

(2013) 12 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No's. 1368 of 2005 and 1032, 3006, 8371 and 13383 of 2006

Harphool Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 1 LLJ 347

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Abha Rathore, for the Appellant; Harish Rathee, D.A.G., Haryana, Raj Mohan Singh, R.K. Malik and Ms. Kiran Rathee, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—This order shall dispose of C.W.P. No. 1368 of 2005 titled Harphool Singh and Others v. State of Haryana and Others, C.W.P. No. 1032 of 2006 titled Lekhi Ram and Others v. State of Haryana and Others, C.W.P. No. 3006 of 2006 titled Ved Ram v. State of Haryana and Others, C.W.P. No. 8371 of 2006 titled Kailash Chander and Others v. State of Haryana and Others and C.W.P. No. 13383 of 2006 titled Rohtash Singh v. State of Haryana and Others. The facts are taken from C.W.P. No. 1368 of 2005. The twelve petitioners before this Court in this petition claim the benefit of the direction issued by the Division Bench of this Court in C.W.P. No. 12509 of 1998 and to accord them backdated orders of regularization of their services w.e.f. February 2000. The claim is largely based on the ground that in the year 1993 the General Manager of Haryana Roadways Depot at Faridabad sent a requisition to the Employment Exchange for filling large number of posts of Conductors in the Faridabad Depot. The names of petitioners were sent by the Employment Exchange. They were called and appeared for interview on 12.05.1993 and were placed on the waiting list. The appointments from out of the waiting list did not fructify. In December 1993 there was a statewide strike by Roadways employees, conductors and drivers paralysing public transport. The strike lasted eight days. In order to keep

the buses plying, a large number of persons were hurriedly engaged by various depots of Haryana Roadways on daily wage basis as conductors. Such as those who were appointed during strike were discontinued after the strike was called off. A list of these persons was prepared for consideration of appointment against future vacancies on random basis by various depots as a measure of State gratitude for good services rendered during the strike. Accordingly a large number of persons who worked during the strike were given appointment in the Department on contract basis in different depots on random basis. However, a considerable number of persons still remained who could not be offered appointment on account of lack of vacancies. This matter gave rise to numerous writ petitions filed before this Court primarily on the allegation that serial order of the so called waiting lists was not followed. Finally the matter was resolved by the Supreme Court in Civil Appeal Nos. 316 and 317 of 2004. In answer to the petition, the State Government submitted a scheme before the Supreme Court containing provision that the remaining persons who could not be given contractual appointment would be offered appointment on contract basis in terms of the scheme presented. In the meanwhile, an additional 750 vacancies of posts of conductors had been sanctioned by the State Government for filling up on contract basis. It was in this background that the bunch of 24 writ petitions was preferred before this Court and on 11.05.2004 the Court directed the Transport Commissioner, Haryana to file an affidavit on or before 23.07.2004 giving details of appointments made of conductors and helpers on contractual basis. It was in these circumstances that contractual appointment was offered to the petitioners vide identical orders dated 19/20/21.05.2004 on a fixed salary of Rs. 2500/- per month with the further conditions of service to be regulated by the amended Haryana Transport Department (Group-C) Haryana Roadways Rules, 2004 and instructions issued by the State Government from time to time. The appointment was to commence from the date of reporting for duty. The time given for submission of joining report was within 15 days from the receipt of the letters of offer. The second prayer today as in the petitions is for modification of the appointment orders so as to make them run not on contractual but on regular basis in Faridabad Depot. They seek regularization of services w.e.f. the day their names found mention in the waiting list of 1993 prepared before the strike but which did not fructify in offer of appointments. The further prayer is for setting aside the appointments of private respondent Nos. 5 to 34 as conductors in Haryana Roadways, Faridabad for a variety of reasons stated in the petition.

2. The petitioners plead that they came to know that some similarly placed persons had moved writ petitions in this Court for relief. Those writ petitions were dismissed as withdrawn on the assurance given by the General Manager, Haryana Roadways, Faridabad Depot that they would be adjusted within one year. The order limited the relief to the petitioners in those writ petitions. In these circumstances, the present petitioners say that they made further representations for being taken on duty on the strength of being placed on the waiting list in 1993 but not offered appointment. In 1996 the petitioners filed

several writ petitions before this Court bearing C.W.P. Nos. 3006 of 1996, 3495 of 1996, 2482 of 1996 and 2770 of 1996 praying for issuance of a writ of certiorari for quashing appointments of all such persons who have been illegally appointed to the post of conductors on which the petitioners claim preferential right of appointment. They claim regular appointments as conductors in Faridabad. The aforesaid writ petitions were partly allowed by order dated 19.05.1997. This Court directed the respondents to hold regular selection for the post of conductors and in this selection process to consider the petitioners also for appointment to the regular post of conductors. The operative part of the order reads as follows:

On the basis of the above discussion, we partly allow the writ petition and direct the respondents to make regular selection and appointments against the available vacant posts within a period of four months. The petitioners shall be treated eligible for appearance in such selection. If they are found suitable, then the petitioners shall be appointed in the order of their merit. However, the plea of the petitioners for issuance of a direction to the respondents to appoint them on the basis of the alleged selection made in the year 1993 is rejected.

3. When no regular selection was initiated the petitioners filed C.O.C.P. No. 1077 of 1997 before the Contempt Court. The stand of the respondent-department was that no regular posts of conductors and helpers became available. It is stated that during the pendency of the contempt proceedings the services of the private respondents in C.W.P. No. 3006 of 1996 were regularized. It is pleaded that when these facts were brought to the notice of this Court, the respondents immediately passed orders de-regularizing the appointees. The contempt petitions were withdrawn since a fresh writ petition No. 12509 of 1998 was filed by Puran Lal who was the petitioner in C.W.P. No. 3495 of 1996 praying for implementation of the order dated 19.05.1997. That writ petition was decided on 05.04.1999 and the following directions were issued:

- i) The official respondents are directed to decide the issue of regularisation of services and for absorption of those who were, appointed during the strike, including the private respondents by applying the rule of seniority in the particular cadre. This shall be done within a period of 3 months from the date of submission of certified copy of this order.
- ii) List of the persons who may be found entitled to the benefit of this direction shall be published in the Newspaper "Dainik Tribune" at the end of 3 months period.
- iii) Against the remaining vacancies of conductors appointment shall be made in accordance with the directions given by the Court on 19.5.1997 while deciding C.W.P. No. 3495 of 1996.
- iv) The official respondents are restrained from making appointment on the posts of conductors till these directions are complied within their entirety.

v) The official as well as non-official respondents are given liberty to approach the Bench concerned for early hearing of C.W.P. No. 16075 of 1998. The petitioners are also given liberty to apply for intervention in that case.

4. With the passing of this order, the earlier order dated 19.05.1997 stood modified. The directions contained in C.W.P. No. 12509 of 1998 and C.W.P. No. 3006 of 1996 were issued in rem.

5. On 13.12.1999 the respondent-department published a list of candidates entitled to regularization. It is the complaint of the petitioners that in this list, there were five persons named i.e. Krishan Kumar, Shamsheer Singh, Satyawar, Praveen Kumar and Ramesh Kumar who never worked as conductors in Faridabad Depot during the period of strike and they had no right to regularization against the vacant post of conductors in Faridabad Depot. Therefore, their names were wrongly included in the active list.

6. To return to a historical fact, it would be appropriate to recall that after the strike was called off the regular striking employees returned to their jobs leading to a situation of over staffing and consequential declaration of surplus of persons appointed during the eight day strike. Since many people had offered their valuable services during the crisis they were rewarded by the State Government in terms of policy promulgated that such persons would have opportunity to appear before the Selection Committee set up for the purpose and those who are selected through such process, their cadre-wise seniority would be prepared for absorption against posts falling vacant in various depots. It is submitted by the petitioners that 9 conductors who are arrayed as respondent Nos. 17 to 25 and had served during the strike in the Faridabad Depot were surreptitiously continued in service on the post of conductors were offered contractual appointment without any justification. They also never appeared before the Departmental Selection Committee. It is then submitted that no seniority list of conductors in Faridabad Depot was framed and therefore their posts ought to have been instead filled by the petitioners on the strength of waiting list-1993. Eighteen of the private respondents No. 17 to 34 who were parties to C.W.P. No. 3006 of 1996 including those who had been earlier deregularized during the earlier pending contempt petition were regularized by the department in February 2000. It is complained that respondent Nos. 17 to 25 never appeared before any Departmental Selection Committee as was necessary. Still further, the remaining respondent Nos. 26 to 34 did not work at all in the Faridabad Depot during the strike. They actually belonged to Dadri Depot but served during the strike period. It is therefore submitted that there was violation of the Division Bench orders of this Court. These posts should also have been offered to the petitioners first on the ground of they being placed on the old waiting list.

