
(1983) 09 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 441 of 1981

Amar Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 13-09-1983

Acts Referred:

Punjab Food and Supplies Department (State Service, Class III) Rules, 1968 — Rule 10, 11, 4

Citation : (1984) 1 ILR (P&H) 467

Hon'ble Judges : S.S. Sandhawalia, C.J.; D.S. Tewatia, J

Bench : Division Bench

Advocate : J.L. Gupta, Adv, Rajiv Atma Ram and Rakesh Khanna, for the Appellant; H.S. Bedi, D.A.G. for Respondent Nos. 1 and 2, M.R. Agnihotri V.K. Sharma, for Respondent No. 3, Kuldeep Singh and S.S. Nijjar, for Respondent No. 7., for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewatia, J.—We have before us six Letters Patent Appeals viz. Nos. 648, 675, 676, 677, 678 and 679 all of the year 1980 and two Civil Writ Petitions No. 395 of 1979 and 441 of 1981 involving common question of law and facts and therefore, a common judgment is proposed to cover all the aforesaid eight matters. Wherever necessary material facts primarily would be referred to from C.W.P. No. 395 of 1979 and C.W.P. No. 441 of 1981 and L.P.A. No. 678 of 1980.

2. The Director, Food and Supplies Department, Punjab, Respondent No. 2 invited applications in January, 1971 for some purely temporary posts inter alia of Sub-Inspectors, Food and Supplies hereinafter referred to as "Sub-Inspectors",--vide advertisement Ex. P. 1 to the C.W.P. No. 395 of 1979. In response to the said advertisement the Petitioners in C.W.P. No. 395 of 1975 and some others put in their applications. A written test was held which the Petitioners and some others qualified. The Director, Food and Supplies, then passed an order, dated May 22, 1971, Annexure P. 3 to C.W.P. No. 441 of 1981, asking the District Food and

Supplies Controllers (hereinafter referred to as the Controller) to constitute Selection Committees comprising of three members each for making selection after holding interview of the candidates who had been called for interview and to effect appointment on ad-hoc basis of the candidates selected by them. On 3rd November, 1971, the Government constituted a Departmental Selection Committee (as the Subordinate Services Selection Board had been superseded) for making selections for regular appointments; that in the meantime certain more posts of Sub-Inspectors had become available and the department advertised these posts through the Chairman of the Departmental Selection Committee. The Petitioners in CWP No. 441/81 and some of those who were already working on ad hoc basis, put in their applications in response to the said advertisement that the Petitioners after being selected by the Departmental Selection Committee were appointed by the Director, Flood and Suppress on regular basis as Sub-Inspectors in order of merit determined by the said Committee; that the Government,--vide their letter, dated 29th January, 1973 decided to regularise the services of such of ad hoc appointees as had completed one year's service on 1st January, 1973 in terms of Annexure P. 4 to the said writ petition. In that letter it was made clear that on regularization the appointments of such regularised ad hoc appointees shall date-back to 1st January, 1973 from which date their seniority would be determined vis-a-vis candidates appointed on regular basis after selection through the prescribed agencies; that the services rendered on ad hoc basis would not be taken into account for the purposes of seniority except to determine inter se seniority between the ad hoc employees themselves whose services were regularised with effect from 1st January, 1973; that in compliance with the said order the Department,--vide Annexure P. 7 to L.P.A. No. 678/80 effected" appointments on regular basis of such of the ad hoc employees as satisfied the requirements of the Government Order Annexure P4 aforesaid. That the department circulated tentative seniority list Annexure P.5 in CWP No. 441/81 and invited-objections there to in which the Petitioners were shown senior to Respondents 3 to 8 in the above petition. Final seniority list was drawn up,--vide letter dated November 21, 1978, Annexure P.6 to the said petition which maintained the seniority of the Petitioners qua Respondents 3 to 8 as shown in the tentative seniority list Annexure P.5 to the same petition

3. That before determining even tentative seniority of Sub-Inspectors, certain promotions to the posts of Junior Analysts were effected. Such promotees included some of the ad hoc appointees in whose case it was made clear that their promotions were subjects to the regularisation order that would be passed. Those promotions were challenged in this Court in CWP No. 267 of 1977 which was dismissed by this Court on 28th March, 1977 on the basis at the latches and on the ground that the petition was premature as the Petitioner Chaman Lal's representation was pending consideration with the government.

