
(2014) 04 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8065 of 2012

Kismat and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Citation : (2014) 04 P&H CK 0058

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Manoj Makkar, Advocate for the Appellant; Harish Rathee, Sr. DAG, Haryana, for respondent Nos. 1 and 2 and Mr. Surender Dhull, Advocate, for respondent Nos. 3 to 5, Advocate for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioners have approached this Court praying for quashing the impugned order dated 12.05.2010 (Annexure P-7) passed by respondent No. 2-the Director, Industrial Training Institute and Vocational Education, Haryana, vide which their services have been terminated. It is the contention of the counsel for the petitioners that petitioner No. 1 Kismat was one of the petitioners in CWP No. 5289 of 2007 (Ashok Kumar and others Versus State of Haryana and others), whereas Ved Pal petitioner No. 2 was a petitioner in CWP No. 5426 of 2007 (Jasbiro Devi and others Versus State of Haryana and others) and petitioner No. 3 Deepak Kumar was a petitioner in CWP No. 5414 of 2007 (Rai Singh and others Versus State of Haryana and others). These writ petitions were disposed of by a Division Bench of this Court vide a common order dated 24.01.2008 (Annexure P-2) with the lead case being CWP No. 5289 of 2007 (Ashok Kumar and others Versus State of Haryana and others).

2. State of Haryana preferred SLP before the Hon''ble Supreme Court, which was disposed of by the said Court vide order dated 13.07.2011 on the basis of a short affidavit filed by Shri Vijay Singh, Joint Secretary to Government of Haryana, Industrial Training Department dated 13.07.2011, wherein it was stated that the

Government was prepared to accommodate the eligible respondents numbering 258, who fulfill the requisite qualification as per the rules on humanitarian ground in the Industrial Training Department against the vacant posts in case a direction is issued to that effect. In the light of the said affidavit, directions were issued by the Hon''ble Supreme Court that it would be in the interest of justice if eligible respondents, who fulfill the requisite qualification are accommodated. The said action was to be taken by the State within a period of three months.

3. Petitioners, being respondents in the SLP and were found eligible out of the 258 respondents to be accommodated, should have been taken back in service, but instead after the disposal of the writ petitions filed by the petitioners in this Court vide order dated 24.01.2008, their services were terminated by the respondents vide impugned order dated 12.05.2010 (Annexure P-7). This, the counsel for the petitioners, contends is not sustainable in the light of the affidavit filed by the respondents in the Hon''ble Supreme Court. Petitioners were required to be considered for adjustment. Instead, the respondents after terminating the services of the petitioners, simply proceeded to ignore the claim of the petitioners on the ground that they were not serving the respondent-department on the date when the order was passed by the Hon''ble Supreme Court, i.e., 21.01.2013. He contends that the action of the respondents is not in accordance with law and in any case against the affidavit which has been filed by the State in the Supreme Court. He has also contended that the order dated 30.09.2013 (Annexure R-1) passed by the Principal Secretary to Government Haryana, Industrial Training Department, is not sustainable as the condition which has been imposed while considering the claims of 258 respondents vide the said order that they should be on the posts on which they were working when the order was passed is alien to the proceedings in the Supreme Court as the affidavit dated 13.07.2011 did not speak of the same. Prayer has, thus, been made to issue directions to the respondents to adjust the petitioners in compliance with the order passed by the Hon''ble Supreme Court.

4. On the other hand, counsel for the State submits that the directions issued by the Division Bench of this Court in Ashok Kumar's case (supra) gave liberty to the respondents and did indicate that the persons who were in service were only to be accommodated. His further submission is that the order dated 13.07.2011 passed by the Supreme Court indicates that the State of Haryana was required to accommodate only the respondents who were working on the said date. On the basis of and in compliance with the order dated 13.07.2011 passed by the Supreme Court, the State of Haryana took a conscious decision to consider and accommodate all eligible respondents numbering 258 who fulfill the requisite qualification as per rules on humanitarian ground in the Industrial Training Department against the vacant posts in case the Hon''ble Supreme Court permits. The order dated 21.01.2013 passed by the Supreme Court thereafter was in pursuance to the affidavit which has been filed by the State of Haryana which was in the context of the earlier order dated 13.07.2011 passed by the Supreme Court. He, on this basis, contends that the incorporation of the

condition that only those eligible respondents were to be allowed to continue in service or adjusted who were working on the said date when the order of the Supreme Court was passed, i.e., 21.01.2013 and the order dated 30.09.2013 (Annexure R-1) passed by the Principal Secretary to Government of Haryana, Industrial Training Department is in the letter and spirit giving effect to the intent of the order of the Supreme Court and, therefore, action of the respondents in not adjusting the petitioners because their services have already been terminated is fully justified. He, on this basis, contends that the writ petition being without any merit deserves to be dismissed.

5. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

6. The claim of the petitioners with regard to the adjustment would be dependent upon the orders firstly passed by the Division Bench of this Court dated 24.01.2008 in Ashok Kumar's case (supra), the operative part whereof reads as follows:-

In view of the consensus arrived at between the parties, we dispose of these writ petitions with a direction to the respondents to allow the petitioners to continue in service subject to all terms & conditions which they have accepted by executing agreement. It is further made clear that in case work and conduct of any employee is not upto the mark authority concerned will be at liberty to take action as per rules. It is further directed as follows:-

a. That the petitioner shall not be entitled to continue in service, when regularly selected candidates, on completion of on going process are appointed against the posts, the petitioners are holding at present.

b. In case the department decides to close down any trade in any institute, incumbent of those posts will have no right to continue. However in case that very trade is opened in any other institute and if former teachers are available, they be offered the posts in the first preference.

c. In case the department of vocational education is merged with the department of secondary education, the petitioner will continue to work on the same terms and conditions under which they are working now and will leave the post when regularly selected candidates are appointed against terms or in case on account of availability of regularly staff their services become surplus.

Thereafter the Supreme Court vide order dated 13.07.2011 stated as follows:-

We have partly heard Ld. Counsel appearing for the State of Haryana and Ld. Counsel appearing for the respective respondents. Admittedly, respondents have worked for about 4 to 5 years in different capacities. According to Ld. Counsel appearing for the State of Haryana it is not possible to accommodate them in Vocational Training Programme Institute because the posts have been abolished in such Institutes.

We request the Chief Secretary, State of Haryana to explore the possibility of accommodating these respondents in any other project or school looking to their qualification. We expressed the same sentiment in our previous order dated 6.4.2009. The Chief Secretary may consult sorting out the case on humanitarian ground.

7. After passing of this order by the Supreme Court, the matter was considered by the Government of Haryana and the decision taken thereon has been reflected in the affidavit dated 27.03.2014 filed by Shri S.K. Goyal, Director General, Department of Industrial Training, Haryana, in the present writ petition. Para 4 of the said affidavit reads as follows:-

4. That in compliance of order dated 13.07.2011 matter was examined by the Govt. in all detail and finally an undertaking by way of affidavit was given by the Govt. (by Sh. Vijay Singh, Special Secretary to Govt. Haryana, Industrial Training Department) that Govt. is prepared to accommodate all the eligible respondents in numbering 258 who fulfill the requisite qualification as per Rule on humanitarian ground in the Industrial Training Department against the vacant post in case this Hon"ble Court permits to do so.

8. A perusal of the above would indicate that the decision taken by the Government of Haryana did not indicate as to whether the eligible respondents, which are numbering 258, were in service who were to be accommodated on humanitarian ground in the Industrial Training Department. The same position is reflected in the order dated 21.01.2013 passed by the Supreme Court, which reads as follows:-

The application for correction of cause title in SLP (C) Nos. 16389-16415 of 2009 is allowed. Let the cause title be corrected accordingly.

The applications for impleadment are dismissed.

Delay condoned.

Pursuant to our order dated 13th July, 2011 a short affidavit has been filed by Mr. Vijay Singh, Joint Secretary to Government of Haryana, Industrial Department, wherein it is stated that the Government is prepared to accommodate the eligible respondents numbering 258 who fulfill the requisite qualification as per rules on humanitarian ground in the Industrial Training Department against the vacant posts in case a direction is issued to that effect.

Having heard learned counsel for the parties, we are of the opinion that it would be in the interest of justice if the eligible respondents who fulfill the requisite qualification are accommodated. Let the necessary action be taken by the State within a period of three months.

The special leave petitions are, accordingly, disposed of.

9. A perusal of the above orders and affidavits would show that there is no indication what to say of an averment/observation that the persons who were

eligible and in service were to be adjusted out of 258 eligible candidates. The order dated 30.09.2013 (Annexure R-1) appended along with this affidavit which puts a rider with regard to accommodation of the respondents in the SLP that they should be adjusted on the posts on which they were working is alien to the earlier decision taken by the Government of Haryana, as reflected in the affidavit which has been filed by Shri Vijay Singh, Joint Secretary to Government of Haryana, Industrial Training Department dated 13.07.2011 in the Supreme Court as also the order of the Supreme Court dated 21.01.2013. The said order dated 30.09.2013 (Annexure R-1) being contrary to the decision of the Government as well as the judgment of the Supreme Court which was based upon the affidavit of the State of Haryana cannot sustain and, therefore, cannot be said to be in compliance with the order passed by the Supreme Court dated 21.01.2013 and, thus, is set-aside.

10. It is an admitted position that the petitioners are eligible as per the posts held by them and, therefore, were required to be adjusted in compliance with the undertaking which was given by the respondent-State by way of an affidavit dated 13.07.2011. The non-consideration of the claim of the petitioners for adjustment only on the ground that they have been terminated after the disposal of the writ petition preferred by them in this Court is not sustainable and the said action of the State cannot be said to be in accordance with law.

11. In view of the above, the present writ petition is allowed and the order dated 12.05.2010 (Annexure P-7) is hereby quashed.

12. Direction is issued to the respondents to consider the claim of the petitioners for adjustment in the light of the judgment of the Hon''ble Supreme Court within a period of one month from the date of receipt of certified copy of the order. Decision so taken be conveyed to the petitioners forthwith.