(2017) 01 P&H CK 0170

In the Punjab And Haryana At Chandigarh

Case No : CWP No.18720 of 1995 (O&M)

Kasturi Lal Khanna APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

Citation : (2017) 2 PLR 558

Hon'ble Judges : Mr. Ajay Tewari, J.

Bench : Single Bench

Advocate : Mr. Kasturi Lal Khanna, Advocate, for the Petitioner in Person; Ms. Shruti Jain Goyal, AAG, Haryana, for the Respondent No.1; Mr. Pritam Saini, Advocate, for the Respondents No.2 and 3-HSMITC

Final Decision : Disposed Off

Judgement

Ajay Tewari, J. (Oral) - By this petition the petitioner has challenged the action of the respondent No.2 in not treating him as a promoted Company Secretary w.e.f. 26.06.1995.

2. The brief facts of the case are that the petitioner joined the services of the Haryana State Minor Irrigation & Tubewells Corporation Limited (hereinafter refered to as the Corporation) as Technical Assistant (Statistics) on 27.12.1974 and was promoted as Assistant Statistician (which is a Grade-II post) on 27.06.1979. On 31.10.1989 the Secretary of the Corporation retired and one Shri K.S.Garewal, Financial Advisor was ordered to look after the work of Secretary. The petitioner acquired the statutory qualification of Company Secretary in the year 1990 and was ordered to look after the work of Company Secretary as a stop-gap arrangement thereby relieving Shri K.S.Garewal, Financial Advisor from the duties of Company Secretary vide order dated 30.04.1991. On 09.08.1991 the Board of Directors noted the arrangement made by the M.D. for the post of Secretary and on 17.03.1992 Service Byelaws were amended and third mode of recruitment i.e. by promotion, was inserted for the post of Secretary. Thereafter the Board decided to refer the matter to Haryana

Bureau of Public Enterprises for filling up the post of Secretary by deputation but the Bureau replied that no surplus Secretary was available and issued NOC for promotion. Matter was placed before the Board of Directors on 25.09.1990 who directed to make reference to ROC for exemption. On 31.08.1992 some Directors in the Board meeting inserted an agenda for promoting the petitioner as Secretary by resorting to the mode of promotion which was deferred and was again taken up on 29.09.1992 when the Board desired that the matter may be examined by the Managing Director. The Managing Director instead of examining the matter issued an advertisement in three leading news papers during February, 1993 and on 06.05.1993 results of advertisement were placed before the Board of Directors when the Board decided that the petitioner should continue with the additional charge.

3. On 04.05.1994 the eligibility and fitness of the petitioner was determined by the Screening Committee. On 20.05.1994 minutes of the Screening Committee were confirmed by the Board of Directors thereby promoting the petitioner as whole time Secretary. Thereafter the Government banned future promotions in the Corporation and the Board of Directors decided that in order to avoid hardship to the officers, the Govt. may be approached for relaxing the ban in their cases including the petitioner. On 27.04.1995 and on 19.05.1995 the Government granted permission to fill up the post of Secretary. Matter was placed before the Board of Directors on 26.06.1995 who resolved to appoint the petitioner as Secretary of the Corporation by resorting the mode of promotion. On 29.09.1995 the decision of the Board of Directors was further confirmed by a majority of 5 to 2 votes. Thereafter the petitioner made representations dated 06.11.1995 and 30.11.1995 for his promotion as Secretary and for issue of formal promotion orders in view of decision of the Board of Directors. In a meeting dated 26.06.1995 the competent authority i.e. Board of Directors of respondent No.2 resolved that the petitioner be appointed as a whole time Secretary of the Corporation in the pay scale of Rs.3000-4500. By the impugned letter (Annexure P-10) dated 18.12.1995 the respondent No.1-State of Haryana annulled that resolution and by order Annexure P-11 (dated 18.12.1995) of the same date the Managing Director of the respondent No.2 passed an order withdrawing the charge of Secretary from the petitioner immediately and thereafter the petitioner filed the present writ petition and the operation of the order (Annexure P-11) was stayed. It is also averred that subsequently by an order dated 23.05.1996 the respondent No.1 superseded the order (Annexure P-10) and wrote as follows :-

"2. Govt. have considered the matter and as both these posts and promotions stand cleared by HBPE also, you are directed to assign the current duty charge of the post of Secretary and Administrative Officer to S/Sh.K.L.Khanna and S.K.Arora respectively for which you are competent."