4. The tentative seniority list was challenge in. G.W.P. Nos. 1028 of 1978 by some of the ad hoc employees; shown junior to the Petitioners in C.W.P. No. 441

of 1981, C.W.P No. 1028/78 was dismissed on 1st May, 1978 with the observation that the impugned seniority list was yet a tentative one; that in the meantime private Respondents to six aforementioned LPAs impugned in this Court Clause 7 of their appointment letter Annexure P 7 for LPA No. 678/80. Their writ petitions were allowed by the learned Single Judge who held that Clause 7 of Annexure P.7, which mentioned that seniority would be determined in accordance with the Chief Secretary's instructions w.e.f. 1st January, 1973, militated against Rule 11 of Punjab Food and Supplies Department (State Service, Class III) Rules, 1968 (hereinafter referred to as the Rules) which envisaged determination of seniority on the basis of continuous service. The State Government and the Director, Food and Supplies have challenged the correctness of the judgment of the learned Single Judge through aforementioned six LPAs.

5. Since in the meantime the tentative seniority list had matured into final seniority list, Annexure P. 6, this led to the filing of C.W.P. No. 395 of 1979 by some of ad hoc employees who were shown juniors to Sub-Inspectors (Food and Supplies) who were impleaded as Respondents 3 to 180 to the said writ petition. Before Writ Petition No. 395 of 1979 and C.W.P. No. 441 of 1981 could be heard, the aforementioned six L.P.As. stood already admitted by this Court and therefore, the two writ petitions in question were also ordered to be heard along with the LP.As and that is how the six Letters Patent Appeals and two writ petitions are before us for decision.

6. The question that primarily falls for consideration is as to whether the initial appointments of those who had applied in response to the first advertisement of January, 1971 and were selected and appointed in the manner already recapitulated is to be treated as ad hoc appointment or regular appointment to the posts to which they had been appointed.

7. While answering the aforesaid question, it would be necessary to identify whether the "ad hoc appointment" carries a distinct meaning or it is a misnomer. That expression "ad hoc" prefixed with the word "appointment" or "employee" is not a misnomer and represents a "level" in the heirarchy of various holders of posts, is left in no doubt by a Full Bench decision of this Court reported as S.K. Verma and Ors. v. State of Punjab and Ors. 1979 (2) SLR 164; The following underlined observation of Sandhawalia, C.J., who delivered the opinion for the Bench are instructive in this regard:

We do not propose to get enmeshed in any abstruse discussion about the precise legal connotation of the term "ad hoc employee" or to attempt a precise definition thereof. Indeed, it appears to us that this convenient appellation for a wholly temporary employee cannot be raised to the pedestal of a term of art. Mr. Chopra had without much success attempted to draw a sharp line of distinction between a temporary employee and an ad hoc employee. According to him, an ad hoc employee is one who is appointed for a specified period of time as against a temporary one, who may be appointed without specifying the period of his

appointment at all.

However, Mr. Chopra could neither cite any principle nor precedent for this supposed distinction. We are wholly unable to find any merit therein and indeed, it would be vain to attempt a legal definition of loose and convenient word of common parlance. To our mind, the term "ad hoc employee" is conveniently used for a wholly temporary employee engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum of ease. The dictionary meaning of ad hoc in Webster's New International Dictionary has been given as "pertaining to or for the sake of this case alone". In the Random House Dictionary its meaning has been given as "for this special purpose, with respect to this subject or thing."

Therefore, having regard to the ordinary meaning of the term, no distinction can reasonably be drawn betwixt a temporary employee whose services are terminable without notice or otherwise and an employee characterised as ad hoc and employed on similar terms. Indeed, it appears to us that in the gamut of service law an ad hoc employee virtually stands at the lowest rung. As against the permanent, quasi permanent and temporary employee, the ad hoc, one appears at the lowest level implying that he had been engaged casually, or for a stop gap arrangement for a short duration or fleeting purposes.

The next point that clamours for some clarification as to in what circumstances the administration should resort to the making of ad hoc appointments and for what period of time and what on the other hand is actually happening.

