

(2010) 04 P&H CK 0168
In the Punjab And Haryana At Chandigarh

Amrik Singh and Others

APPELLANT

Vs

Punjab Mandi Board and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 04 P&H CK 0168

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The petitioners No. 1 to 9 challenge an order of regularization of private respondents No. 2 to 21 purporting to regularize their services after completion of two years from the date of their direct recruitment. The admitted case is that when the Government framed the policy originally on 28.10.1980 (vide annexure P-5), it provided for regularization of services for persons who had been recruited through Employment Exchange or by open advertisement and who had completed one year of service. None of the private respondents qualified for such consideration but the petitioners were qualified and hence regularized by the proceedings dated 15.12.1986 w.e.f. 01.07.1982. Subsequently, it appears that the Government has decided to relax some of the conditions in the regularization policy that set down that persons, who were ad hoc employees and who had completed three years of service on the date of issue of the order namely 26.10.1982 and who did not fulfill the prescribed conditions with regard to the qualifications, age or mode of their initial recruitment shall also be considered for regularization. By virtue of this relaxation of conditions, all the respondents had been regularized. When the order was passed, the petitioners had no grievance. The problem arose because by virtue of the impugned order, all the employees who were not previously regularized as per the original policy were being regularized after completion of two years from the date of the respective appointments if they meant back-door entries. This had an effect of bringing the private respondents whose initial entry

was not legal to steal a march over the petitioners by reckoning their seniority above the petitioners by virtue of their prior entry into service, irrespective of the fact that they did not fulfill the necessary qualifications or their appointments were not as per rules.

2. During the pendency of the petition, it appears that the Board itself was aware of the situation that had given rise to the filing of the writ petition and had made a file noting, which is produced in this case as Annexure A-1 that admitted to the situation that the regularization of the services of the private respondents made, gave place to more than how the relaxation was sought to be given. While the rules of relaxation contemplated regularization of service who had put in three years of service, the impugned proceedings were issued approving of regularization of the private respondents after the completion of two years from the date of the respective dates of appointment. This file noting is relied to show that the impugned proceedings had been issued even without concurrence of the Chairman of the Board.

3. If there was a policy of regularization of persons, who had completed certain number of years, it shall not normally be for the Court to interfere with such a policy consideration unless it was grossly inequitable or illegal. The relaxation of the original policy of regularizing only persons, who had been recruited through a proper selection process through public advertisement would be perfectly justified. A decision to regularize also persons, who had been appointed otherwise through such process would have been had in the light of the decision of the Hon"ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, as falling foul of Article 14. We are not even addressing the situation of persons making any attempt to annul the selection or regularization of the private respondents. The petitioners are aggrieved only by the fact that in the attempted application of the relaxation of the policy, the persons who had been appointed through back-door have stolen a march over the petitioners by having their initial dates of entry into service as operating to provide to them a seniority which they were not otherwise entitled to. In other words, persons who were appointed through regular selection process have been disadvantaged by a policy consideration that made possible persons, who were back-door entrants but have their entry into service regularized, although they did not fulfill the necessary qualification or their entry into service was against recruitment rules. The information secured through the RTI of the file noting of the Board literally vindicates the stand of the petitioners that the regularization made of the private respondents was invalid and illegal on the face of the record.

4. Under the circumstances, it shall not be lawful to permit P11 to stand but it shall not so operate to cause any prejudice to the private respondents, who have been holding their office by virtue of the order issued in the year 1989. Even Uma Devi dispensation provided for a one time relaxation of persons, who had held their service for more than 10 years and who had continued but for orders of stay obtained from any Court. The private respondents have continued in their

service all along by virtue of the impugned proceedings and regularized w.e.f. 24.03.1983. The order shall be considered as ineffective so far as the petitioners are concerned and the seniority shall be re-worked entitling the petitioners to treat themselves as seniors from the date when the private respondents' services were regularized and treated as seniors. All the monetary benefits shall also be re-worked on the above basis and the petitioners shall be assigned to such posts as they should have secured if the P-11 had not come into effect to oust them from their respective seniority positions. The entire exercise of re-working seniority and calculating the monetary benefits and re-fixation of posts shall be done without in any way affecting the posts held by the private respondents.

5. The entire exercise shall be completed within a period of 12 weeks from the date of receipt of copy of the order and all the arrears shall be paid forthwith on such reckoning. If the amount is not paid within a period of 12 weeks, the amount shall carry interest @12% p.a. If amongst the petitioners, any one of them has retired from service on attaining the age of superannuation, the benefits of any increase in emoluments shall be calculated and given to them and it shall also have bearing on the terminal benefits that such persons would be entitled to.

6. The writ petition is allowed on the above terms but there shall be, however, no direction as to costs.