
(1997) 12 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 761 of 1987

Attar Chand and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 21-12-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1998) 119 PLR 142

Hon'ble Judges : Sarojnei Saksena, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : G.P. Singh, for the Appellant; Jaswant Singh, D.A.G. for the Respondent Nos. 1 to 3 and U.S. Sahni, for the Respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.

1.This appeal is directed against the order dated 17.8.1987 passed by the learned Single Judge directing the respondent Nos. 1 to 3 to regularise the services of the writ petitioners (now respondent Nos. 4 and 5) on the posts of Assistant Foreman Electrical from the date of regularisation of the services of their juniors and to grant them consequential benefits like promotion, arrears of salary, fixation of pay, seniority etc. on the assumption that their services were regularised on the posts of Assistant Foreman Electrical and not on the posts of Electrical Chageman.

2.On 1.2.1974, the Commissioner and Secretary Government of Haryana, Public Health Department conveyed the Governor's sanction for grant of various service benefits to the existing employees including conversion of ,450 work-charge employees of Public Works Department, Public Health Department into regular cadre and regularisation of work-charge employees. The relevant extract of the memo No. 329-PW-III(4)-74/3105, dated 1.2.1974, reads as under :-

From

The Commissioner and Secretary to Govt Haryana, Public Health Department,

To

The Chief Engineer, Haryana, P.W.D. Public Health Branch, Chandigarh

Memo No. 329-PW-III(4)-74/3105, dated 1.2.1974.

Subject: Regularisation of the work charged employees of the Haryana State P.W.D. Public Health Branch.

Reference your memo No. 16/71/T.A.-11134, dated 3.10.1973, on the subject noted above.

xx xx xx xx Sanction of the Government of Haryana is also conveyed to the conversion of 450 work-charged employees of P.W.D. Public Health Department as shown in the enclosed statement of regular cadre on the basis of seniority subject to the following conditions :-

(a) A work charged employee has put in more than 5 years service in the work charged capacity and his seniority will be kept in view.

(b) His antecedent will be verified and he will also undergo medical examination for fitness before he is brought on regular staff.

(c) Every work charged employee will be placed on probation for one year. During probation period his antecedents will be verified and medical examination conducted. In case during the year of probation, it was found that the antecedent or Health of any employee was not satisfactory he would not be regularised.

Sd/- Deputy Secretary, for Commissioner and Secretary to Govt. Haryana Public Health Department.

Copy of Endstt. No. 16-71/T.A./459-86-PH/GA/IV dt. 20.4.1984, from the Chief Engineer, Haryana, P.W.D. Public Health Branch, Chandigarh.

xx xx xx xx FOR SUPERINTENDING ENGINEERS AMBALA CANTT ONLY.

He is requested to please issue necessary orders for the regularisation of work charged employees as per instructions contained in para, 5 of the Govt. letter immediately under intimation to this office. Receipt of this letter may be acknowledged.

3. In compliance of the instructions issued by the government, the Superintending Engineer, P.W.D. Public Health Circle, Ambala Cantt., passed orders dated 21.3.1975 and 16.5.1974, regularising the services of the respondents Krishan Lal and Piara Lal on the posts of Chageman Electrical. The relevant extract of these orders are also reproduced below:

Order dated 21.3.1975 Office Order No. 4055 Office of the Superintending

Engineer, P.W.D. Public Health Circles Ambala Cantt, Dated, Ambala Cantt. 21.3.1975.

OFFICE ORDER. In continuation of this office Order No. 9621-49/E, dated 16.5.1971, 9576-9604/E, 9692/E, 9634-62/E and 9606-37/E, dated 16.5.1974, the following work charged officials who have completed five years service at the present post are hereby brought on the regular establishment in the interest of Public Health Services with effect from 16.5.1974 subject to the following conditions. This will be without prejudice to the seniority of the officials, who have not completed five years in present post, regarding which the clarification has been sought from the Chief Engineer, Haryana, P.W.D. Public Health Branch, Chandigarh.

xx xx xx xx

Sr. Name of the Official Present Gr. Post as Regular Place Rk. o. Designation received post to of Post- which now Posting appointed Electrical Chargeman 3. Krishan Lal T/C Electrical Rs. 140-6-170 Regular PH.1 Div. Charge -8-210/10-300 Electrical (Const.) chargeman Faridabad

The above orders are based on the seniority list in this office of regular employee of various divisions available in this office. However, any discrepancy in the above orders found at any stage, these orders will be subject to consideration on appeal and therefore does not confer permanent right to the persons on the regular posts.

Sd/- Superintendent Engineer P.W.D. Public Health Circle, Ambala Cantt.

xx xx xx xx xx Order dated 16.5.1974.

OFFICE ORDER NO. _____ OFFICE OF SUPERINTENDING ENGINEER P.W.D. PUBLIC HEALTH CIRCLE AMBALA CANTT.