7. It was in the above background of facts that the petitioners were offered contractual employment in May 2004 and are serving the department since then. Still further, it is claimed that respondent Nos. 5 to 16 were given contractual appointments in Faridabad Depot although they never worked during the strike

nor had filed any writ petition in the High Court and they have been given employment without any justification and in flagrant violation of Articles 14 & 16 of the Constitution of India. This fact was brought to the notice of this Court through an affidavit filed in the contempt petition. C.O.C.P. No. 572 of 2000 filed by nine applicants who are some of the petitioners here led to a detailed order passed on 10.09.2004. The Court observed:

Learned Counsel for the petitioners contended as per order dated 5.4.1999, quoted hereinabove, the respondents had to take a decision for regularisation of services of persons appointed during strike as per seniority in the particular cadre within three months and publish list of such persons in Dainik Tribune at the end of the three month's period failing which the vacancies had to be filled up as per directions contained in order dated 19.5.1997 and respondents were restrained from making any appointment as per above order. Instead of doing so, the respondents have made regularisation of employees without publishing list of persons found entitled to regularisation and without considering the petitioners. This has violated valuable right of the petitioners to show that persons regularised could not be regularised as per decision of this Court or otherwise and also the right of the petitioners to be considered for appointments.

Learned counsel for the respondents have not been able to show that exercise as per orders of this Court was undergone and after identifying persons entitled to regularisation, their list was published before proceeding to regularise them. It has, however, been submitted that there were no vacancies and no regularisation was done, as per understanding of the respondents. It is stated that order dated 7.8.1999 was a speaking order passed in compliance of order dated 5.4.1999. It is also submitted that after filing of contempt petition, the respondents have published list of persons regularised against supernumerary vacancies in Dainik Tribune dated 18.5.2004. The regularisation which has been done, was by creating supernumerary posts, for the persons already working in Faridabad Depot and as per their interpretation, such regularisation was not within the purview of order dated 5.4.1999. It is also stated that certain appointments have been made as per orders of the Apex Court dated 16.1.2004 in SLP No. 3492 of 2003, State of Haryana v. Naresh Singh and orders of this Court dated 11.5.2004 in C.W.P. No. 18191 of 2001.

Contention on behalf of the respondents cannot be accepted. Any regularisation against vacancies available on the date of passing of the order dated 5.4.1999, was conveyed by order of this Court and if the respondents had any doubt, they were also given liberty to approach this Court. They could not make their own interpretation and take a decision on the issue of regularisation and also regularise services of employees, without following the procedure laid in the order of this Court. Regularisation made against supernumerary posts created in respect of persons already working, was also covered by the order of this Court dated 5.4.1999. It is therefore stated that orders of regularisation will not be given effect to and will stand annulled until the respondents act in accordance

with the orders of this Court dated 5.4.1999. Learned counsel for the State stated that he had no objection to such a course being adopted by way of purging the respondents of contempt and notice published in Dainik Tribune dated 18.5.2004 may be treated to have been published in pursuance to orders of this Court dated 5.4.1999. Learned counsel for the petitioners did not file any objections and since order of this Court dated 5.4.1999 was being complied with now, they should be given liberty to file their objections and issue of regularisation should be finalised only after their objections are considered. It is so ordered, as it is necessary to do so for compliance of orders of this Court dated 5.4.1999. Since the step taken by the respondents is in violation of orders of this Court dated 5.4.1999. It is further made clear that if any vacancies as on 5.4.1999 remain, the same will be filled up as per directions contained in the order dated 5.4.1999.

As regards the appointments made pursuant to orders of the Apex Court dated 16.1.2004 and orders of this Court dated 11.5.2004, this matter is outside the scope of this contempt petition. If the petitioners are aggrieved by the said appointments, they are free to take their remedies in accordance with law. It is also made clear that after considering objections of the petitioners, the respondents will be at liberty to decide the issue of regularisation.

The petition is disposed of.

September 10, 2004 Sd/- Adrash Kumar Goel, Judge.

8. As a result of the litigation what is central to the issue presently is the order dated 05.04.1999 passed by this Court.

9. On notice of motion having been issued, the State has filed written statement and has contested the case. The department has narrated the history of the litigation leading to preparation of scheme for appointment of unabsorbed candidates on the waiting lists allocated to various depots for their adjustments in the depot of origin. Clause 3 of the scheme has been cited:

The waiting list prepared by each depot, which was distributed amongst different depots, may be reconsolidated in the original depot where the persons borne on those waiting lists had been initially engaged for working temporarily during the period of strike without disturbing the status quo to the extent the persons have already been appointed out of such list. In other words, the names of all the unabsorbed candidates on the waiting lists allocated to various depots may be called back in the depot of origin. All the names so received back may be consolidated in the order available on the original waiting list of the parent depot. In other words, the inter-se placement of unabsorbed persons may not be disturbed.

