
(2005) 01 P&H CK 0148
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10382 of 2002

Bhagwan and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 21-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 3 LLJ 119

Hon'ble Judges : Surya Kant, J;S.S. Nijjar, J

Bench : Division Bench

Advocate : Narendra Hooda, for the Appellant; Palika Monga, AAG for Respondent No. 1 and Sanjay Kaushal, for the Respondent

Final Decision : Allowed

Judgement

Surya Kant, J.—The petitioners have invoked the writ jurisdiction of this Court for issuance of a writ in the nature of certiorari for quashing the communication dated May 7, 2002 (Annexure P-2) whereby their claim for regularisation of services has been turned do Managing Director of respondent No. 2. The petitioners have further sought a direction to the respondent to regularise their services on the vacant posts of Cane Sub-Inspector/Kamdar and alternatively to pay to them the minimum of the pay scale given to the permanent/seasonal permanent Cane Sub-Inspector/Kamdar.

2. The undisputed facts are that petitioner No. 1 was engaged as a Cane Sub-Inspector/ Kamdar on daily wages by the Haryana Co-operative Sugar Mills Limited, Rohtak-respondent No. 2 (in short the Mill) in -January 1983; petitioner No. 2 was engaged by the Mill to work as Cane Sub-Inspector/ Kamdar on daily wages in the year 1976 and he continued to work as such the year 1980; according to the Mill, petitioner No. 2 did not work for a year from 1980 to 1981 but was " again engaged in November, 1981; since then, both the petitioners are continuously working. It is also not in dispute that a regularly appointed Cane Sub-Inspector/Kamdar gets monthly emoluments of Rs. 5500/-(approximately)

in the pay scale of 900-1250/-whereas the petitioners, while working on daily wage basis, are paid a consolidated salary of Rs. 2460/-per month.

3. The Mill is run by a Co-operative Society controlled by the State Government and/or its agency, namely, the Haryana State Federation of Co-operative Sugar Mills Ltd. Sugarfed which is an Apex Body of the Co-operative Sugar Mills. It is the case of the respondents themselves that vide memo No. SMF-2001/AR/12037-43 dated January 4, 2002, a copy of which was placed before us by the learned counsel for the respondents, the Registrar, Co-operative Societies as well as the State Government have approved the revised staff strength, subject to certain conditions, of all the Co-operative Sugar Mills including the respondent-Mill. For ready reference, we may reproduce relevant contents of the aforementioned communication:

"Ref: No. SMF-2001/AR/12037-43 Dated: January 4, 2002

To

The Managing Director, Co-op. Sugar Mills Ltd., Rohtak, Sonapat, Jind, Kaithal, Meham and Bhuna.

Sub : Approval of revised staff strength of all the existing 10 Co-op. Sugar Mills.

I am directed to inform you that the review of Staff strength of all the Co-operative Sugar Mills was under consideration of the State Government in order to reduce the wage bill of the Mills. The State Government has finally approved the proposal for revised staff strength of all the Co-operative Sugar Mills. Accordingly, Managing Director, Sugarfed exercising the powers of RCS, Haryana has also accorded his approval under the provisions of Service Rules as specified under Note 1 of Annexure-A of the Service Rules for the Employees of Co-op. Sugar Mills for the above revised staff strength of the Mills. A copy of the revised staff strength duly attested is enclosed herewith. The revised staff strength of the Mills is subject to the following conditions:

1) That the services of existing employees shall not be retrenched on account of revised staff strength. The reduction in staff strength shall be achieved gradually through retirement, resignation, removal/ dismissal, death etc. of the employees working in the Sugar Mills against the earlier strength.

2) and 3) ...

4) That the daily wagers in excess may be regularised against vacant posts/ newly created posts subject to the fulfilment of the prescribed qualifications strictly in order of seniority and in view of the instructions of the Govt. on the subject. However, in case the Mills have less daily wagers than the revised staff strength of daily wagers, they shall not undertake fresh recruitment of daily wagers but shall convey their requirement to the Sugar Federation so that the excess daily wagers of other Mills may be accommodated against the daily wage posts. The instructions issued vide letter No. SMF-2001/165/1780-89 dated May

24, 2001 are hereby withdrawn."

