
(2014) 10 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2020 of 1998

Daryao Singh

APPELLANT

Vs

Haryana Tourism Corporation

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Citation : (2015) 1 SCT 151

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Abha Rathore, Advocates for the Appellant; K.K. Gupta, Advocates for the Respondent

Judgement

Rameshwar Singh Malik, J.—The present writ petition is directed against the order dated 24.10.1997 (Annexure P-2) passed by the respondent, whereby petitioner was relieved from duty. Notice of motion was issued and pursuant thereto, written statement was filed.

2. Learned counsel for the petitioner submits that the impugned order is a non-speaking and cryptic order. No reason, whatsoever, has been assigned by the respondent, while passing the impugned order. She further submits that pursuant to the communication dated 16.8.1991 (Annexure P-1), petitioner successfully completed his training of 2 years. Under Clause 1 of communication dated 16.8.1991 (Annexure P-1), training period of the petitioner was never extended. Although, no order of regular appointment was issued in favour of the petitioner yet he was entitled to be considered for appointment on regular basis in view of the order dated 1.6.1999 passed by this court in 1999(4) S.C.T 35 : CWP No. 18474 of 1996 (Dharamvir and others v. State of Haryana and another). Learned counsel for the petitioner would further contend that in fact the present petitioner was petitioner No. 21 in CWP No. 18474 of 1996, but he withdrew his writ petition, for the reason that present impugned order dated 24.10.1997 (Annexure P-2) came to be passed during the pendency of CWP No. 18474 of 1996. Learned counsel for the petitioner concluded by submitting that in view of

the order dated 30.9.1999 passed by the LP A Bench in LP A No. 866 of 1999 (Haryana Tourism Corporation Ltd. v. Dharamvir and others), case of the petitioner was squarely covered, because the reasonable and genuine claim of the petitioner was never considered by the respondent authority. She prays for setting aside the impugned order, by allowing the present writ petition.

3. Per contra, learned counsel for the respondent submits that the impugned order was passed because the work and conduct of the petitioner was not found satisfactory. In this regard, learned counsel for the respondent relies on a communication dated 10.9.1997 (Annexure R-1), received from Tourist Officer, Karnal. Learned counsel for the respondent also submits that in view of the terms and conditions of Annexure P-1, petitioner had no indefeasible right for appointment, even after the successful completion of his training. Learned counsel for the respondent would next contend that in the peculiar facts and circumstances of the case, no enquiry was required to be conducted nor any opportunity of being heard was required to be granted to the petitioner, before passing the impugned order relieving him from duties. He prays for dismissal of the writ petition.

4. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that in the given fact situation of the present case, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

5. It is a matter of record and not in dispute that by invoking clause 1 of the communication dated 16.8.1991 (Annexure P-1), respondent never extended training period of the petitioner, which was of 2 years. Thus, the petitioner was allowed to complete his training period of 2 years successfully, with effect from 16.8.1991 to 15.8.1993. Extension in the training period, if any, could be only for another six months. Even if that extension is to presumed, as sought to be argued by the learned counsel for the respondent, although there is no such order passed nor averments taken in the written statement, yet said extension would also come to an end by February 1994, whereas the impugned order came to be passed much later i.e. on 24.10.1997. It is also not in dispute between the parties that no enquiry was ever conducted nor any charge sheet was issued against the petitioner, on account of his alleged misconduct.

6. The impugned order is cryptic and non-speaking on the face of it, which reads as under:--

"ORDER

Sanction is hereby accorded to relieve Sh. Daria Singh, Assistant Cook-cum-Tandooria, (Trainee) HTC, Kama Lake, Karnal, with immediate effect. He has completed his training successfully."

7. While filing the written statement, respondent has tried to make out an entirely new case against the petitioner, while pleading that his work and conduct was not found satisfactory. Clause 4 of communication dated 16.8.1991 (Annexure P-1) has also been sought to be invoked, which was not even available to the respondent. It is so said, because petitioner had been allowed to complete his training period successfully much before and clause 4 of Annexure P-1 could have been invoked only during the period of training.

8. So far as the report received against the petitioner from the Tourist Officer, Karnal, contained in Annexure P-1 is concerned, that is also a matter of record, but admittedly never communicated to the petitioner. However, it is relevant to refer to the communication Annexure R-1, which reads as under:--

"Ref. No. HTC/KLK/97/3097

dated 10.9.97

To The Managing Director, Haryana Tourism Corporation, Chandigarh.

Sub : Regarding work at Tandoor Sh. Dario Singh, ACCT Tr.

It is to inform you that Sh. Dario Singh, ACCT Tr. is working here for the last four years or so but we are facing some problem at Tandoor. He was asked to work there he started misbehaving with seniors. Though he is only a trainee but he shows himself to be a very senior person. It is requested that as he is not preparing chapaties and even he doesn't want to learn working of tandoor, Either his services may be dispensed with or he may be shifted to some non functional unit, so that discipline can be maintained at this place. Report of MCA is enclosed for reference.

Encl: Attached.

