
(2002) 09 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9430 of 2000

Anil Kumar

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Punjab Civil Service (General and Common Conditions of Services) Rules, 1994 — Rule 15(1)
Punjab Trust Services (Recruitment and Conditions of Service) Rules, 1978 — Rule 9, 9(1), 9(2), 9(3)

Citation : (2003) 1 ILR (P&H) 309

Hon'ble Judges : Swatanter Kumar, J;S.S. Saron, J

Bench : Division Bench

Advocate : Raman Sharma, for the Appellant; A.S. Grewal, D.A.G. for Respondents No. 1 and 2 and Rakesh Garg, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—The Petitioner in the present writ petition assails order dated 24th May, 2002 Annexure P-13 whereby he has been reverted from the post of Clerk to that of Sewadar (Peon) by the Director, Local Government, Punjab Respondent No. 2.

2. Brief facts of the case are that father of the Petitioner Roshan Lal was working as a Tractor Driver with the Improvement Trust, Jalandhar. During his service he died on 16th November, 2000. The Petitioner submitted an application to the Improvement Trust, Jalandhar, alongwith matriculation certificate for appointment as Clerk on compassionate grounds. The Petitioner is the eldest son of the deceased Roshan Lal. His request was accepted and he was appointed as Clerk on 7th March, 2001. Copy of appointment letter is annexed with the petition as Annexure P-3. During the service of the Petitioner as Clerk with the Improvement Trust Jalandhar, the Assistant Controller (Internal Audit) Improvement Trust raised an objection with regard to the salary of the Petitioner on the ground that he was not matriculate with IInd Division and as such he did

not fulfil the minimum qualifications for appointment as a Clerk. Thereafter a reference was made by Respondent No. 3 Executive Officer, Improvement Trust, Jalandhar to the Director Local Government, Punjab, Respondent No. 2 for relaxing the qualifications of the Petitioner in respect of his appointment as Clerk. Respondent No. 2,--vide letter dated 17th June, 2001 (Annexure P-6) considered the proposal and approval was granted on the condition that the petitioner should pass the matric examination with Punjabi in IInd Division within one year. The Petitioner appeared in the matriculation level Punjabi examination conducted by Punjab School Education Board and passed it in the year 2001. He submitted copy of the detailed marks sheet to Respondents,-- vide letter dated 22nd February, 2002 (Annexure P-7). Insofar as passing of matriculation with IInd Division is concerned, the Petitioner made enquiries from Himachal Pradesh Board of School Education, Dharsamshala, from where he has passed matriculation in the year 1992 as to how he could improve his division. The Petitioner was informed that improvement examination of the matriculation could only be given in the next academic session to the session in which one would pass out the examination. The Petitioner had passed matriculation in the year 1991-92, and he could not make improvement in his division after the academic session 1992-93 as per rules of the Himachal Pradesh Education Board. The Petitioner states that he was guided to appear straight-way in the 10+2 examination of the Board which would satisfy the condition imposed by Respondent No. 2. The Petitioner filled the necessary forms for appearing in 10+2 examination. However, by registered letter dated 2nd February, 2002 the Secretary, Himachal Pradesh School Education Board, Dharamshala informed the Petitioner that with effect from March, 2002 onwards it had been made mandatory for a person to first pass 10+1 examination before he can be allowed to appear in the 10+2 examination and as such the forms submitted by him were cancelled. In these circumstances, the Petitioner could not pass matriculation with IInd Division within the period of one year as granted by Respondent No. 2. The Petitioner was asked,--vide letter dated 5th March, 2002 (Annexure P-9) by Respondent No. 2 to inform them whether he had cleared the matriculation examination in IInd Division. The petitioner then made a representation dated 7th March, 2002 (Annexure P-10) asking for relaxation for the year 2002-03 so that he was able to pass 10+2 examination. The Improvement Trust Respondent No. 3 also,--vide memo dated 18th March, 2002 (Annexure P-II) wrote to the Director Respondent No. 2 regarding passing Matriculation in IInd Division by the Petitioner. A reference was made to the representation of the Petitioner in which he had informed the office that he had passed Punjab examination of the matric standard from the Punjab School Education Board. However, for passing matric in IInd Division it was stated that he required of migration certificate from Himachal Pradesh Board of Education and only after the year 2002-03 he could appear since one year provided by Himachal Education Board for improvement in matriculation subjects has elapsed in the year 1993. The Petitioner prayed that he should be granted relaxation for the year 2002-03. The representation of the Petitioner was forwarded by Respondent No. 3 to Respondent No. 2 for necessary

action. The Director, Local Government instead of dispassionately considering the representation passed the impugned order dated 17th May, 2002 (Annexure P13) whereby the Petitioner was reverted to the post of a Peon. The Petitioner thus filed the present writ petition assailing the said order.