8. To my mind it is an administrative necessity or call It emergency calling for additional hands for performing administrative task of a given post lying either vacant or created to meet the given temporary necessity or emergency. When the administration stands in such dire need of additional hands, the strict meticulous adherence to merit and at times even eligibility in the matter of age and qualifications and also the sanctioned procedures for selection are given a go-by in the public interest.

9. In the nature of things it is expected to be a one time act to afford to the administrative authority breathing time to select and appoint candidates in strict compliance with the relevant rules or the executive instructions. What is, however, happening in actual practice is that filling of vacancies, existing or newly created through ad hoc appointments has become the norm and the selection through an established mode or procedures sanctioned by law stands relegated to the position of exception.

10. The reason for overturning the mode and manner of appointments is not difficult to conceive. In a situation where hundreds, of eligible candidates come to compete for a solitary post (in fact, such was the position in the present case where for 74 posts, of Sub-Inspectors, Food and Supplies, over 8,000 persons had put in their applications and out of them over 1,500 and odd were called for interview) the authorities at the helm anxious to have his own favourite

appointed to the post, who may otherwise not fare well in an open competition, conducted by the statutory authority, skirt round the established procedure of selection by statutory functionaries (envisaged by the rule making authority by virtue of their experience or status with a view to impart some objectivity to the selection) by getting the job of selection entrusted to such, functionaries as are amenable to their, influence and would act on their, bidding. The real intention behind the bypassing of the established selection procedure are camouflaged by projecting the appointment in a low profile by calling them ad hoc.

11. Although such appointments are made, normally with an express or implied rider that they were to make way the moment persons duly selected in, accordance with, the established procedure sanctioned by law become available for appointment, but years are allowed to pass by and the selection through statutorily sanctioned procedure is nowhere in sight and then ultimately the appointments of such ad hoc employees are got regularised. In this manner not in tens or scores or hundreds but in thousands such ad hoc appointments have been made and are being made only to be regularised later on and the statutory procedure for selection is being deliberately scuttled.

12. Can the employees who initially secure appointment on ad hoc basis and later on came to be regularised, as is the case here, from a given date and are offered fresh appointment under the Rules from a date with effect from the date on which they are regularised, claim that the date of ad hoc appointment be considered as the date of their regular appointment under the rules?

13. In my opinion, no such option is available to an employee who secured initial appointment on ad hoc basis. He secures appointment under the rules only on regularisation and that too in accordance with the terms and conditions of fresh appointment letter.

14. Now turning to the facts of the present case, it may be observed that the stand that has been highlighted on behalf of the alleged regularised employees is that, in fact, in substance their initial appointment was a regular one and not adhoc because they had been made to go through a written test and a regular interview by a Departmental Selection Committee and they had satisfied eligibility conditions that regular employees are normally required to satisfy. To sustain the above assertion, attention was invited to advertisement, Annexure P. 1, which was made at the instance of the Director, Food and Supplies, Annexure P. 2, letter written by the office of the Director, Food and Supplies requiring the Applicants to appear for written test. Annexure P. 3, again a letter from the office of the Director, Food and Supplies informing the candidates about their having qualified the written test and requiring them to appear for interview in the office of the Controller. It was also projected by Mr. Kuldip Singh counsel appearing for alleged regularised employees that some of the employees who initially were appointed on adhoc basis, after regularisation were even promoted to next higher post and the State Government had defended their promotion when questioned by some of regularly appointed Sub-Inspectors on the ground that

they were senior to the regularised Sub-Inspectors as the seniority was to be counted on the basis of continuous service.

15. At this stage relevant rule deserved noticing. Rule 4 identifying the authority competent to make appointments and Rule 11 prescribing criteria for determination of seniority are in the following terms:

4. Appointing Authority.--All appointments to posts in the service shall be made by the Director.

11. Seniority of Members of Service.--The seniority inter se of members of the service shall be determined by the date of their continuous appointment in the service:

Provided that in the case of members recruited by direct appointment the order of merit determined by the Commission or the Board, shall not be disturbed and persons appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection:

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:

(a) a member recruited by direct appointment shall be senior to a member recruited otherwise;

(b) a member recruited by promotion shall be senior to a person recruited by transfer;

(c) in the case of members recruited by promotion or transfer seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) In the case of members recruited by transfer from different cadres, their seniority shall be determined according to pay, preference being given to member who was drawing a higher rate of pay in his previous appointment and if the rate of pay drawn are also the same then by their length of service in those appointments; and if the length of such service is also the same, an older member shall be senior to a younger member.