Sd/- Tourist Officer"

9. Since the abovesaid report was based on earlier communication allegedly received by the Tourist Officer, the same is also being reproduced from page 33 of the paper book, which reads as under:--

"Sub: Regarding disobedient and uninterested attitude of Sh. Dario Singh, ACCT.

It is brought to your notice that Sh. Dario Singh ACCT (Tr) is in the least interested to work at Tandoor. Today on 1.9.97 at 1.00 PM he flatly refused to the undersigned to prepare chapati at Tandoor and excited others also not to do the same. This is height of indiscipline. He straightway created hindrances in smooth running of Restt. When we are going to celebrate "Tourism Day" I strongly recommend that his training may be discontinued and the official should be rusticated from HTC. A lenient view against the employee will bring down the closure of restaurant one day. So it is requested that the employee may not be spared in any case.

Sd/- MCA HTC, Ch. Lake"

10. A bare reading of the abovesaid official record would show that petitioner had completed his training period of 2 years successfully. His training period was not extended. At the time of passing of the impugned order dated 24.10.1997, Clause 4 of Annexure P-1 was not even available to be invoked by the respondent, because the petitioner had already completed his training period long back. It is so said because even as per the impugned order, the petitioner has completed his training successfully. It is neither pleaded nor argued case on behalf of the respondent that training period of the petitioner was extended.

11. After completion of his training period successfully in the month of August 1993, petitioner was allowed to work for more than 4 years. There were very many employees, who were similarly situated with the petitioner. Petitioner, alongwith 64 other similarly situated co-employees approached this court by way of CWP No. 18474 of 1996, seeking a writ in the nature of Mandamus, directing the respondent to give regular appointment to the petitioners on completion of their training period. However, since during the pendency of the said writ petition, present impugned order Annexure P-2 came to be issued by the respondent authority, petitioner was well justified to withdraw his name from the above said writ petition i.e. CWP No. 18474 of 1996.

12. It is further undisputed between the parties that the said writ petition bearing CWP No. 18474 of 1996, wherein petitioner was initially at Sr. No. 21, was allowed by this court, vide order dated 1.6.1999. Respondent- Corporation filed LPA No. 866 of 1999 (Haryana Tourism Corporation v. Dharamvir and another), which came to be disposed of by a consent order dated 30.9.1999. It has further gone undisputed on record that in compliance of the order dated 30.9.1999 passed by the LPA Bench of this court, as many as 51 co-employees of the petitioner were considered and appointed against the advertised posts.

13. However, claim of the petitioner could not be considered because of pendency of the present writ petition. There is no other factual difference between the petitioner and his co-petitioners in earlier writ petition bearing CWP No. 18474 of 1996, except this that he had challenged the present impugned order dated 24.10.1997, which came to be passed during the pendency of CWP No. 18474 of 1996. Thus, petitioner was entitled to be treated at par with his numerous co-employees and co-petitioners of CWP No. 18474 of 1996, but respondent has treated him in a discriminatory manner.

14. So far as the contention raised by learned counsel for the respondent that no enquiry was liable to be conducted nor any opportunity of being heard was liable to be granted to the petitioner before passing the impugned order is concerned, the same has been found to be wholly misconceived and fallacious, which cannot be accepted. It is so said because the golden rule of Audi Alterm Partem has been glaringly violated in the present case, while passing the impugned order dated 24.10.1997 (Annexure P-2) and the same cannot be sustained.

15. As noticed above, neither any charge sheet was issued nor any enquiry was

conducted against the petitioner. It has come on record that the impugned order Annexure P-2 was passed against the petitioner, because of his alleged misconduct, which is reflected from abovesaid communication dated 10.9.1997 (Annexure R-1). The contention of learned counsel for the respondent that since the petitioner was not a member of the service and issuance of any show cause notice, charge sheet or conducting any enquiry was not required has also been found to be baseless, hence rejected.

16. Basic principles of natural justice were certainly required to be meticulously complied with before passing the impugned order. Petitioner had already served the respondent-Corporation for more than 4 years after successful completion of his training. Once the respondents were having some material against the petitioner, it was least expected from them to confront the petitioner with the said material, so as to grant him an opportunity to defend himself. However, in the present case, petitioner has been condemned unheard because of which the impugned order cannot be sustained.

17. The abovesaid view taken by this court also finds support from the following judgments of the Hon'ble Supreme Court. A.K. Kraipak v. Union of India, (1962) 2 SCC 262, Ridge v. Baldwin, 1964 AC 40, Sayeedur Rehman Vs. The State of Bihar and Others, , State of Orissa v. Dr. (Miss) Binapani Dei, 1976 AIR (SC) 1269, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

No other argument was raised.

18. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the impugned order cannot be sustained and the same is hereby set aside. Respondent is directed to consider the claim of the petitioner in terms of the order dated 1.6.1999 passed by this court in CWP No. 18474 of 1996 and upheld by the LPA Bench, vide order dated 30.9.1999 in LPA No. 866 of 1999.

19. Let the needful be done within a period of two months. The petitioner shall be entitled for all the consequential service benefits. However, it is made clear that the respondent shall be at liberty to proceed against the petitioner, if felt necessary, in accordance with law. Resultantly, with the above said observations made and directions issued, instant writ petition stands allowed, however, with no order as to costs.