4. In support of the claim of the petitioners, Shri Narender Hooda, their learned counsel has made two-fold submissions. According to him, sanctioned and approved cadre strength of Cane Sub-Inspectors/Kamdars is 40 posts out of which 20 posts are permanent and 20 posts are seasonal permanent and that against these sanctioned posts, only 11 Cane Sub-Inspectors/Kamdars have been appointed on permanent basis, 18 on seasonal permanent basis and 15 have been engaged as daily wagers. He contended that the petitioners are amongst seniormost daily wagers and permanent/seasonal permanent vacancies being available in their cadre, they are entitled for regularisation of their services. Relying upon the judgment of the Supreme Court in Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, , he also contended that the daily wagers like the petitioners, who are working from the last over 20 years, in any case are entitled for regularisation of their services notwithstanding the non-availability of regular sanctioned posts.

5. On the other hand, Shri Sanjay Kaushal, learned counsel for the Mill, though admitted that vacancies in the cadre of Cane Sub-Inspector/Kamdar are available, he, however, contended that the Mill has employed 767 employees on permanent and/or seasonal permanent basis against the total sanctioned strength of 679 employees and, thus, the strength of permanent/seasonal permanent employees is far in excess to the total sanctioned posts.

6. To appreciate the controversy, it will be apposite to reproduce the averments made in paragraph 5 of the writ petition as well as in the corresponding paragraph of the written statement filed by the Mill, which read as follows:

Writ Petition

"5. That the approved cadre strength on the post of Cane Sub-Inspector/Kamdar is as follows:

Permanent 20 Seasonal permanent 20 Against the abovesaid sanctioned strength, the following posts have been filled under three different categories :

Permanent 11 Seasonal Permanent 18 Daily Wages 15" Written Statement

"5. That the contents of para 5 are wrong and hence denied. The approval cadre strength on the post of Cane Sub-Inspector/Kamdar is as follows:

Permanent 18 Seasonal permanent 18 Against the above sanctioned strength 12 Permanent and 17 seasonal kamdars are employed."

7. It thus clearly emerges that there are permanent as well as seasonal permanent vacant posts in the cadre of Cane Sub-Inspectors/Kamdars. According to Shri Kaushal, firstly, seasonal permanent employees are adjusted against permanent posts and against the resultant vacancies, the daily wagers are adjusted. That being so, there are 7 vacancies available in the cadre of Cane Sub-Inspectors/Kamdars against which daily wagers, strictly as per their seniority,

eligibility and service record, can be considered for regularisation. Needless to say that if there are daily wagers who are seniors to the petitioners in the aforementioned cadre and they also fulfil the criteria for regularisation of services, such daily wagers will have a preferential claim over and above to that of the petitioners. The question, however, arises as to whether the petitioners and/or other daily wagers working in the cadre of Cane Sub- Inspectors/Kamdars for whom admittedly vacancies within the sanctioned cadre strength are available, can be deprived of regularisation of their services on the plea that the Mill has made excess recruitments in other cadres over and above the sanctioned posts in such cadres. We are of the view that Mill cannot be permitted to take advantage of its own wrongs. Though complete details of sanctioned posts in different cadres have not been placed on record but it is the case of the respondents themselves; that posts have been duly sanctioned in each cadre separately. It is apparent that if total sanctioned strength of such posts is 679 and the Mill has employed 767 employees on permanent/seasonal permanent basis, it has made recruitment in some of cadres (other than Cane Sub- Inspectors/Kamdars) in excess of the sanctioned strength of such cadres. We are of the view that if the Mill requires extra employees on permanent/seasonal permanent basis in other cadres, it is for it to persuade the State Government and/or any other competent authority to revise and sanction additional posts to accommodate such additional employees. The daily wagers working as Cane Sub- Inspectors/Kamdars however, cannot be made to suffer on this account and they are entitled for being made permanent/seasonal permanent to the extent of their sanctioned cadre strength. The action of the respondents contrary to what has been observed above, cannot stand to the touchstone of Articles 14 and 16 of our Constitution.

8. Consequently, we allow this writ petition, quash the order dated May 7, 2002 (Annexure P-2) and direct the respondents, firstly, to consider the Cane Sub- Inspectors/ Kamdars working on seasonal permanent basis for their appointment on permanent basis strictly as per their seniority and eligibility conditions and thereafter to consider the Cane Sub-Inspectors/Kamdars working on daily wage basis for regularisation of their services against the vacant and/or resultant seasonal permanent vacancies in the cadre of Cane Sub-Inspectors/Kamdars. Needless to say that if the petitioners as per their seniority and eligibility are entitled for such considerations, they will also be considered for regularisation of their services within a period of three months from the date of receipt of a certified copy of this order. No order as to costs.