4. These facts have not been disputed in the reply. However support is sought from Article 135 of the Articles of Association of the company to justify the action

of the respondent No.1. Article 135 of the Articles of Association of the company is as follows :-

" Rights of the Government :-

135. Not withstanding any thing contained in any of the Articles, the Government may, from time to time, issue such directives as they may consider necessary in matter of broad policy and in like manner may vary and annul any such directive. The Company shall give immediate effect to directives so issued."

5. The learned counsel for the petitioner has argued that the reliance on Article 135 is completely misplaced on a bare perusal thereof, because that is limited to ''matters of broad policy'' and an order of promotion of an employee by the competent authority i.e. Board of Directors can never be taken to be a matter of broad policy. He has further argued that under Section 383 of the Companies Act 1956 it was mandatory to appoint a whole time Company Secretary of respondent No.2 and even on this score the appointment was necessary. He points out that a careful perusal of the letter dated 23.05.1996 would reveal that respondent No.1 has accepted the correctness of the promotion but has still gone on to give an unjustified direction of treating the appointment of the petitioner as ''current duty charge''.

6. Learned counsel for respondent No.2 and 3-Corporation has pointed out that with effect from 01.08.1991 he was assigned the duties of Company Secretary in addition to his own duties in his own pay scale as stop gap arrangement and by an undertaking dated 09.09.1992 he stated that he would not seek the pay scale of the post of Secretary during this arrangement. He has argued that once the petitioner had himself eschewed any claim to the pay scale of the post of Secretary he can not now turn round and claim this.

7. As regards to the undertaking the petitioner has relied upon Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and others, (1998) 5 SCC 87, wherein the Supreme Court has held as follows :-

"8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer-I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872."

8. Learned counsel for the respondent No.2 points out that in the writ petition the only claim is for effectuating the order of promotion and no claim has been made for the grant of salary from the date of stop-gap arrangement.

9. I find merit in this argument and consequently hold that the petitioner would be bound by the prayer made in the writ petition and can not now enlarge his claim. However, as regards the claim raised in the writ petition the same is absolutely justified.

10. In CWP No.14253 of 1995 and other connected petitions Subhash Chander Mittal v. State of Haryana decided on 04.02.1997 (page 10) a Division Bench of this Court has held as follows :-

"12) The second point raised pertains to the scope of Article 135 of the Memorandum and Articles of Association. For ready reference, it may be reproduced as under :-

"135. Notwithstanding anything contained in any of the Articles, the Government may, from time to time, issue such directives as they may consider necessary in matter of broad policy and in like manner may vary and annul any such directive. The Company shall give effect to directives so issued."

13) A bare perusal of it clearly indicates that the Government can issue directive regarding the broad policy matters. The term ''broad policy'' is not defined anywhere in the memorandum and Articles of Association. But that term certainly does not mean to take away the powers of the Board of Directors to run the Corporation by appointing its various officers. That provision also cannot be stretched to mean that Government can impose persons on deputation while putting ban to promote the officers to hold various posts. Certainly a Corporation is an entity separate from the Government; though it is an undertaking by the Government of Haryana. Article 80 & 81 of the Articles of Association indicate powers of the Board of Directors. A bare perusal of it indicates that the HSMIT Corporation is an autonomous body for carrying its business by exercising various powers, including the power of appointment by promotion. In view of that, Article 135 of Article of Association cannot be interpreted to reduce a Corporation to the position of a department run by the Government. The term "broad policy" used in Article 135 of Article of Association means the directions issued should be such as would give prominance to the main object without insisting on details in the course of action or a system of administration guided more by interest than by principle. The term "broad policy", therefore, should be understood in right spirit behind formation of a separate entity in the form of a Corporation."

11. Learned counsel for respondents No.2 and 3-Corporation is not in a position

to counter this.

12. In the circumstances, the writ petition is allowed and it is directed that the petitioner be treated as having been promoted to the post of Secretary w.e.f. 26.06.1995 i.e., the date of the decision. However since he has now retired the respondents would be liable to pay him the difference in pay and emoluments and other consequential benefits. The petitioner claims that he is entitled to interest @ 12%, in view of the fact that the respondents illegally withheld the same.

13. Learned counsel for respondents No.2 and 3-Corporation has argued that in view of the directions of respondent No.1 the blame can not be laid at the door of respondents No.2 and 3-Corporation and consequently the claim for interest is unjustified. Keeping in view the entire factual matrix I deem it appropriate to grant interest @ 6% p.a. from the date the payment become due. However, respondents are directed to work out the same and pay to him within a period of three months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim the same with interest @ 12% on the amount/s from the date/s they were due (within three months with interest).

14. Since the main case has been decided, the pending Civil Miscellaneous Application, if any, also stands disposed of.