
(1989) 05 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3283 of 1986

Baldev Singh

APPELLANT

Vs

Bhakra Beas Management Board, Chandigarh and others

RESPONDENT

Date of Decision : 15-05-1989

Acts Referred:

Citation : (1989) 05 P&H CK 0024

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : K.L. Arora, for the Appellant; Arun Nehra, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This order will also dispose of civil writ petition No. 6776 of 1986 as the question involved is common in both the cases.

2. The Petitioner, Baldev Singh, has been in the service of the Respondents on the post of T. Mate (WC) since 5th August, 1980, whereas the other Petitioner, Suresh Kumar, is in the service of the Respondents on the said post since 2nd of January, 1981. Vide Annexure P-1, dated 28th of January, 1986, the Senior Sub-Station Engineer sent a letter to the Executive Engineer giving the names of four persons along with their biodata. According to the said letter, Baldev Singh joined the service on 5th August, 1980, whereas Suresh Kumar joined the service on 2nd of January, 1981. The other two Respondents--Parmod Kumar joined on 12th of January, 1983, and Ganga Samp joined as T. Mate on 23rd of July, 1984. According to the Petitioners, in spite of the fact that both the Petitioners were senior to the Respondents, Ganga Samp was promoted as T.P.O. (WC) vide Annexure P-2, dated 29th of January, 1986, and Parmod Kumar, Respondent, was promoted vide Annexure P-3, dated 19th of February, 1986, ignoring the seniority of the Petitioners. The main grievance of the Petitioners is that their juniors have been promoted arbitrarily and illegally whereas the Petitioners being senior were entitled to be promoted and their claim has been rejected arbitrarily

3. In the return Sled on behalf of the Bhakra Beas Management Board, preliminary objection has been raised "that no legal right of the Petitioners has been infringed by their non-appointment to the post of Teleprinter Operator. The appointment to the post of Teleprinter Operator is made by selection and not on the basis of seniority cum-merit. Respondent No. 5 was originally appointed as T. Mate against the post of Teleprinter Operator w.e.f. 11th of July, 1984, and actually performed the duties as such. He being experienced Teleprinter Operator and educational qualified was rightly appointed/promoted as such." It has been further stated in the return that the appointment from the post of T. Mate to the post of Teleprinter Operator is made purely on the basis of merit and selection and the question of seniority-cum-merit does not arise. The Petitioners' candidature for the post of Teleprinter Operator was duly considered along with other candidates. Respondents No. 4 and 5 i.e. Parmod Kumar and Ganga Sarup were found more merited and were selected for appointment to the post of Teleprinter Operator. It has further been stated in para 11 that the Petitioners could not be promoted as Teleprinter Operator or Electrc. Mistry because of lack of proficiency in the respective trades.

4. Learned Counsel for the Petitioners submitted that even if there were no statutory rules with respect to the promotion of the Petitioner it was their fundamental right being senior to the Respondents and, therefore, their claim has been rejected arbitrarily in support of his contention he referred to State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, and The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, Reference was also made to Shri Shadi Lal v. The Deputy Commissioner, Gurgaon 1974 (1) S.L.R. 217 to contend that promotion to the post should be made on the basis of seniority and if senior most eligible has merit, he shall be selected irrespective of better merit of his juniors. On the other hand, learned Counsel for the Respondent submitted that is the absence of any statutory rules, no writ of mandamus could be issued in favour of the Petitioners since there was no statutory duty cast upon the Respondent to promote the Petitioners. Moreover argued the learned Counsel it was not a case of promotion but of selection and, therefore, Respondents No. 4 and 3 have been rightly selected for the post. In support of his conten(Sic)ion he referred to Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, and The Praga Tools Corporation Vs. Shri C.A. Imanual and Others,

5. After hearing the learned Counsel for the parties, I do not find any merit in this petition. Admittedly, there are no statutory rules governing the services of the Petitioners. The Petitioners were appointed as work charge employees. That being so, they could not claim their promotion as a matter of right in the absence of any statutory rules. Thus it also becomes immaterial whether it was a case of promotion or selection. It was held in Lekhraj Sathramdas Lalvani's case (supra) that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of

the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction Ram Chandra Dev's case (supra) relied upon by the learned Counsel for the Petitioner has absolutely no applicability to the facts of the present case. It was held therein that though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the Article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226 In the absence of any statutory rules, there is no right in the Petitioners for which writ jurisdiction could be invoked by them. At the most they may have their remedy, if any, under the Industrial Disputes Act but no relief can be granted to them in writ jurisdiction. Consequently, both the petitions failed and are dismissed with no order as to costs