3. Notice was issued to the Respondents. Respondents No. 1 and 2 filed their reply and Respondent No. 3 Executive Officer Improvement Trust, Jalandhar, filed a separate reply. In the reply filed by Respondents No. 1 and 2, it has been stated that the Petitioner was not eligible to be appointed as a Clerk as he was matriculate with IIIrd Division, whereas according to the provisions of Rule 15(1) of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter to be referred as 1994 Rules), the minimum educational qualification for appointment as a Clerk should be matriculate in IInd Division or Senior Secondary Part-II. The Petitioner being a matriculate with I Ird Division is not eligible for appointment as Clerk under the rules and as such he has no legal right to hold the post. It was also submitted that the fact regarding non eligibility of the peitioner to the post of clerk came to the notice after the initial letter of appointment dated 7th March, 2001 (Annexure P-3) had been issued. In fact it was Respondent No. 3,--vide leter dated 4th May, 2001 (Annexure P-5) informed Respondent No. 1 and 2 that the Petitioner was not eligible. However, since the Petitioner had been appointed on compassionate ground, he was asked to pass matriculation examination within one year and also pass Punjabi type test. It was also intimated by Respondent No. 2 to Respondent No. 3 that annual increment would only be granted to the Petitioner after passing matriculation examination in IInd Division and Punjabi type test, otherwise he will be reverted to the post of Peon. It was also submitted that Respondents follow the 1994 Rules.

4. Respondent No. 3 in its written statement has submitted that the Petitioner was appointed on compassionate grounds and that his mother Smt. Naro Devi also made a request,--vide application dated 1st January, 2001 alongwith affidavits of her two other sons to the effect that they had no objection for giving appointment to the Petitioner on compassionate grounds. It was further stated that there was no vacant class III post available with Improvement Trust, Jalandhar, and therefore, the case of the Petitioner was forwarded to the Government for giving him appointment as Clerk as the competent authority for such appointments is the State Government. The application of the Petitioner alongwith certificates/annexures was sent to the Government. Besides a copy of the resolution dated 16th January, 2001 (Annexure R-3/1) passed by the Improvement Trust whereby it was decided for creation of a post of Clerk for sanction of the Trust and the Government for appointment of the Petitioner to the post of Clerk on compassionate ground was also sent.

5. Learned Counsel for the parties have been heard. We have given our thoughtful consideration to the matter.

6. A perusal of the appointment letter dated 7th March, 2001 (Annexure P-3) shows that various conditions were set out subject to which the Petitioner was

offered appointment as Clerk by Respondent No. 2. Sub-para (vi) of the letter of appointment envisages that the Petitioner would remain on probation for a period of two years under Rule 9(1) of the Punjab Trust Services (Recruitment and Conditions of Service) Rules, 1978 (hereinafter to be referred as the 1978 Rules). Besides, regular appointment shall be subject to the satisfactory completion of probation period after the expiry of two years from the date of joining and the Petitioner would not be entitled for regularisation unless such orders were passed.

7. Sub-para (xii) and (xiii) of the letter of appointment provides that the offer was subject to the service condition being changed by the Government from time to time. It was also laid down that the Petitioner was required to qualify the Punjabi type test within six months from the date of joining. The approval for the creation of one post of Clerk was also accorded in the budget for the year 2000-2001. Therefore, it is to be noticed that there was no condition in the initial appointment letter dated 7th March, 2001 Annexure P-3 in respect of the Petitioner that he was required to pass matriculation examination in IInd Division. Besides, sub-para (vi) of letter of appointment also shows that 1978 Rules were to apply and were applied for the purpose of governing his conditions of service. There is no provision in the 1978 Rules for passing the matriculation with IInd Division for consideration for appointment as Clerk. Respondents No. 1 and 2, however, seek to enforce Rule 15(1) of 1994 Rules so as to disentitle the Petitioner to hold the post of Clerk on the ground that he has not passed matriculation with IInd Division. Rule 15(1) of 1994 Rules reads as under:

Minimum educational and other Qualifications:(1) No person shall be appointed by direct appointment to the post of a Clerk under the Punjab Government unless he is Matriculate in Second Division or has passed Senior Secondary Part-II Examination from a recognized University or Institution.

