
(2003) 01 P&H CK 0333
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8834 of 2002

Manjeet Kaur and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 23

Citation : (2003) 2 ILR (P&H) 277

Hon'ble Judges : S.S. Nijjar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : S.K. Sharma, Budhladhawala and Kapil Kakkar, for the Appellant;
H.S. Sran, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—We have heard the learned Counsel for the parties at length and perused the record of the case.

2. This order of ours will dispose of Civil Writ Petition Nos. 8834, 17957, 17958, 16526, 15632, 16584, 17603 of 2002 and 1628 of 2003 as the questions of fact and controversy involved is identical.

3. For facility of reference the facts as pleaded in C. W.P. No. 8834 of 2002 have been noticed.

4. Some of the Petitioners had been selected as Anganwari Workers on payment of honorarium and some of them have been appointed as Helpers of Anganwari Workers. The State of Punjab, on enquiry, came to the conclusion that serious irregularities and illegalities have been committed while issuing these appointments to the Anganwari Workers and Helper Anganwari Workes. On the basis of the complaints, disciplinary proceedings were also initiated against one Iqbal Singh, the District Programme Officer, who acted as Chairman of the Selection Committee. At present, he is under suspension. The State of Punjab by order dated 16th September, 2002, terminated the services of 304 Anganwari

Workers including the Petitioners in the present petition(s).

5. It has been vehemently argued by the learned Counsel for the Petitioners that the Petitioners have made out a case for issuance of a writ of Prohibition directing the Respondents not to give effect to the orders of termination. They have also submitted that all the Petitioners had been duly selected and appointed after participating in the process of selection. All the Petitioners have been given appointment orders on 12th November, 2001. They had acquired valuable rights which could not have been taken away without complying with the rules of natural justice. All the appointment orders had provided that if the Anganwari Worker for any reason wants to resign, she will have to give 15 days advance notice to the department. Therefore, the Petitioners would also be entitled to at least 15 days notice before the contract is ended by the Respondents. It has also been submitted that all the Petitioners had been performing their duties for four to six months prior to the order of termination. None of them had been paid any honorarium. Therefore, the action of the Respondents is said to be in breach of Article 23 of the Constitution of India.

6. Written statement has been filed and the claim put forward by the Petitioners has been controverted. In paragraph 12 of the written statement, it is submitted that the action for terminating the services of the Petitioners was necessitated as there had been a wholesale breach of government instructions in the conduct of the selection and appointment of the Petitioners. It is submitted that some of the Petitioners had been appointed in Anganwari Centres where no posts of Anganwari Workers existed. The Respondents have attached a statement Annexure R-5 with the written statement showing the position where fresh appointments have been made but the post does not exist. According to the statement Annexure R-5, the appointment of Petitioners Nos. 1, 2, 3, 5, 7, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25, 27, 28 to 44, 47, 48 to 53, 56, 57, 59, 61, 66, 67, 69, 70, 73, 75, 76, 77, 79, 80, 81 to 84, 88 to 90, 100, 104, 106, 107, 108, 109, 112, 113, 118, 121, 122, 123, 127 to 130, 135 and 136 have been made against the non existing posts. Petitioner Nos. 8, 10, 12, 13, 19, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 53, 56, 57, 58, 60, 65, 73, 74, 75, 76, 92, 93, 94, 95, 96, 97, 98, 99, 100, 113, 119, 124, 125, 127, 128, 129 and 130 are shown to have been appointed as Anganwari Workers on the condition that until the sanction for the post is received, she will have to perform the job as Social Worker. Petitioner Nos. 59, 63, 64, 81, 82, 83, 84, 85, 86, 87, 89, 90, 91, 101, 104, 116, 135 and 136 are shown to have been appointed as Helpers, when the post does not exist in the concerned Anganwari Centres. The written statement goes on to explain that Petitioner Nos. 46, 132 and 134 have been working as Helpers since March, 1997; September, 1998; and January 1997, respectively. Their services have not been terminated. These Petitioners have subsequently given affidavits stating that they have been wrongly impleaded as Petitioners as no cause of action has arisen in their favour. The affidavits given by Petitioner Nos. 46, 132 and 134, are attached as Annexure R-6, R-7 and R-8 to the written statement.

