

(2007) 10 P&H CK 0053
In the Punjab And Haryana At Chandigarh

Jagtar Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Citation : (2007) 10 P&H CK 0053

Hon'ble Judges : S.D. Anand, J

Bench : Single Bench

Judgement

S.D. Anand, J.—The commonness of law point involved in these three writ petitions (CWP Nos. 7859 of 1987, 8905 of 1987 and 7465 of 1987) persuades me to dispose these of by a common order. Facts in CWP No. 7859 and 7465 of 1987

2. The petitioners joined the employment of respondent No. 2 Punjab State Tubewell Corporation (hereinafter referred to as the Corporation) during the period 1977 to 1981 in different capacities. Their placements in employment and the date of joining is indicated in detail in chart, Annexure P1. All of them are in employment in Sangrur Circle. All of them received letter dated 29.9.1987 from the Corporation informing them that they were being retrenched with effect from 31.10.1987. Translated copies of the specimen intimation letters are on file as Annexures P2 to P8. The respondents have acted arbitrarily by having retrenched the petitioners, while retaining their juniors in employment. It is also the averment by the petitioners that the stance adopted by the Corporation that the petitioners have been rendered surplus on account of shortage of work was denied.

3. Yet another averment made by the petitioners is as under:

The seniority of workcharge staff (a category to which the petitioners belonged, as per the averment) is maintained circle-wise in pursuance of an agreement dated 17.12.1985 (Annexure P11), which had been entered between the Corporation and the representatives of the Employees' Union. Prior thereto, the

seniority was maintained Division-wise. The Corporation has circles in Amritsar, Bathinda, Ferozepur and Sangrur. Each circle has four Divisions. The petitioners belonged to one circle which had been merged into Bathinda circle. Initially, the Corporation had banned the inter-Division transfer of workcharge employees. Vide letter dated 10.7.1986 (Annexure P12), it was announced that an employee desiring to go to inter Division shall have to resign and seek fresh appointment in the Division of his own choice. However, inspite thereof, the Corporation has been transferring various persons from one Division to another without effecting their seniority. The further averment, in the context, is that

the respondent-Corporation is indulging in illegal practice or retrenching the work charge staff by a pick and choose method. The principle of first come last go has not been followed by the Corporation. The Corporation with a view to protect certain employees generally close a division and merge it with a division of other circle with a result that the employees of closed division don't lose their seniority and employees of the division to which the merger takes place are pushed down in their respective seniority lists. Thereafter, the Corporation does the retrenchment and employees who are pushed down in the seniority list are retrenched first whereas employees of the closed Division stay in service. This practice is often adopted by the Corporation to protect the employees of their choice. For illustration following Divisions have been closed and merged with the other divisions of other circles resulting in total break down of circle wise seniority.

4. It was on the above factual premise that the petitioners applied for the grant of:

a) ...

b) a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction directing the respondents to regularise the services of the petitioners in view of the decision given by this Hon'ble High Court in Civil Writ Petition No. 718 of 1986 and Civil Writ Petition No. 72 of 1988 and in view of the decision of Government dated 11.9.1986 (Annexure P15).

5. The petitioners also requested for the grant of a direction to the respondents to draw a common seniority list of all the workcharge employees of various circles and Divisions of Punjab State Tubewell Corporation in the State of Punjab on the basis of Rule of Continuous Length of Service.

6. The respondents denied that any one junior to the petitioners had been retained in any category. The averment, in the context, is that the provisions of the Act have been complied with while retrenching the petitioners on "last go first come" basis. It was conceded that during the pre- agreement dated 17.12.1985 (Annexure P11) period, the seniority was maintained on Divisional level and that it came to be maintained at the Circle level in the light of the aforementioned agreement, Annexure P11. In that very context, it was averred that the seniority of the petitioners in the Corporation is determined at the level

of each circle. The cadre of each Circle is independent of the cadre of any other circle. No transfers whatsoever are effected from one circle to any other circle. The validity of the impugned order was re-iterated by averring that the petitioners have been rendered surplus on account of completion of the assignment for which they had been appointed. A categorical averment was made to the effect that no transfer has been effected from one Circle to another Circle. It was also pointedly averred that the principle of "first come, last go" has been followed.

No rejoinder came to be filed. CWP No. 8905 of 1987

7. The petitioners in this petition also averred a grievance that the principle of 'last come, first go' had not been adhered to. The resistance offered by the respondents was to the effect that all the petitioners belonged to Sangrur Circle and they have not been able to indicate any junior to them in placement who may have been retained in service while ordering their (petitioners) retrenchment.

No rejoinder came to be filed in this petition too.

8. Mr. Balram Gupta, the learned Senior Advocate, Mr. H.C. Arora and Mr. S.C. Arora, appearing on behalf of the petitioners, argued that the material obtaining on the file is indicative of the fact that the principle of 'last come, first go' had not been followed and the services of junior employees had been retained while ordering retrenchment of the petitioners.

9. The plea is completely devoid of force. As already noticed, the respondents have raised a precise plea denying the retention of any junior in service. A common seniority list (all categories) of the employees was placed on file. The petitioners in all the petitions, in their wisdom, refrained from offering a denial by filing a rejoinder. The present is, thus, a case in which the respondents have categorically denied that anyone junior to the petitioners had been retained in service while ordering their (petitioners) retrenchment. In that view of things, it was incumbent upon the petitioners (in all the petitions) to demonstrate, by record-based illustration, the identity of their juniors in the relevant category (to which each one of them had been appointed) who had been retained in service. That was a condition precedent before they could claim relief in these petitions. It would be pertinent to point out in the context that the respondent-Corporation has raised a precise plea of extinguishment of assignment (for the execution of which the petitioners had been appointed) and have held out an assurance, in the form of pleadings, that the petitioners would get priority appointment if the respondent-Corporation would ever get an assignment for execution.

10. Apart therefrom, the petitioners have also not been able to invite the attention of this Court to any instance in which a junior employee of a closed Division may have been retained in preference to a senior employee of the Division to which the former had been transferred on extinguishment of assignment or closure of a Division, for one reason or the other.

11. There can be no dispute with the proposition that those employed for the execution of a project cannot claim retention in employment for all the time to come and they also cannot validly grudge their retrenchment on extinguishment of the project. The only rider upon the authorities in the context is that in case of retrenchment, the principle of `last come, first go" has to be compulsively and meticulously followed.

12. In the light of the foregoing discussion, it is apparent that the petitioners have not been able to prove that any one junior to them (in the category to which they belonged and also in the seniority of that category only) had been retained in service while ordering their (petitioners) retrenchment. These writ petitions are completely bereft of merit and are ordered to be dismissed.