8. There being no minimum educational qualification provided in the 1978 Rules, 1994 Rules would apply. However, it is pertinent to note that in respect of probation, 1978 Rules are to be applied even as per appointment letter dated 7th March, 2001 Annexure P-3. Rule 9(1) of 1978 Rules reads as under:

Probation:(1) A person appointed to a service shall remain on probation for a period of two years, if appointed by direct recruitment, and one year, if appointed otherwise;

Provided that officiating appointment in a Service shall be reckoned as period spent on probation.

(2) If the work or conduct of a person appointed to a Service during the period of his probation is, in the opinion of the appointing authority, not satisfactory, it may:

(a) If appointed by direct recruitment, dispense with his services; or

(b) if appointed otherwise:

- (i) revert him to his former post; or
 - (ii) deal with him in such manner as the terms and conditions of his previous appointment permit.
- (3) On the completion of the period of probation of a person, the appointing authority may:
- (a) if his work or conduct has, in its opinion, been satisfactory;
 - (i) confirm such person from the date of his appointment, if appointed against a permanent vacancy; or
 - (ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or
 - (iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy;
 - (b) if his work or conduct has not been, in its opinion, satisfactory;
 - (i) dispense with his services, if appointed by direct recruitment or if appointed otherwise; revert him to his former post or deal with him in such other manner as the terms and conditions of his previous appointment may permit; or
 - (ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the original period of probation:

Provided that the total period of probation including extension, if any, shall not exceed three years.

9. A perusal of the above rule which has been specifically made applicable to the Petitioner, vide sub-para (vi) of the appointment letter Annexure P-3, shows that a person appointed to a service is to remain on probation for a period of two years, if appointed by direct recruitment and one year if appointed otherwise. Besides, Rule 9(2) of Rules shows that if the work and conduct of a person appointed to a service during the period of his probation is, in the opinion of the appointing authority, not satisfactory, it may, dispense with his services, if appointed by direct recruitment, or if appointed otherwise, revert him to his former post or deal with him in such manner as the terms and conditions of his previous appointment permit. Rule 9(3) deals with confirmation if the work or conduct has been satisfactory. The dispensing with the service of the Petitioner or reverting him to the post of a Peon is subject to his work and conduct during the period of probation being satisfactory. This is the intent and terms of the appointment letter and Rule 9 of the 1978 Rules. In the present case the Petitioner has been reverted on account of his not having passed matriculation in IInd Division at the time of his initial appointment. His reversion is not on the condition of his work and conduct being not satisfactory. Appointment to the post of Clerk is one of the status than of a mere contract between the parties. The Petitioner after having been appointed as Clerk acquired some status and he did

not make any misrepresentation with regard to his having passed the matriculation examination. It is not even the case of the Respondents that there has been any misrepresentation or fraud committed by the Petitioner at the time of his initial appointment as Clerk. Rather the case of the Respondent is that it later came to their notice that the Petitioner was not matriculation with IInd Division. The reversion of the Petitioner, therefore, in our view, is in violation of Rule 9 of 1978 Rules. The Petitioner could only be reverted to the post of Peon if his work and conduct were not found upto the mark in accordance with Rule 9 of 1978 Rules. It is to be noted that the post against which the Petitioner was appointed was duly sanctioned in the budget for the year 2000-01. Therefore, the substantive appointment of Petitioner to a sanctioned post in public service confers normally on the servant so appointed a substantive right to the post and he becomes entitled to hold the post. The only reason for his reversion ought to have been that his work and conduct was not satisfactory which is not the case in hand. Therefore, we are of the opinion that the infraction of Rule 15(1) of 1994 Rules would not apply after his appointment to the post. Besides, the Petitioner himself has made sincere efforts to qualify matriculation examination but under the changed circumstances he could not pass matriculation examination in IInd Division. Respondent No. 3 Improvement Trust,--vide resolution dated 16th October, 2001 Annexure R-3/1 recommended his case for appointment on account of demise of Roshan Lal who was a Tractor Driver in the Improvement Trust. The post of clerk was sanctioned for the Improvement Trust by the Government for appointing the Petitioner as Clerk on compassionate grounds. We are thus of the view that reversion of the Petitioner in pursuance of the impugned order dated 24th May, 2002 (Annexure P-13) is not sustainable.

10. Consequently, the writ petition is allowed and the order dated 24th May, 2002 (Annexure P-13) is quashed. The Petitioner shall continue to work on the post of Clerk in accordance with the appointment letter dated 7th March, 2001 (Annexure P-3). No costs.