
(2001) 03 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8614 of 2000

Badloo Prasad, Mali

APPELLANT

Vs

Chandigarh Administration

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 19(1), 19(3)
Industrial Disputes Act, 1947 — Section 25

Citation : (2001) 03 P&H CK 0122

Hon'ble Judges : Nirmal Singh, J;G.S. Singhi, J

Bench : Division Bench

Advocate : Mr. K.S. Dadwal, for the Appellant;

Judgement

G.S. Singhvi, J.—This is a petition for quashing of the order dated 15.5.2000 passed by the Central Administrative Tribunal, Chandigarh Bench (for short "the Tribunal") dismissing in limine the application filed by the petitioners u/s 19 of the Administrative Tribunals Act, 1985 (for short "the 1985 Act") for directing respondent Nos. 1 and 2 (non-applicants before the Tribunal) to regularise their services.

2. The notices issued by the Court have been duly served upon the respondents, but neither the written statement has been filed by them to controvert the averments made in the petition nor any one has appeared on their behalf to defend the order under challenge.

3. The uncontroverted facts of the case are that petitioners Badloo Prasad and Ran Paul were appointed as Mali and Ground Boy-cum-Peon in Government Model Senior Secondary School, Sector 16, Chandigarh, with effect from 28.4.1984 and 17.9.1984, respectively. Their services were terminated in 1987 without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, "the 1947 Act"). The petitioners challenged the action of the management of the school by raising industrial dispute under the 1947 Act. By an award dated 4.3.1991 (An-nexure PI), the Labour Court, Chandigarh,

declared the termination of the services of petitioner No. 2 as void and ordered his reinstatement with continuity of service and full back- wages. Civil Writ Petition No. 7990 of 1991 filed by the management of the school was dismissed by this Court on January 17, 1992. Thereafter, the petitioners jointly represented to the Principal of the School to regularise their services by contending that they had continuously served for 14 years. They also filed C.W.P. No. 3954 of 1999, which was dismissed as withdrawn with liberty to file a fresh petition. After that, they served legal notice upon respondent Nos. 1 and 2 and having failed to get any response, they tiled C.W.P. No. 9324 of 1999, which was disposed of by a Division Bench on 14.7.1999 with the following direction :-

"Contends that the petitioners are entitled to regular-isation in terms of the policy, Annexure P-4. They served a legal notice dated 6.4,1999, Annexure P-3, but the same has not been disposed of till today.

After hearing learned counsel for the petitioners and pursuing the record, we dispose of this writ petition with a direction to the Principal, Senior Secondary School, Sector 16, Chandigarh to take a decision on the legal notice dated 6.4.1999, Annexure P-5, within a period of four months from the date of receipt by him a copy of this order. In case he is not the competent officer to order regularisation, he shall inform the petitioners to make a comprehensive representation to the competent authority in this behalf."

Their claim for regularisation was rejected by the Director Public Instruction (S), Chandigarh, vide Memo, dated 11.4.2000 on the ground that their cases are not covered by the policy framed by the Chandigarh Administration. The petitioners challenged the decision contained in memo dated 11.4.2000 by filing an application u/s 19 of the 1985 Act, which was summarily dismissed by the Tribunal on 15.5.2000. The relevant extract of the Tribunal's order reads as under :-

"The order passed by the Director Pubic Instructions makes it clear that they were employed on part-time basis by the Principal of the School and are being paid out of the Student Funds. Apparently, they are not covered under the policy instructions contained in letter dated September 11,1996. The policy instructions dated 31.5.98 relied upon by the applicants had never been issued by the Chandigarh Administration. The teamed counsel for the applicants has failed to show during the course of hearing that the applicants were being paid out of the State Funds or out of the Contingent funds. It is clearly mentioned in the orders of the Director Public Instructions that the applicants are being paid out of the Students funds and are not coverea by the Policy instructions. Once the applicants are not covered by the Policy instructions regarding regularisation, no relief can be granted to them."

4. We have heard Shri K.S. Dadwal and perused the record. Learned counsel argued that the impugned order should be declared as vitiated by an error of law apparent on the face of the record because of the Tribunal's failure to consider

the material evidence produced by the petitioners to substantiate their claim for regularisation of service. He referred to the award passed by the Labour Court to show that petitioner No. 2 was initially appointed in the regular pay-scale, but later on the terms of his employment were arbitrarily changed and submitted that in view of the findings recorded by the Labour Court, the Tribunal was not justified in dismissing the application summarily.