Note I.--This rule shall not apply to persons appointed on purely provisional basis pending their passing the qualifying test.

Note II.--In the case of members whose period of probation is extended under Rule 10, the date of appointment for the purpose of this rule shall be deemed to have been deferred to the extent the period of probation is extended.

16. Perusal of Rule 4 would show that all appointments to the service which, inter alia, comprises of Sub-Inspector, Food and Supplies were to be made by the Director.

17. Mr. J.L. Gupta, appearing for Petitioners in Writ Petition No. 441 of 1981 and

on behalf of one of the Respondents in C.W.P. No. 395 of 1979 has contended that the initial appointments of the alleged regularised Sub-Inspectors, Food and Supplies, some of whom are Petitioners in C.W.P. No. 395 of 1979 and Respondents in six L.P.As was not effected by Director, Food and Supplies, who alone was competent to do so. Their appointments having been made by the Controller, if these were to be considered as appointment to the service, were illegal or these were in the nature of adhoc appointment outside the service.

18. Admittedly, initial appointment letters of such persons whose services were later on regularised were issued by the respective Controllers and not by the Director, Food and Supplies, Punjab.

19. Reference in this regard may be made to Annexure P. 4 to L.P.A. No. 678 of 1980, which is a letter from the Controller, Kapurthala to Shri Avinash Chander Respondent

20. The Controller had acted in pursuance of communication dated May 2, 1971, Annexure P. 3 to C.W.P. No. 441 of 1981, which is in the following terms:

From

Shri J.D. Khanna, IAS, Director, Food and Supplies and Joint Secretary, Punjab Government.

To

Distt. Food and Supplies Controllers. Memo No. Est(2)71/19761 Dated Chandigarh 2 May, 1971.

Subject : Appointment of Sub-Inspectors.

The list of the candidates who qualified the test taken by you on the subject noted above is enclosed and it has been decided that you should take interview of these candidates on 6th June, 1981. Necessary interview letters have been issued from Headquarters. After taking interview according to instruction, the selected candidate be appointed on adhoc basis against temporary and regular vacancies in your circular Head Office inform Head Office. You have already filled up some vacancies through employment exchange out of the selected candidates from the above list, these posts may be given to them but the appointment of these candidates will have to be got regularised through board.

For this purpose a committee be constituted of these officers and you will be the Chairman of this committee out of the remaining two officers one should be Scheduled Caste.

Out of the appointed, there should be 20% Scheduled Caste, 20% ex-servicemen and 2% Backward Classes.

(Sd.)..., Superintendent Establishment or Director, Food and Supplies (Pb.)

21. Perusal of the above communication would show that the Director, Food and

Supplies authorised respective Controllers to constitute a Selection Committee of three officers, one of them would be the Controller himself who would act as the Chairman of that committee and who would also nominate two other officers to the Selection Committee; that the Controller was further authorised as would be clear from the underlined portion of Annexure P. 3, to appoint on adhoc basis the candidates selected by the said selection committee and then inform the Head Office.

22. The appointments made by the Controller in compliance with the letter of the Director, Food and Supplies, Annexure P. 3 can be regarded to have been made by the Director, Food and Supplies himself, if in law the Director could delegate his power of making appointment to the Controller.

23. Rules in question do not envisage any delegation of power of appointment on the part of the Director, Food and Supplies. It has however been contended by Mr. Kuldip Singh that making of appointment is an administrative function which can be delegated to a subordinate or any other person, while on the other hand it has been urged by Mr. J.L. Gupta that the ultimate responsibility to make appointment cannot be delegated by a statutory functionary to another person and sought support for his submission from Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court, and Vine v. National Dock Labour Board (1956) 3 All ELR 939.

24. A Constitution Bench of five Judges in Pradyat Kumar's case (supra) while responding through Jagannadhadas, J. who delivered the opinion for the Bench to a contention advanced before them on behalf of the Appellant who held the office of the Registrar and Accountant-General of the High Court of Calcutta and was dismissed therefrom by an order of the Chief Justice, that Chief Justice could not delegate the function of enquiring into the charges against him to another Judge had the following to say:

It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law so specifically so provides--is the ultimate responsibility for the exercise of such power.