Dated, the 16th May, 1974. Ambala Cantt.

OFFICE ORDER

Under the authorities of the Commissioner and Secretary to Govt. Haryana P.W.D. Public Health Branch, Chandigarh, memo No. 329-PW HI (iv)74/3105, dated 1.2.1974, addressed to the Chief Engineer, Public Health Branch, Chandigarh and copy received vide Chief Engineer, Haryana P.W.D. Public Health Branch, Chandigarh Endst. No. 16-71/AA/459-86-PH/GA/IV, dated 20.2.1974, the following work charged officials who have completed five years service at the present post are hereby brought on to regular establishment in the interest of Public Service with immediate effect subject to the following condition. This will be without prejudice to the seniority of officials, who have not completed five years in present post regarding which the clarification has been sought from the Chief Engineer, Haryana, P.W.D. Public Health Branch, Chandigarh.

xx xx xx xx xxSr. Name of Present Grade of Regular Place of Remark No. official

designation post post which posting as receipt now ap- pointed 1. Sh. Piara W.C.Charge Rs. 140-6-17 Regular Public Lal man 0/8-200/10- Public Health Electrical 300 Chagem Division an No. 2, Electrical Gurgaon The above orders are based on the seniority list of work charge/regular employees of various divisions available in this office. However, if any discrepancy in the above orders found at any stage, these orders will be subject to reconsideration on appeal and therefore does not confer permanent rights to the persons brought to the regular post.

Sd/- Superintending Engineer, Ambala Cantt.

4. On 27.5.1980, the government sanctioned conversion of the work charged posts into regular posts and regularisation of the services of work-charged employees, who had completed 5 years service. For implementing this policy decision of the government, the Commissioner and Secretary, P.W.D. Public Health Branch, Haryana, issued instructions vide memo No. 3/126/80-PH(2), dated 14.7.1980. The relevant extract of this memo is reproduced below.

From

The Commissioner and Secretary to Govt. Haryana, P.W.D. Public Health Branch.

To

The Engineer-in-Chief, Haryana, P.W.D.P.H. Branch, Chandigarh.

Memo No. 3/126/80-PH(2) Dated Chandigarh, the 14th July, 1980 Sub: Regularisation of work charged employees.

Please refer to our memo No. 74-36/7/(7)/372-PH/GI, dated 9.5.1980 and Sh. Rajeshwar Lal's D.O. Letter No. 413-PH/GI, dated 8.7.1980, on the subject noted above.

It has already been decided by the Govt. with the concurrence of the Finance Department (a copy of the Finance Department advice already sent to you vide this Department endorsement No. 3/136/80-PH(2), dated 27.5.1980, for taking further action) the service of the work charged employees who have completed 5 years of continuous services pa 31.12.1978 should be regularised. It has been decided by the Govt. that Sub Division/Division wise strength of the employees should be fixed in order to ensure that as, a result of regularisation of work charged employees to the extent beyond the number of work charged employees made regular.

xx xx xx xx." 5. In pursuance of these instructions, the services of the appellants, who were working in Hissar, Karnal and Ambala Circles respectively were regularised on posts of Assistant Foreman. After 2 years of the issuance of the instructions for regularisation of the services of work-charged employees who had completed 5 years" service, the Superintending Engineer circulated on 29.10.1982, a list of regular Foreman, Assistant Forensic Foreman, Chageman H. Duty and Foreman Electrical. On 6.2.1984, Krishan Lal Nangia, (respondent

No. 4) served notice upon the department claiming seniority and promotion from the date S/Shri Mohabat Rai, Ram Kumar and Hardit Singh had been regularised on the higher posts of Assistant Foreman Electrical. After another 2 years, he and Piara Lal instituted C.W.P. No. 1740 of 1984 for issuance of a writ to quash memo dated 1.2.1974, orders dated 21.3.1975 and 16.5.1974 and for issuance of a direction to the respondents No. 2 and 3 to regularise their services on the posts of Assistant Foreman Electrical from the date of completion of 5 years service in the work-charge capacity, They also prayed for issuance of seniority list on the basis of the deemed date of regularisation of their service. An alternative relief claimed by the writ petitioners was for directing the official respondents to promote them as Assistant Foreman Electrical from the date their juniors were so promoted.

6. The respondents No. 4, 5, 7 and 8 (including three appellants) contested the writ petition on the ground that the petitioners do not have any right to seek regularisation of their services on the higher posts of Assistant Foreman Electrical because they had not completed 5 years service on that post. They also challenged the locus standi of the writ petitioners to seek quashing of the memo issued by the government for regularisation of the services of the work charge employees. The respondents relied on the order dated 25.2.1982 passed by a Division Bench in C.W.P. No. 6809 of 1981, Parkash Singh and Anr. v. State of Haryana and Ors., in support of their plea that the petitioners are not entitled to relief.

