
(2001) 03 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9658 of 2000

Avtar Singh

APPELLANT

Vs

Punjab State Co-operative Supply and Marketing Federation
Ltd. (MARKFED), Chandigarh

RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Citation : (2001) 03 P&H CK 0069

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. Gurinder Pal Singh, for the Appellant; Mr. Hemant Kumar, for the Respondent

Judgement

S.S. Sudhalkar, J.—This judgment will dispose of C. W.P. No. 9658 of 2000 and C. W.P. No. 9672 of 2000. The facts of these cases and the question of law to be decided being similar, they are being disposed of by this common judgment. The facts from C.W.P. No. 9658 of 2000 are referred to for the convenience.

2. The petitioner was in the service of the respondents from 22.2.1984 upto 18.12.1984 as un-skilled worker/helper. His services were terminated w.e.f. 18.12.1984. He raised an industrial dispute and by the award dated 1.2.1993 (copy Annexure P/1), he was held entitled to reinstatement with continuity in service but without back-wages. The petitioner challenged the award que the denial of back-wages to him before this Court. A Division Bench of this Court in C.W.P. No. 7450 of 1994 decided on September 8, 1995 (copy Annexure P/2) modified the award holding that the petitioner is entitled to payment of back wages w.e.f. 11.11.1988 till his reinstatement.

3. In the meanwhile the Board of Directors, Marked resolved to regularise certain ad hoc/temporary/daily paid employees of class-III and class-IV categories. The resolution is dated 15.12.1992 (copy Annexure P/3). The relevant agenda is as under :-

"15. To consider to regularise the services of ad hoc/temporary/daily paid employees appointed in class-III and class IV service and allow regular scale of pay."

The minutes regarding the requirement for regularisation and the cut off date regarding the same are as under :-

"i) The ad hoc/temporary/casual/daily paid workers of Class III and IV categories who have completed a minimum of two years service as on 30.10.1992 and are in service on 30.10.1992 shall be regularised with the release of regular scale of post w.e.f. 1.11.1992 or with effect from the date they complete the service of two years whichever is later."

4. We are not quoting the other part of the minutes because they are not relevant for the decision of this case. Counsel for the petitioners argued that this policy of regularisation came during the period of forced unemployment of the petitioners. He further argued that had the petitioners' services been not terminated, they would have got the benefit of this policy and it is only because they were not in service because of the act of the respondents which was ultimately held to be not proper, they could not be regularised at that time. He has further argued that as the Labour Court had granted continuity of service, it implied that the petitioner would have got all the benefits, had they not been terminated.

5. Counsel for the respondents argued that the petitioners were not in service at the relevant time and only those persons who were in service were regularised and posts were created by the Registrar, Cooperative Societies at that time for those persons. He further argued that no post is available now with the respondents for regularisation of the service of the petitioners. He has argued that Registrar, Cooperative Societies is not a party in this case and it was for the Registrar to create the post.

6. Counsel for the petitioners relied on the judgment of the Division Bench of this Court in case Sohan Lal v. State of Haryana and others. This judgment is dated 4.12.1996 and copy of the same has been produced as Annexure P/7. Counsel for the petitioners further argued that the present case is covered by the principle laid down by the Division Bench in that case. Relevant part of the judgment can be reproduced as under :-

"The petitioner is claiming regularisation on the basis of rendering continuous service for more than five years as on March 13, 1993 and the respondents are not considering the petitioner to be in continuous service because of his earlier termination and later reinstatement by the award of the Labour Court.

After hearing the learned counsel for the parties, we are of the view that once the petitioner was reinstated into service by the Labour Court with continuity of service, fictionally he would be deemed to have actually served the department during the period between the termination and reinstatement. This deeming

fiction should be taken to its logical end for all purposes; meaning thereby that the aforesaid period will be reckoned towards his seniority, fixation of pay and for other purposes like length of service for regularisation. As per the award, of course, the petitioner was not entitled to actual wages for the period he remained out of service but as observed above, the petitioner will be deemed to be in continuous service.

We find from the above quoted paragraphs that the present cases are squarely covered by the principle laid down by the Division Bench in that case. Physically the petitioners were not in the service on the relevant date. However, if the principle laid down in the above judgment is considered, the petitioners have to be deemed to be in service at the relevant date when the question of regularisation was considered, because the petitioners have been re-instated with continuity of service. If any other view is taken, then it will be against the order of the Labour Court ordering continuity of service. Hence also, no other view is possible. The contention of the respondent that posts are not available and only the Registrar can create the posts, has no weight. It is for the respondents in such a case to ask for the sanction of necessary posts.

7. In view of this position, we find that this writ petitions deserve to be allowed. The writ petitions are, therefore, allowed. Respondents are directed to consider the regularisation of the petitioners in accordance with the principle laid down in the case of Sohan Lal (supra). Necessary sanction for the posts be obtained by the respondents from the Registrar, Cooperative Societies, Punjab.

8. Writ petition allowed.