7. We have considered the respective submissions made by the learned Counsel for the parties.

8. The submissions made by the learned Counsel for the Petitioners are wholly misconceived and deserve to be rejected. The State of Punjab had issued instructions on 14th January, 1998, laying down a criteria for appointments of Anganwari Workers. These were subsequently modified on 23rd May, 2000. In this memorandum, the Government has reviewed the existing policy/instructions with regard to the recruitment of Anganwari Workers. A definite criteria has been provided, as follows:

The Government has reviewed the present policy/instructions recruitment of Anganwari Workers and it has been decided that at the time of recruitment of Anganwadi Workers, the marks may be allotted as detailed below on the basis of educational qualifications and experience in addition to 15 marks kept for interview:

THE ALLOTMENT OF MARKS ON THE BASIS OF EDUCATIONAL QUALIFICATION

1. Matriculate candidate 10 marks
2. Additional marks to be given who has passed matriculation in first division 2 marks
3. Additional marks to be given who has passed matriculation in second division 1 mark
4. Additional marks to be given who has passed 10+1 1 mark
5. Additional marks to be given who has passed 10+2 1 mark
6. Additional marks to be given who has passed B.A.-I 1 mark
7. Additional marks to be given who has passed B.A.-II 1 mark
8. Additional marks to be given who has passed B.A. or higher education 5 marks

ALLOTMENT OF MARKS TO BE GIVEN ON THE BASIS OF EXPERIENCE

1. In case a candidate possesses experience for the Welfare of Women and Children up to one year 3 marks
2. In case a candidate possesses experience for the Welfare of Women and children upto two years 3 marks
3. In case a candidate possesses experience for the Welfare of Women and Children up to three years 4 marks
4. In case a candidate possesses diploma in the field of Women and Children Development from any recognized University 3 marks

To implement the decision made by the Government, the necessary action be taken immediately and the vacant posts be filled as per the amendments

9. These instructions were wholly disregarded while making the appointments. The-Petitioners did not even care to attach the appointment orders while filing the original writ petition. On 31st May, 2002, it was noticed by the Division Bench that challenge had been made to the relieving order of Petitioner No. 125. Learned Counsel for the Petitioner, therefore, was directed to place on record her appointment letter.

10. The Petitioners filed Civil Miscellaneous Application No. 2426 of 2003, for placing on record the appointment orders of some of the Petitioners as Annexures P-18 to P-71. In this application, it is stated that the original copies of the appointment orders of the Petitioners could not be attached with the present writ petition. As such, true photocopies and true translations of the same are attached.

11. The Petitioners had also filed Civil Miscellaneous Application No. 2427 of 2003 for release of the salary of the Petitioners. The Petitioners have attached two kinds of orders which have been allegedly issued to them. For proper appreciation, it is necessary to reproduce the same in toto, which are as under:

ANNEXURE P-18

OFFICE OF PROGRAMME OFFICER, SANGRUR

The following candidate/candidates have offered to work as Honorary workers by making applications to Child Development Project Officer, Sherpur, District Sangrur. The same have been accepted on the recommendation of their names by the Block Level Anganwari Workers Selection Committee and the following selected Anganwari Workers are entrusted the work of the Anganwari Centre with effect from the date of their joining up to 28th February, 2002.

Name of Anganwari Workers Husband/Father's Name Centre/Village

Manjeet Kaur Karnail Singh Ghanauri Kalan Block Malerkotla

2. The work of Anganwari will be temporary and the Honorarium payable to the Honorary Workers shall be admissible as sanctioned by the Government of India from time to time.

3. If at any stage the work of Anganwari Worker is not found satisfactory or she remains absent for 15 days or more, the work entrusted to her will be withdrawn.

4. If an Anganwari Worker for any reason wants to resign, she will have to give 15 days advance notice to the Department.

5. If the selected candidate is found ineligible from the documents/facts, work entrusted to her will be withdrawn without assigning any reason and she will have on objection in this regard.

(Sd.). . .,

Endst. No. P.C./2001/722--725, dated 12th November, 2001.

ANNEXURE P-49 ORDER

Smt. Monika Shanti W/o Parminder Kumar of Village Banbhora, Block Malerkotla, has been appointed as Anganwari Worker on temporary basis up to 28th February, 2002. She will be paid only the honorarium as sanctioned by the Government of India from time to time. Her services can be terminated without assigning any reason or issue of any notice at any time.

(Sd.). . .,

Endst. No. P.O. Sang/2001/7347-48, dated 19th December, 2001.