7. After hearing the counsel for the parties, the learned Single Judge allowed the writ petition and issued the impugned orders.

8. The first contention of Shri G.P. Singh is that the learned single judge has seriously erred in overlooking the unexplained delay of 9 to 10 years in the filing of the writ petition in the context of the challenge made by the writ petitioners to the legality of the memo dated 1.2.1974 and the orders dated 16.5.1974 and 21.3.1975. He submitted that the writ petitioners should not have been given any relief in the petition filed after almost one decade of the issuance of the orders by which then-services were regularised as Chargeman Electrical. Shri Singh further submitted that after having taken advantage of the orders regularising their service, the writ petitioner should not have been allowed to question the legality thereof. Learned Deputy Advocate General supported the contention of Shri Singh. However, Shri U.S. Sahni argued that the delay itself could not have been made a ground to deny relief to the writ petitioners and as such, the direction given by the learned Single Judge should not be upset.

9. We have thoughtfully considered the rival submission in the light of the facts placed on the record of the case Admittedly, vide memo dated 1.2.1974 Ae Government had sanctioned conversion of 450 work charge employees of P.W.D. Public Health Branch. Although the writ petitioners did not enclose a copy of the statement which formed part of that memo, there is no dispute between the parties that the Government had sanctioned only one post of Assistant Foreman

electrical and 9 posts of Electrical Chargeman. On 1.2.1974, Krishan Lal Nangia working as Chargeman Electrical and not as Assistant Foreman Electrical Piara Lal was working as Assistant Foreman Electrical, but he had not completed 5 years service as Assistant Foreman Electrical upto 1.2.1974. Neither of them was eligible to be regularised on the post of Assistant Foreman Electrical. Both of them were fully aware of their in-eligibility to be regularised on the posts of Assistant Foreman Electrical. Precisely due to this reason neither of them objected to the regularisation of the service on the post of Chargemen Electrical by orders dated 16.3.1974 and 21.3.1975. Rather, they reaped and enjoyed the service benefits as regular Chargemen Electrical. Neither of them made representation for regularisation of service on the post of Assistant Foreman, Electrical. For the first time, Krishan Lal Nangia served notice dated 6.2.1984. The writ petition was filed in April, 1984. Why the petitioners kept silence for 9 to 10 years after the passing of the orders regularising their service as Chargeman Electrical has not at all been explained. Therefore, we find considerable force in the argument of Shri S.P. Singh that the writ petition was highly belated and the learned Single Judge ought not have entertained the same.

10. Delay and laches are two facets of the same ground on which the writ court should ordinarily refuse to entertain the claim of the petitioner. Although no period of limitation has been prescribed either in Article 226 of the Constitution or any other provision for filing of the writ petition, the courts have evolved a rule of self-imposed discipline that belated petitions will not be entertained and relief will ordinarily be refused where the petitioner has approached the court after lapse of long period- No hard and fast rule or straight-jacket formula has been laid down by the courts about the time period for entertaining the petitions filed under Article 226 of the Constitution, but long and unexplained delay has always been treated as a good ground to non-suit the petitioner. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, , a Constitution Bench of the Supreme Court held that a writ petition filed under Article 226 of the Constitution after expiry of the period " of limitation prescribed for filing of a civil suit should normally be treated as belated and relief should be refused unless cogent and satisfactory explanation is offered by the petitioner. A some what similar principle has been laid down by another Constitution bench of the Supreme Court in *Tirlok Chand Moti Chand v. H.B. Munshi* AIR 1970 S.C. 890. Similarly, in *Kamini Kumar Das Choudhury Vs. State of West Bengal and Others*, ; *P.S. Sadaswami v. State of Tamil Nadu* 1976 (1) S.L.R. 53, and *Roshan Lal and Others Vs. International Airport Authority of India and Others*, , the Apex Court has held that the writ jurisdiction should not be exercised in favour of a person who approaches the court after lapse of long period counted from the date of accrual of the cause of action.

11. In the present case, as already mentioned above, no explanation was offered by the petitioners about the time gap of almost one decade in the filing of the writ . petition for quashing memo dated 1.2.1974 and the orders dated 16.5.1974 and 21.3.1975. Therefore, the contention urged by Shri Singh that the

writ petition is liable to be dismissed on the ground of delay and laches deserves to be accepted.

12. The second contention urged by the learned counsel for the appellants, which also merits acceptance, is that the learned Single Judge could not have directed the ? regularisation of the services of the writ petitioners even without the availability of two posts of Assistant Foremen Electrical. He submitted that only one post of work-charge Assistant Foreman Electrical was converted into the regular post and, therefore, the direction issued by the learned Single Judge for regularisation of the services of both the petitioners is without jurisdiction, Shri Sahni could not draw our attention to any order or document showing that the Governor had sanctioned conversion of two posts of work-charge Assistant Foreman Electrical into regular posts. Therefore, the direction given by the learned Single Judge for regularisation of services of both the petitioners as Assistant Electrical Chargemen with" retrospective effect cannot be upheld.