10. The scheme met with the approval of the Supreme Court. As a result, the seniority list of persons borne on the waiting lists along with persons who were sponsored by the Employment Exchange to Faridabad Depot was prepared and

published in the local newspaper and they were accordingly given appointment on the basis of said seniority list after obtaining options from the petitioners of their preferred places of posting. It was in pursuance to options exercised that joining was allowed. The relevant part of the order dated 16.01.2004 passed by the Supreme Court in SLP No. 6517 of 2003 reads as follows:

Mr. P.P. Rao, Learned senior counsel for the appellants has taken us through the several orders and the affidavits filed on behalf of the appellants particularly the averments made in the additional affidavit filed on October 8, 2003. It is submitted that presently more vacancies are available as compared number of candidates in the waiting list, for appointment, namely, those who were petitioners in different writ petitions filed in the High Court. It is submitted that all these persons shall be accommodated against the vacancies wherever available and preference shall be given first in the depot of origin. In case on such vacancy is available in the depot of origin, option for other depots shall be taken from the candidates otherwise they will be posted in the depots wherever vacancies may be available. It is also indicated in paragraph "E" of the aforesaid affidavit filed on October 08, 2003 that the eligibility of the candidates for appointment shall be that they fulfill the prescribed educational qualifications and age requirement as in December, 1993 and the possess requisite license. It is also indicated on behalf of the appellants that the persons in the waiting list shall be given first preference before filling up the vacancies by any other outside candidates. The appeal are finally disposed of in the manner as indicated above.

11. It is, therefore, explained that the petitioners could be given fresh appointment on contract basis and they would not have any relationship or claim to seniority over the persons already appointed from amongst the said lists. The petitioners in such circumstances were offered appointments and joined contractual service in terms of the scheme placed before the Supreme Court. It has been denied that appointments were given to respondent Nos. 5 to 16 on contractual basis in Faridabad Depot illegally. It has been explained that the present petitioners had themselves given their consent for sending them to other depots of Haryana Roadways other than Faridabad Depot and they cannot now complain that respondent Nos. 5 to 16 were offered appointments in the depot claimed, nor had the petitioners worked during strike nor had filed writ petitions earlier. The averments in counter averments on this point are contained in para 20 of the petition and its corresponding para in the reply. The private respondents have also contested the case and have filed separate written statements in protection of their rights.

12. Mr. R.K. Malik, learned Senior counsel appearing for respondent Nos. 17 to 19, 21, 23 to 30 and 33 points out from the written statement that the petitioners did not render any service during the strike period. Their claim was based simply on the strength of an interview conducted in 1993 and their names being placed on a waiting list. His clients had helped the State at a critical juncture which was a reasonable classification between the two cases. The

petitioners were appointed on contract basis on the ground that persons whose names were sponsored by Employment Exchange, Faridabad in the year 1993 should also be given similar treatment. Mr. Malik would point out specifically to the judgment and order dated 19.05.1997 passed by the Division Bench of this Court in which it has been plainly held "the plea of the respondents to appoint them on the basis of the alleged selection made in year 1993 is rejected." Mr. Malik submits that offering appointments to the petitioners merely for the reason that their names were sponsored by the Employment Exchange in the year 1993 is a clear cut case of grant of undue benefit to the petitioners and their appointments itself is violative of Articles 14 & 16 of the Constitution of India. The petitioners' further claim that they should be appointed on regular basis instead of on contract basis and to insist on seeking appointments in the Faridabad Depot alone instead of other depots is without any lawful basis with no right attaching to such a plea. What is also relevant is the order dated 08.08.2006 passed by this Court in C.O.C.P. No. 572 of 2000. In the order, it is noticed that the contempt petition was originally filed alleging disobedience of the order dated 19.05.1997 passed in C.W.P. No. 3495 of 1996 and the order dated 05.04.1999 passed in C.W.P. No. 12509 of 1998. It has been noticed that two sets of competing claims had given rise to multifarious litigation in relation to appointments of conductors in Faridabad Depot. The present petitioners claimed and still do, a preferential right to appointment over and above the alleged back door entrants who were employed during the strike period. The first direction issued on 19.05.1997 was to make regular selection and appointment against available vacant post within a period of four months. The petitioners therein were directed to be treated eligible for appearance in the selection and if suitable they were to be appointed in their order of merit. The claim for appointment on the basis of alleged selection list prepared in the year 1993 was turned down. The contempt Bench would then refer to C.W.P. No. 12509 of 1998 and the five directions contained therein supra. Reference has been made to the speaking order dated 10.09.2004 passed by this Court, the compliance of which resulted in the birth of the administrative order dated 24.03.2006 passed by the General Manager, Haryana Roadways, Faridabad. The petitioners before the Contempt Court contended that there was failure to implement the orders through the order dated 05.04.1999 in its letter and spirit. It was argued that the services of those who were appointed during strike period could be regularized only by applying the rule of seniority in the "particular cadre", however, the respondents were alleged to have disregarded the said direction and have regularized even those who were brought from other depots to Faridabad Depot. This Court summed up as follows:

After hearing learned counsel for the parties at length and having regard to the scope of interference in these contempt proceedings, I am of the considered view that the legality of the order dated 24.3.2006 so far as it pertains to regularisation of services of those who are not even party to these proceedings cannot be gone into. Similarly, it appears from the order dated 24.3.2006 that

the respondents have made sincere efforts to comply with the directions issued by this Court from time to time and in any case their action, even if assumed to be erroneous, cannot be termed as willful disobedience of order or breach of any undertaking given before this Court. Consequently I dispose of this petition with liberty to the petitioners to impugn the alleged illegal appointments/absorptions, made by the respondents in Faridabad depot before an appropriate forum, if so advised.

Disposed of.

Rule discharged.

Sd./- Surya Kant Judge Aug. 8, 2006

13. It was in this background that the present petitions were brought to this Court. The core issue which arises is whether the petitioners can claim appointment as a matter of right on the strength of requisition sent to the local Employment Exchange calling names for filling up the post of conductors and interviewing the candidates which did not fructify into offer of appointments. Can the petitioners claim appointment only on the strength of a placement in the waiting list in 1993? I think not. It is well settled that mere selection does not given an indefeasible right to appointment. There were supervening events of a serious nature which completely transformed the shape of employment in Faridabad Depot and other depots resulting from an eight day strike by transport employees which led to an extraordinary situation as never witnessed before where people had to be literally picked up from the street in dire urgency to keep the transport fleet running in public interest. If such back door entries were offered employment years later it was on the strength of a human issue which was resolved before the Supreme Court by presentation of a scheme by the State which was duly approved and thereafter implemented after putting those stop gap appointments through a semi-balance of a hybrid selection process aimed also absorbing the best available talent from that strange and awkward source. Extraordinary situations require extraordinary remedies sometimes not known to law. The fact of the matter is that petitioners did not offer their services during the strike. If they complain as urged by Ms. Abha Rathore, learned counsel appearing for the petitioners that they did not withhold their labour they ought to have been offered appointments instead of back door entries then that is largely in the realm of speculation. Mr. Malik may be right in his submission that there may be reasonable classification between the two groups. The appointments of his clients should be viewed on the touchstone of a reward given by the State for keeping the show running during the eight days when public transport was sought to be paralyzed. In any case, their claim now arises due to judicial proceedings culminating in the Supreme Court and their appointments therefore are not open to be disturbed or set aside albeit at this distance of time. The petitioners had themselves given options for appointments in different depots and cannot fix their gaze on Faridabad Depot. If there was inter-change in depots it was a result of administrative chaos harmonized by

Court intervention. In my view, therefore, the prayers of the petitioners cannot be answered in their favour. Neither can the appointments of respondent Nos. 5 to 34 as conductors be set aside or the petitioners granted regular appointment from a date when they had no demonstrable right to appointment since the selection did not translate into action. Consequently, their appointment orders issued in 2004 cannot be modified. Their claim for regularization can be considered only on the strength of policies of Government existing in 2004. If those policies justify antedated regularization their cases can be so considered but not *de hors* that. In any case, their claim based on waiting lists prepared in 1993 was categorically rejected by this Court. There is, therefore, no merit in this and the connected cases which are accordingly dismissed. This Court should not nit-pick on facts or enter upon a roving and fishing inquiry into the nature and character of the mode of entry into service on contract of the two set of competing interests. Both having secured appointments in violation of Articles 14 and 16 of the Constitution of India but protected as a human problem by the Court and measured in terms of reward and concession bestowed by the State. The petitions, therefore, fail and are dismissed.