25. The underlined portion of the aforementioned observations leaves no scope for doubt that even in the matter of exercise of administrative power what cannot be delegated is the ultimate responsibility for the exercise of such power.

26. Lord Somervell of Harrow in a concurring opinion in Vine's case (supra) at page 951 of the report held that in deciding whether a "person" has power to delegate, one has to consider the nature of the duty and the character of the person. There are, on the other hand, many administrative duties which cannot be delegated. Appointment to an office of position is plainly an administrative act. If under a statute a duty to appoint is placed on the holder of an office,

whether under the Crown or not, he would, normally, have no authority to delegate. He could take advice, of course, but he could not, by a minute, authorise someone else to make the appointment without further reference to him.

Applying the ratio of the aforementioned two cases to the facts of the present case one cannot but hold that while it was permissible to the Director, Food and Supplies, Punjab, to constitute a selection committee with Controller as Chairman as envisaged in Annexure P. 3 and have the candidates interviewed by such a selection committee, it was, however, not permissible to him to authorise respective Controllers to make appointments of the candidates selected by the said selection committee. By authorising the Controller to act on the result of the interview and make appointment, the Director relegated to the respective District Controllers his ultimate responsibility of making appointment.

27. In view of the ratio of the decision of their Lordships of the House of Lords in Vine's case (supra), such a course of action was not open to the Director and therefore, the appointments effected to the post of Sub-Inspector, Food and Supplies in January, 1971, could not be regarded as appointment made by the Director, Food and Supplies. Since the appointments were not made by the Director, who alone was competent to make appointment to the service to which rules in question apply, such appointments both in letter and spirit are ad hoc appointments outside the service. The appointments were clearly intended to be ad hoc as is clear from Annexure P. 3, communication from the Director to the Controllers. Indeed these appointments had all along been treated by the Government as ad hoc requiring to be regularised. This fact was made clear while making promotions as would be clear from the following portion of Annexure R. 1 to L.P.A. No. 678 of 1980:

Sarvshri Alla Singh, Mohinder Singh, Karnail Singh, Balwant Singh and Abnash Chander are at present posted as Sub-Inspector on ad hoc basis and matter regarding their regularisation and assigning them seniority is under consideration. Their promotion is therefore made on ad hoc basis and decision regarding their continuation on the post of Junior Analyst will be taken after the final decision on the cases mentioned above.

28. The stand that the State Government took in its written statement before the Court when regular appointees challenged those promotions through civil writ petition 267/1977 in substance is no different. By then their seniority tentative or otherwise had not been formulated. The promotions were adhoc and conferred no right till the final decision on regularisation had been taken. Till that was done the Government merely kept the dates of appointments in view while effecting such ad-hoc promotion.

29. For the reasons aforementioned, I hold that the initial appointment of Respondents to the L.P.As and Petitioners in C.W.P. No. 395 of 1979 as also of those who were appointed in the like manner by the Controllers in pursuance of

Annexure P. 3 as Sub-Inspector, Food and Supplies, was on ad hoc basis and was not governed by the rules. Their appointment to the service came to be governed by the said rules with effect from the date their services were regularised in terms with effect from the date their services in Annexure P. 7 to LPA No. 678/1980. That date was 1st January, 1973 and therefore, Clause 7 in their appointment letter, the legal validity where of arises for consideration in the six L.P.As is legal and valid.

It is not disputed that if their date of appointment is taken to be 1st January, 1973 then their seniority qua their colleagues Respondents 3 to 180 in C.W.P. No. 395 of 1979 is correctly reflected both in the tentative seniority list Annexure P-5 and final seniority list Annexure P. 6.

30. For the reasons aforementioned I allow the Letters Patent Appeal No. 658 and 675 to 679 of 1980, set aside the judgment of learned single Judge and dismiss the writ Petitions No. 1616, 1604, 1640, 3288, 1078 and 1639 of 1978. I also dismiss C.W.P. No. 395 of 1979 and allow C.W.P. No. 441 of 1981 No order as to costs.

S.S. Sandhawalia, C.J.

31. I agree.