

(2010) 03 P&H CK 0139
In the Punjab And Haryana At Chandigarh

Kulwant Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Citation : (2010) 03 P&H CK 0139

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The petitioners who were employees of the Punjab State Tubewell Corporation Ltd. (for brevity the Corporation) complained against the action of the Corporation in declaring junior most employees of the Corporation amongst them, as surplus and transferring them for absorption with the Punjab Irrigation Department (for brevity the Department).

2. The petitioners' contention is that the action of the Corporation which was prompted on a request from the Department to send the service particulars, age, educational qualification of 18 senior Zileedars in the office of the Corporation, could not have sent the junior most among them and the petitioners' names, who being the seniors to the private respondents, ought to have been declared as surplus amongst the seniors and sent for absorption with the Department.

3. Some more particulars that would become necessary for understanding the background of the case would be, that when the services of some of the Zileedars of the Corporation seemed like that they were not necessary and there was an imminent prospect of their being treated as surplus, some of the persons who apprehended that they would be retrenched from service, had approached this Court in CWP No. 2280 of 1987, as a pre-emptive action to protect the in-service. It so happened that the services of all of them were not terminated and out of 27 Zileedars in Corporation, only 18 were treated as surplus. There had been yet another writ petition also, that went up to the Hon'ble Supreme Court,

which was disposed of in CA No. 4512 of 2000, when the persons who were sought to be absorbed with the Department, claimed that they should be given pay protection and when they approached the Hon''ble Supreme Court, the State was making a plea that no decision had been taken with reference to the pay protection and that no Rule enabling them to protect the pay had also been drawn, when they were working in Corporation. The stand of the Corporation and the State, as placed before the Hon''ble Supreme Court were referred to address the point urged on behalf of the petitioners that at all times, the Corporation had only been claiming that all the 27 persons were going to be treated as surplus and all the Zileedars were expecting to be absorbed in the State, if such a move ever took place.

4. When the request was made by the Chief Engineer, Irrigation Works, Punjab to the Managing Director of the Tubewell Corporation, he had requested by his letter dated 27.1.1993 to send the service particulars of 18 senior Zileedars to the office. It was clarified that the list of senior surplus Zileedars should be based on seniority and that there should be no favouritism or victimization. By letter dated 3.2.1993, the Divisional Engineer on behalf of the Managing Director of the Corporation had sent out a list of 18 persons, who were not amongst the seniors but all the juniors subject to two exceptions, where a person who was in serial No. 19 in the order of seniority and another person in serial number 21 had not been sent and instead two other persons in the first 18, one of whom belong to Scheduled Caste category and another person belonging to Ex-serviceman category had been recommended. Only after giving a list of the 18 persons, most of whom were the junior most, an office order had been passed on 12.2.1993 declaring the persons, whose names had been sent, as surplus. This fact that the declaration of surplus by the Corporation took place only on 12.2.1993 is cited by the petitioners as giving a proof of the fact that the Corporation was not acting as per the letter of request and they had declared the persons as surplus only after sending the names upon a prejudgment. The claim of the petitioners is that if the letter of request dated 27.1.1993 had been followed strictly, the petitioners were entitled for consideration above the private respondents and the petitioners ought to be therefore, directed to be absorbed in the State service by the Department.

5. Statements have been filed both on behalf of the State and by the Corporation. The contention on behalf of the State is that they after all absorbed only the names of persons who had been recommended by the Corporation and they had no role to play in the matter of absorption. The Corporation justified its stand by pointing out that surplus invariably shall be only of persons who were junior most and in this case when after initial reckoning that all 27 persons would be treated as surplus, it was ultimately decided to retain 9 of them. That was after a previous round of litigation when there had been apprehensions expressed that all the Zileedars would be retrenched from service. The Government still offered an absorption only for 18 persons and therefore they forwarded the name of 18 persons who were among the junior most. Learned

Counsel appearing on behalf of the Corporation would submit that there were no malafides in the action for after all, the concept of surplus itself underlines the fact that only the junior most could be treated as surplus and the senior amongst the employees, could not have been offered as surplus for absorption in yet another organization. There was also another indefinite reason for such a choice, for the persons, who were retained in service in the Corporation would retain the seniority as well, but if they were transferred to yet another organization, they had to lose all the seniority and rank as junior most in the new service. At that time again, the scales of pay, both in the Department of the State and the Corporation were the same and therefore, the choice of the names as surplus, was a conscious decision to retain the senior most in the Corporation and to offer the junior amongst them to the State Department.

6. The petitioners are aggrieved that the scales of pay in the Department was more than what was there in the Corporation and that further the persons who had been absorbed in the Department, were later on accommodated as Naib Tehsildars in the Department. The retiral benefits also became more lucrative and therefore, by hind-sight, the petitioners find that the juniors marched over them by obtaining greater benefits of pay. By not complying with letter of request in the manner in which the State had sought, the Corporation had grossly visited injustice and put the petitioners below par to the private respondents, who were juniors to them.

7. The request of the petitioners for absorption to the State could be done only, if in the first place there are vacant posts available to which they should claim absorption. For an incident that happened in the year 1992, it shall be inexpedient to set the clock back and transport the petitioners to the State service. The fact that the service condition became better in State service would only be seen to be a fortuitous circumstance and that by itself in my view cannot afford to the petitioners a right to absorption in the State service. No deliberate wrong conduct could be attributed to the Corporation.

8. The petitioners' claim for absorption and for grant of similar benefits as accorded to the private respondents cannot be granted and the writ petition shall fail and is accordingly dismissed.