13. There is one more reason why the impugned direction cannot be sustained, namely, that neither of the writ petitioners fulfilled the condition laid down in the memo dated February 1, 1974. Respondent-Piare Lal had not completed five years service. Kishan Lal was not even working as Assistant Chargeman Electrical. Thus, their services could not have been regularised on the posts of Assistant Chargemen Electrical in terms of memo dated 1.2.1974.

14. The third contention of Shri Singh is that without quashing the orders Annexures P2 and P3 by which the services of the writ petitioners had been regularised on the posts of Chargemen Electrical, the learned Single Judge could not have ordered regularisation of their services with retrospective effect. Shri Singh argued that Krishan Lal Nangia could not have been regularised in service as Assistant Foreman Electrical because he was not holding that post on 1.2.1974. On the other hand, Shri. Sahni urged that the instructions issued by the Government vide dated 27.5.1980 and memo dated 14.7.1980.

15. We have thoughtfully considered the entire issue. The very fact that the Governor had sanctioned creation of specified number of posts in the regular establishment by conversion of existing work-charge posts shows that the intention of the government was to regularise the services of only those work-charge employees who had completed a particular length of service on a particular post. In other words, a person who had worked as Chargeman for a period of 5 years could, have been regularised on the post of Chargeman and the mere fact that he may have received promotion a few days earlier could not entitle him to claim regularisation of the services on the higher post. Thus, the essence of the policy of the government was to confer benefit of regular employee upon those Work charged employees who had worked for a particular length of time on a specified post. This is precisely what the Superintending Engineer did when he regularised the services of the writ petitioners as Charge-men Electrical keeping in view the fact that they had completed 5 years work-charge service as Charge-men Electrical. This aspect has been altogether ignored

by the learned Single Judge while directing regularisation of the services of the writ petitioners as Assistant Foremen Electrical. Therefore, the impugned judgment is liable to be set aside.

16. In Parkash Singh and Anr. v. State of Haryana and Ors., C.W.P. No. 6809 of 1981 decided by a Division Bench on 25.2.1982 almost an identical claim made by the petitioners was negated by the Court as would appear from the order of the Division Bench which is extracted below :

"Briefly, the facts are that the petitioners are confirmed electricians and appointed against substantive permanent vacancies. Respondent Nos. 3 to 8 were working as work charged chagemen. Respondent No. 3 thereafter was promoted as work-charged Foreman. It is alleged that respondent No. 9 issued a circular letter dated 3rd July, 1980 (copy Annexure P-2) to all the Superintending Engineers in Haryana, P.W.D. B&R Branch, conveying that the services of all the work charged employees who had completed five years as work charged employees upto 21st December, 1978 be regularised and to achieve that end necessary number of posts were created on regular basis. In pursuance of the directions contained in the above letter, the Superintending Engineer, electricity Circle, P.W.D. B&R, Haryana, Karnal, regularised the services of respondent No. 3 as foreman and of respondent Nos. 4 to 8 as Chageman which posts were higher than the posts of the petitioners. It is alleged that the above-said order is violative of Articles 14 and 16 of the Constitution of India as while confirming respondent Nos. 3 to 8 the petitioners were not considered for these posts by way of promotion as those posts were considered . higher posts.

We have heard the learned counsel for the parties. The contention of the learned counsel for the petitioners is that while confirming respondent No. 3 on the post of work charged chageman, the petitioners should have been considered for those posts as they were senior to the respondents. It is not disputed that respondent No. 3 was working as work charged Foreman and respondent Nos. 4 to 8 as work charged Chagemen since long. Later, the Government decided that the services of all work charged employees who had completed five years of services on 31st December, 1978 be regularised. The respondents fell within that category. Consequently, their services were regularised. The petitioners cannot be allowed to say that the respondents could not be regularised on those posts and they should have been regularised on the lower posts and thereafter the cases of the petitioners and promotion to the said posts. In our view, the order does not violate Articles 14 and 16 of the Constitution of India as stated by the counsel for the petitioners".

17. Although the order of the Division Bench was placed before the learned Single Judge, he ignored the same and accepted the claim made by the writ petitioners for retrospective regularisation of their services. We do not find any legitimate ground to commend the direction given by the learned Single Judge ignoring the order passed by the Division Bench.

18. For the reasons mentioned above, we allow the appeal and set aside the order passed by the learned Single Judge. However, keeping in view the fact that the respondent-Krishan Lal Nangia is reported to have retired from service setting aside of the order of the learned Single Judge shall not Adversely affect him in so far as the past benefits are concerned.