
(2016) 03 P&H CK 0233
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 22093 of 2013

Joginder and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 PLR 77

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Mr. R.K Malik, Senior Advocate with Ms. Rimple Kadyan, Advocate, for the Appellant; Mr. Rajesh Gaur, Additional Advocate General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—The petitioners are seeking directions for quashing of the order dated 27.9.2013 (Annexure P-11) by which the services of the petitioners have been terminated.

2. The respondent-Transport Department, Haryana (hereinafter referred to as "the respondent-Department") advertised the posts of drivers on contract basis on 8.4.2003 and thereafter the road test, written test and interviews were held for the aforesaid posts from 15.5.2003 to 20.5.2003 and the petitioners were selected on the post of the drivers and thereafter one merit list as well as seniority list (Annexure P-4) was prepared by the respondent Department. In the said merit list, the petitioners have been shown at Sr. No. 30, 29, 31, 32, 37 and 28 respectively. The petitioners were appointed in the respondent-department on the post of Driver on contract basis on 16.7.2008 and appointment letters were issued by the respondent-Department in which the petitioners were appointed on the contract basis on the consolidated amount of Rs. 3000/-. Annexure P-6, copy of appointment letter of one of the petitioners has been annexed with the petition. Thereafter the transport Department advertised 48 posts of Drivers of

General Category in the year 2008 in Sonapat Depot. In the year 2011 again 31 posts of Drivers of General Category were advertised in Sonapat Depot. Since the petitioners were already in the employment, the petitioners did not apply for the said posts. Thereafter, 121 posts of Drivers of General Category were again advertised whose process of selection was going on at the time of filing of the writ petition.

3. The petitioners, thereafter, were issued a show cause notice. Show cause notice issued to one of the petitioners to this effect is annexed with the petition as Annexure P-8. The services of the petitioners were terminated vide order dated 27.9.2013 (Annexure P-11). In the order dated 27.9.2013 (Annexure P-11), it has been observed that the Director General, State Transport, Haryana got an enquiry conducted through Joint Transport Commissioner-I, Haryana Chandigarh. The enquiry officer after summoning the concerned officials of this depot along with official record submitted his findings to Director General, State Transport, Haryana vide report dated 20.4.2012. The Director General, State Transport, Haryana while accepting the findings of enquiry report directed that the candidates appointed against reserved category posts may be removed being illegal appointees as suggested in enquiry report after following the due process of law. Thereafter show cause notices were issued to the said drivers who filed CWP No.25703 of 2012 and CWP No. 317 of 2013 which was disposed of by this Court on 23.8.2013 giving directions to the respondents to examine the case of each of the petitioners on merits after affording effective opportunity of hearing to the petitioners and pass final orders.

4. Mr. R.K. Malik, counsel for the petitioners has argued that appointment to the petitioners was pursuant to the advertisement in the year 2003 and their names have been appeared in initial merit list (Annexure P-4) and thereafter the petitioners were given their appointment on contract basis. The appointment was made on vacant posts and in view of the Division Bench judgment in the case of Rakesh Kumar v. State of Haryana and others (CWP No. 7062 of 2003) decided on 1.7.2004 (Annexure P-12), the services could simply be not terminated on the ground that the appointment was made beyond the number of advertised posts by the Department. In the case of Saveti Devi v. State of Haryana and others bearing CWP No. 27 of 2008 (Annexure P-13), the services of petitioner, Saveti Devi, Art and Craft Teacher was sought to be cancelled on the ground that another candidate more meritorious than her had to be accommodated in view of a decision of this Court in CWP No. 2555 of 2004. This Court after following the Division Bench Judgment in Rakesh Kumar's case (supra) allowed the writ petition and set aside the termination order and gave a direction to accommodate the petitioner on a vacant post of Art and Craft Teacher and a similar view has been taken by this Court in the case of Tej Pal v. State of Haryana and another in CWP No.5369 of 2006 (Annexure P-14).

5. Counsel for the State on the other hand has argued that in the year 2003 only, 45 vacancies of drivers were advertised as per the advertisement (Annexure

R-2). 33 candidates were given appointment and as per the roster only four posts of drivers were to be filled up against general category candidates. General category candidates were issued appointments against reserved category candidates and they joined their duties as well. When it came to the notice of respondent no.2 i.e Transport Commissioner, an enquiry was conducted by Sh. Jagdeep Dhanda, HCS, Joint Transport Commissioner-I, Harayna, Chandigarh and thereafter Director General, State Transport Haryana gave direction that the candidates appointed over and above the advertised posts of General Category who were appointed against reserved category posts may be removed being illegal appointees as suggested in enquiry report. The petitioners were given a show cause notice (Annexure R-4) to appear before the office of General Manager for personal hearing. After hearing him, the impugned order (Annexure P-11) has been passed. Since the petitioners belonged to the general category, they could not be appointed against posts meant for reserved category candidates.

6. Mr. R.K. Malik has informed the Court that one of the Drivers Sh. Karambir Singh whose services have been terminated vide order (Annexure P-11) had filed an appeal before the Department against his termination order. This appeal has been accepted by the Additional Transport Commissioner-II, Haryana, Chandigarh vide order dated 10.2.2016 and his termination order has been set aside. After the order dated 10.2.2016, the Director General State Transport, Haryana, Chandigarh regularised the services of Sh. Karambir Singh on contract basis in the pay band of 5200-20200 with Grade pay 1900/- w.e.f 13.3.2012. Counsel for the State, on instructions, does not dispute that this order has been passed in favour of karambir Singh. A perusal of the order shows that when the enquiry was conducted by Sh. Jagdeep Dhanda, the petitioners were not given an opportunity of hearing. In fact an enquiry was conducted against the action of the then General Manager, Haryana Roadways, Sonapat in making appointments. The enquiry report was sent to the Government for taking action against the then General Manager Haryana Roadways, Sonapat. The Govt. passed the following orders on 27.9.2013:-

"On careful consideration of inquiry report, it has been revealed that the appointments given by Sh. Kuldeep Singh Ahlawat was made against the instructions regarding reservation issued by Chief secretary but in the interest of the department due to the shortage of drivers and no loss was accrued to the State Exchequer.

It has, therefore, been decided by the Government that a punishment of "Censure" be imposed upon Sh. Kuldeep Singh Ahlawat the then General Manager, Harayna Roadways, Sonipat (now G.M Delhi)."

7. While imposing a punishment of Censure it has been specifically observed that since the appellant Karambir Singh was not heard when the order was passed, the Transport Commissioner accepted the appeal of Karambir Singh by observing that after his appointment, he had an excellent service record to his credit and in

the termination order no plausible reason has been given to terminate the contract of the petitioner. It is further observed in the order that before issuance of appointment letter to him there were 224 posts of SC category lying vacant which were converted vide letter dated 6.5.2006 and hence once the posts had been converted prior to the appointment of the appellant, thus in no manner, it can be held that the appellant was appointed against the posts reserved for SC category on 14.8.2008. After going through the order passed in the case of Karambir, Joint Transport Commissioner-I, Haryana, Chandigarh imposed a punishment of censure on the then General Manager, Sonapat, however the termination order has been set aside on the reasons as stated above. The Chief Secretary had converted the reserved category posts to that of General Category and hence the ground of termination did not exist.

8. In view of the above, the writ petition is allowed and order dated 27.9.2013 (Annexure P-11) is set aside with all consequential benefits.