
(1994) 09 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8715 of 1994

Anand Kumar

APPELLANT

Vs

Haryana Urban Development Authority

RESPONDENT

Date of Decision : 13-09-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B

Citation : (1994) 09 P&H CK 0098

Hon'ble Judges : N.K. Sodhi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.K. Malik, for the Appellant; Deepali Puri, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This petition is being decided alongwith C.W.Ps. Nos. 8714, 8717, 8716 and 8718 of 1994 because a common question of law is required to be decided in all these petitions.

2. Petitioners in all these petitions are employees of Haryana Urban Development Authority (for short "the HUDA"). All the petitioners were initially appointed on daily wages. Petitioner Anand Kumar was appointed as Beldar on daily wages with effect from 1.11.1987. Petitioner Nar Bahadur was appointed as Chowkidar in June, 1981, petitioner Krishan Lal was appointed as Chowkidar on daily wages in July, 1984, petitioner Prithvi Singh was appointed as Chowkidar on daily wages in November, 1987 and petitioner Satyavan was appointed as Keman on daily wages in August, 1986. All the petitioners continue to work on daily wages. Services of the petitioners were regularised by the competent authority on the basis of policy decision contained in the circular dated 27.5.1993 issued by the Government of Haryana and which was adopted and applied by the respondent-HUDA. Order for regularisation of service was passed on 17.8.1993 in the case of petitioner Anand Kumar. Service of Nar Bahadur was regularised by order dated 10.9.1993. In the case of petitioner Krishan Lal order for regularisation was issued on 29.9.1993. In the case of Prithvi Singh this order was issued on

10.9.1993 and the service of Satyavan was regularised by order dated 30.9.1993. In each case the competent authority had considered the nature of service rendered by the petitioner as also the length of his service. However, after about 8/9 months of the date of regularisation of services of all the petitioners, respondent No. 2 issued order dated 27.6.1994 cancelling the orders of regularisation of services of each of the petitioners on the ground that there was a break of more than one month at a time in a year in the services of the petitioners.

3. Petitioners have challenged the order of deregularisation of their services on the ground of the violation of the principles of natural justice, and the Government instructions as also on the ground that persons similarly situated have been regularised in service. In each of the petitions, the petitioner has given the reason for interruption in his service. Anand Kumar has stated that he was sick during the months of March and April, 1989 and therefore he could not attend duty for a period of 60 days. Similar statement has been made by the other petitioners.

4. In their written replies, which are identical in all the petitions, respondents have pleaded that Government instructions contained in letter dated 27.5.1993 were conveyed by the Chief Administrator, HUDA, vide Endorsement dated 4.8.1993. In accordance with these instructions it was decided to regularise the work-charged and daily wage employees of HUDA, who had completed 5 years service as on 31.3.1993. Orders for regularisation of services of work-charged/daily wage employees were issued on the basis of the lists furnished by the concerned Heads of Offices and which were got verified from the concerned superior officers. While admitting that order for regularisation of service of each of the petitioner had been issued, the respondents have further stated that in the statements furnished to respondent No. 2 by the respective superiors, details about the break in service of each of the petitioners were not given. Subsequently, the Government issued circular letter dated 18.3.1994 which was conveyed by the Chief Administrator, HUDA vide Endorsement dated 1.4.1994 and it was clarified that those daily-wage employees who had worked for 5 years and who had completed 240 days of service without break of more than one month are entitled to be regularised. In the light of this policy decision, respondent No. 2 issued the impugned order. Contention of the respondents is that their action is in consonance with the directions issued by the Government of Haryana and, therefore, they cannot be charged with the allegation of having acted in breach of the principles of natural justice.

5. The first argument of Sh. Malik is that the impugned order is liable to be quashed on the ground of violation of the principles of natural justice. Shri Malik argued that before passing the impugned order for cancelling the earlier orders by which the services of the petitioners were regularised, no action-oriented notice and no opportunity of hearing was given to the petitioners. Shri Malik argued that before the respondents could cancel the order of regularisation of