5. We have given serious thought to the arguments of the learned counsel. In our opinion, the order under challenge must be held as vitiated by an error or law apparent on the face of the record due to non-consideration of an important document, namely, the award of the Labour Court. A perusal of the award Annexure PI shows that after considering the pleading and evidence of the parties, the Labour Court had invalidated the action of the management of the School to terminate the services of petitioner No. 2 with the following observations :-

"18. The record of the cases shows that earlier Shri Raj Pal was appointed as full-fledged Ground Boy at the rate of Rs. 215/- p.m. with effect from 17th September, 1984 vide Ex. A1. It appears that at one stage the management terminated the services of the petitioner with effect from 15th May, 1986. A demand notice dated 30th July, 1986 was given to the management on which the Assistant Labour Commissioner fixed the date as 20th August, 1986. Shri Piara Singh the authorized representative of the management appeared before the Assistant Labour Commissioner and made a statement that the respondent never terminated the services of the petitioner and it was ready to take the petitioner on duty immediately. Consequently, the petitioner Shri Raj Pal joined and reported for duty on 29th August, 1986. He never knew what the respondent was doing at its own level. Instead of taking the petitioner on duty with effect from 29th August, 1986 and by treating him in job with effect from 17th September, 1984, the respondent cleverly issued office order dated 29th August, 1986 Ex.M 1 by which the appointment of Snri Raj Pal has been shown as part-time Ground Boy for a period of 6 months. It is a matter of dispute whether this letter was ever served upon the petitioner or not because the management has not been able to produce any record to show that this so- called fresh appointment for a period of 6 months i.e. with effect from 29th August, 1986 was ever handed over to the petitioner. The record further shows that on 28th February, 1987 a letter was issued by the management to the petitioner that the sanction for the post was going to expire on 31 st March, 1987 and the petitioner would be deemed to have been relieved from the duty with effect from that date. Shri Raj Pal refused to accept this tetter and rightly too because he must have been taken by surprise as to how the management could terminate his services when he is a regular employee since 17th September, 1984. It appears that Shri Rai Pal refused to accept the letter and it was sent to him by post. Ultimately the management vide Ex.M5 terminated the service of the petitioner in spite of the resistance shown in Ex.M3 when he gave the reply to the notice Ex.M2. The management paid a sum of Rs. 335/-as terminal benefits which is less. The

management ought to have paid at least Rs. 360/- because the petitioner had completed services more than 30 months and he was entitled to terminal benefits as if he had completed three years service. The management adopted unfair practice by issuing an illegal order dated 29th August, 1986 because the petitioner will be deemed to be in continuous service from 17th September, 1984 to 31st March, 1987. The amount paid to the petitioner was short and in these circumstances it has to be held that the management did not comply with the provisions of Section 25F of the Industrial Disputes Act. I repel the arguments of Shri Zakhmi that the job of the petitioner was contractual with effect from 29th August, 1986.

Shri Zakhmi submitted that there is no post of Ground Boy at present with the management and the ground is being looked after by the students itself. The management has not produced any record to show that the post has been abolished under some valid order passed by the D.P.I. Schools or by the U.T. Administration. Even if there is no post at present it can be created in order to accommodate the petitioner which is entitled to serve as a Ground Boy. It is also not believable that the post of Ground Boy has been abolished because the nature of this job is such that the services of Ground Boy are always required in order to maintain the play ground of the school and this fact has not been disputed before me that there is no play ground ear marked for the School. The management is bound to accept the petitioner as Ground Boy."

In the face of these observations, the Tribunal was not at all justified in dismissing the application of the petitioners without even issuing notice to the respondents.

6. We are further of the view that even though u/s 19(3) of the 1985 Act, the Tribunal is vested with the power to dismiss an application filed u/s 19(1), that power should be exercised sparingly and with great care and circumspection and not as a matter of course because the Tribunal has been constituted as a substitute of all the Courts except the High Courts and Supreme Court. The conferment of wide power upon the Tribunal imposes upon it a corresponding duty to apply itself judiciously to the dispute raised by the aggrieved-employee and pass order after due consideration of the entire material placed before it.

7. For the reasons mentioned above, the writ petition is allowed. Order dated 15.5.2000 passed by the Tribunal is set aside with a direction that the application filed by the petitioners u/s 19(1) be admitted and decided afresh after issuing notice to the non-applicants.