
(1994) 05 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16828 of 1992

Mahant Lal

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 27-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana Health Department, Multipurpose Health Supervisors and Multipurpose Health Workers Group C Service Rules, 1984 — Rule 21
Punjab Public Health Department Subordinate Posts (Recruitment and Conditions of Service) Rules, 1940 — Rule 5

Citation : (1994) 108 PLR 415

Hon'ble Judges : R.P. Sethi, J; Harjit Singh Bedi, J

Bench : Division Bench

Advocate : Surya Kant, for the Appellant; Jagdev Sharma, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—By this judgment we propose to dispose of C.W.P. Nos. 2621 of 1985, 4120 of 1987, 15340 and 16828 of 1992. The facts have been taken from C.W.P. No. 16828 of 1992.

2. The petitioner was appointed as Tehsil Sanitary Inspector in May 1964 and confirmed as such with effect from November 2, 1966. He was promoted as Chief Sanitary Inspector in May 1976 and vide Notification dated July 9, 1977, Annexure P1 to the petition was conferred the additional powers of Food Inspector under the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter called the "Act"). It has been averred by the petitioner that his services were governed by the Punjab Public Health Department Subordinate Posts (Recruitment and Conditions of Service) Rules, 1940 (hereinafter called the "1940 Rules") and Rule 5 provides for the method of appointment to the posts shown in Appendix A thereto. Reliance has also been placed on Section IV to Appendix A to the 1940 Rules to show that the post held by the petitioner i.e.

Chief Sanitary Inspector was the highest post in the cadre of the petitioner and that no further promotion was envisaged from that post. The grievance of the petitioner is that the respondents have vide order dated December 5, 1992 Annexure P3 to the petition, sought to push the petitioner to the higher post of Senior laboratory Technician, which was not in his cadre and therefore outside the purview of the Rules and, as such, he could not be forced to accept that promotion. It is further the grievance of the petitioner that by promoting him to the post of Senior Laboratory Technician the powers of Food Inspector conferred on him vide Annexure P-I would in consequence be withdrawn. The action of the respondents in issuing Annexure P3 has been impugned in the present petition.

3. In the reply filed on behalf of the respondents, most of the facts, as stated, have been admitted but it has been stated that with effect from December 28, 1984 the 1940 Rules had been repealed by the Haryana Health Department, Multipurpose Health Supervisors and Multipurpose Health Workers Group "C Service Rules, 1984 (hereinafter called the "1984 Rules") and the post of Sanitary Inspector having been redesignated as Multipurpose Health Supervisors (Male) envisaged that promotion could be made from that post to that of Senior Laboratory Technician. Reliance has also been placed on Annexure R1 which is a communication dated June 25, 1984 dealing with the grant of food powers to a Sanitary Inspector in which it has been directed that a Sanitary Inspector for going his promotion was not entitled to retain his status as a Food Inspector. The order Annexure P3 is therefore sought to be justified on the facts stated above.

4. It is the conceded case of the parties that the post of Senior Laboratory Technician does not find mention in the 1940 Rules. It is also clear from a reading of Rule 5 alongwith Section IV of Appendix A to the 1940 Rules that the cadre to which the petitioner belongs consists of only three different categories of posts viz. Chief Sanitary Inspector, Sanitary Inspector (normal staff) and Sanitary Inspector (Special Staff). The question that now arises is as to whether a government employee can be compelled to accept a post outside his cadre, on this connection, Mr. Surya Kant has placed reliance on a Division Bench decision of this Court reported in Tilak Raj Bhalla, District Attorney, Amritsar v. State of Punjab and Ors. 1987 (2) S.L.R. 672 in support of his plea that a government employee cannot be so compelled. The Division Bench relying on a number of decisions of various High Courts-observed that a government employee could not against his wishes be transferred to a post outside the cadre of that service.

5. We have considered this argument of the learned counsel for the parties and find that the petitions deserve to succeed. Rule 21 of the 1984 Rules which is the repealing and savings clause specifically repeals the rules with regard to certain categories of employees but not with regard to the category of Senior Sanitary Inspectors i.e. the post held by the petitioner prior to his promotion vide Annexure P3. Rule 21 *ibid* is reproduced below :-

"21 Repeal and Savings:- The Punjab Health Department Subordinate Posts (Recruitment and Conditions of Service) Rules, 1940 in so far as these relate to

the posts of Vaccinators, Sanitary Inspectors Health Inspectors, Small Pox Supervisors, Health Education Assistants, Non-Medical Assistants, Surveillance Inspectors, Inspectors Vaccination and Malaria Inspectors and the Punjab Medical and Health Department (State Service Class-III-Auxiliary Nurse Midwives, Nurse Dais and Trained Nurse Dais) Rules, 1965 in so far as these relate to the posts of Auxiliary Nurse Midwives are hereby repealed : Provided that any order made or action taken under the rule so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules."

It will, therefore, be seen from the aforecited rule that the 1940 Rules would stand repealed by the 1984 Rules as regard the post of Sanitary Inspector, but as far as the post of Senior Sanitary Inspector is concerned, the 1940 Rules would be still operative. Once it is so held the ration of Tilak Raj Bhalla's case would apply and the petitioner cannot be compelled to accept a promotion post outside his cadre as the post of Senior Laboratory Technician is admittedly not a post in the cadre.

6. For the reasons recorded above, the present petition is allowed and the order Annexure P-3 set aside qua the petitioners. We however make it clear that the setting aside of this order will not mean that the appointment of the petitioners as Food Inspectors would ipso facto revive and we leave it to the authorities to pass such orders in this regard as they deem fit.