the services of the petitioners, it was imperative for the respondents to have given an opportunity of hearing to the petitioners. Learned counsel for the respondents argued that respondents had done nothing more than a mere compliance of the instructions issued by the Government of Haryana and, therefore, it was not necessary for them to give show-cause notice to the petitioners. In our opinion, the argument of the learned counsel for the petitioners merits acceptance. There can be no manner of doubt that orders of regularisation of services passed in favour of the petitioners had conferred a valuable right on the petitioners. With the passing of the orders for regularisation of their services the petitioners became part of the regular establishment of the organisation. They became entitled to be given all the benefits which are admissible to other regularly appointed persons. Before such right of the petitioners could be taken away, the minimum which was required to be done by the respondents was to have given a notice to the petitioners calling upon them to show cause as to why the orders passed in their favour be not recalled. It is trite to say that even administrative orders are required to be passed in consonance with the rules of natural justice. One of the well recognised rules of natural justice is that no person should be condemned unheard. This rule has been applied even in purely administrative State actions as is evident from the judgments of the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, ; *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, ; and *Sayeedur Rehman Vs. The State of Bihar and Others*, . An altogether new dimension has been given to the concept of natural justice in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , their Lordships of the Supreme Court held that every State action must be fair and reasonable and if it is found to be arbitrary, it will be treated as contrary to Article 14 of the Constitution. In view of this, it must be held that the impugned order dated 27.6.1994 passed by respondent No. 2 cancelling the orders of regularisation of services of the petitioners is liable to be quashed only on the ground that the petitioners were not heard before passing of that order.

6. Second argument of the learned counsel is that the instructions issued by the Government vide letter dated 18.3.1994 cannot be applied to the cases of the petitioners. Learned counsel argued that the petitioners had been regularised in service on the basis of instructions issued by the Government vide circular letter dated 27.5.1993. That circular required 5 years service as on 31.3.1993 in order to entitle a casual/daily wage employee to be regularised in service and once the respondents acted on those instructions, the subsequent instructions issued by the Government cannot take away the right which had accrued in favour of the petitioners on the basis of circular dated 27.5.1993. Learned counsel for the respondents submitted that the policy instructions issued by the Government dated 18.3.1994 are clarificatory in nature and, therefore, the action taken by respondent No. 2 in compliance of those instructions cannot be termed as arbitrary or one affecting the existing rights of the petitioners. After having given

our thoughtful consideration to the rival submissions we are of the opinion that learned counsel for the petitioners is right in arguing that the instructions issued on 18.3.1994 cannot be availed of by the respondents for cancelling the orders of regularisation of services of the petitioners. Once respondent No. 2 had given effect to the earlier policy instructions contained in circular dated 27.5.1993 the subsequent instructions issued by the Government cannot be availed of by respondent No. 2 in order to change the status of the petitioners. Although the Government is possessed with the power to issue administrative instructions as also the power to change such administrative instructions, the amendment or change effected in the administrative instructions cannot have retrospective effect. Neither the Constitution of India nor any Act of the legislature empowers the Government to issue administrative instructions having retrospective effect. Therefore, the administrative instructions issued on 18.3.1994 could not have been used by the respondents for cancelling the regularisation of services of the petitioners.

7. Third argument of the learned counsel is that the break in service of the petitioners, though such break may be for a period of more than 30 days, cannot be a ground for denying the benefit of regularisation of service to the petitioners. He argued that as daily wagers, the petitioners cannot but be deemed to have entered into a contract of employment which used to end every day and interruption in the service of the daily wagers which may be on account of varied circumstances cannot be a ground for denying benefit of regularisation of service. Learned counsel further argued that interruption in the service of even monthly rated or regular employees does not amount to break in service and, therefore in case of daily wagers also interruption in service due to reasons beyond the control of the daily-wage employees cannot be made basis for denying the benefit of regularisation to such daily wagers. We find sufficient justification to accept this contention of the learned counsel. There can be no denying that contract of service between a daily wager and his employer begins on a particular day and ends on that very day. Employer as well as the employee is free to enter into such contract. The employer has a right not to provide work to a daily wager. If a break in service or interruption in service takes place due to the action of the employer, it cannot be treated as break in service for the purposes of circulars issued by the Government of Haryana. Likewise, if an interruption in service is due to sickness or authorised leave, or accident, or a legal strike or a lock-out, such interruption cannot be treated as break in service, so as to disentitle an employee the benefit of regularisation in service. It is significant to note that the definition of the expression "continuous service" used in section 25B excludes interruption of service on account of sickness or authorised leave or accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman. Though section 25B cannot be invoked in its letter and spirit for the purposes of interpretation of the circulars issued by the Government for regularisation of daily wager/casual employees, the legislative intendment for enacting section

25B of the Industrial Disputes Act can certainly provide a reasonable guidance for the purpose of interpretation of the expression "break in service", which is used in the circulars of the Government. Therefore, we are of the opinion that a break in service or interruption in service of a daily wager which has been brought about on account of circumstances beyond the control of daily wager/casual employee cannot be a ground for denying him the benefit of regularisation in service.

8. For the reasons aforementioned, these writ petitions are allowed and order dated 27.6.1994 which is impugned in each of these petitions is declared illegal and is hereby quashed. The petitioners shall get all consequential benefits. Costs made easy.