A copy of the above is forwarded to the following for information and necessary action:

1. Child Development Project Officer, Sangrur.
2. Converned Anganwari Helper.

(Sd.). . .,

12. A persual of the appointment order, Annexure P-18, issued to Manjeet Kaur, reproduced above, shows that she had been appointed only up to 28th February, 2002. The order also shows that the Anganwari Worker would be paid honorarium sanctioned by the Government of India from time to time. Condition No. 5 clearly lays down that if the selected candidate is found ineligible from the documents/facts, work entrusted to her will be withdrawn without assigning any reason and she will have no objection in this regard.

13. Similarly, the appointment order, Annexure P-49, issued to Smt. Monika Shanti, reproduced above, clearly shows that she had only been appointed up to 28th February, 2002. None of the orders, reproduced above, can be said to be creating any indefeasible rights to employment in favour of the Petitioners.

14. On enquiry being conducted, the Respondent-State has come to the conclusion that the appointments of the Petitioners is in breach of the Government instructions. The appointments have been made against non-existing posts. The appointments have been made arbitrarily and for extraneous consideration. Such being the position, the Respondents have issued the letter dated 16th September, 2002 directing the termination of the services of 304 Anganwari Workers/ Helpers, including the Petitioners, selected in District Sangrur. Pursuant to this order, the services of 304 Anganwari Workers/Helpers have been terminated including the Petitioners.

15. When such is the state of affairs, it would be wholly inappropriate to strike down the decision of the Government on some imaginary grounds that there had been a breach of rules of natural justice. When appointments to public posts are sought to be made arbitrarily and for extraneous consideration without complying with the selection procedure, it is open to the appropriate authority to set the matter right by revoking such appointments. In the face of the

circumstances and the justification given by the Respondents the candidates whose appointments have been revoked, cannot be permitted to say that there has been a breach of rules of natural justice. This view of ours finds support from a judgment of the Hon''ble Supreme Court in the case of *The District Collector & Chairman Vizianagaram (Social Welfare Residential School Society), Vizianagaram and Anr. v. M. Tripura Sundari Devi* 1990(4) S.L.R. 237.

In that case, the Respondent had applied for appointment as a teacher in response to an advertisement. She was appointed as Post Graduate Teacher in Hindi. Subsequently, on checking her certificates, it was found that she was not qualified for the post. She was not allowed to join the services. Aggrieved against the decision of the authorities, Respondent moved the Andhra Pradesh Administrative Tribunal at Hyderabad, representing to the Tribunal that pursuant to the order of 27th December, 1985, she had joined her duties on 2nd January, 1986 and that she should be allowed to continue in service with all the benefits from that day. The Tribunal accepted the application of the Respondent and awarded costs against the employer. The Hon''ble Supreme Court observed in paragraph 6 of the judgment as under:

It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.

(Emphasis supplied).

16. The aforesaid observation make it crystal clear that arbitrary decisions made by the Selection Committee would fall in the realm of fraud committed on the general public. Aggrieved are not only the affected parties. When selection and appointments are made for arbitrary and extraneous considerations against all norms, the Courts should not be a party to perpetuation of the fraudulent practice.

17. In yet another case, *Union Territory of Chandigarh v. Dilbagh Singh and Ors.* 1993(1) S.L.R. 451, the Hon''ble Supreme Court upheld the decision of the Union Territory, Chandigarh, cancelling the entire selection on the post of Conductors. The Union Territory, Chandigarh, had come to the conclusion that the select list was the amalgam of favouritism and nepotism and even corruption resorted to by the Members of the Selection Board. It was found that the Selection Board during interviews had brought into select list, least qualified candidates who had been awarded less marks for their educational qualifications. These revelations,

compelled the Chandigarh Administration to conclude that the select list of candidates for appointment as conductors in C.T.U. had not been prepared by the members of the Selection Board fairly and judiciously in that those members had taken undue advantage of the marks awardable by them at the interview to favour the candidates of their choice although there was no clinching evidence of corruption attributable to the members. After cancelling the selection, a new Selection Board had been set up to interview the candidates. An Original Application was moved before the Central Administrative Tribunal, Chandigarh, seeking setting aside of the cancellation order made by the Chandigarh Administration, Chandigarh. The application was allowed by the Central Administrative Tribunal, Chandigarh, the Chandigarh Administration, Chandigarh, went in appeal to the Supreme Court. The Hon''ble Supreme Court rejected the reasoning of the Central Administrative Tribunal, Chandigarh, that the select list could not have been cancelled without giving an opportunity of hearing to the Members of the earlier Selection Board. In paragraph 8 of the judgment, the Hon''ble Supreme Court observed as follows:

Affording of an opportunity of hearing by an Administration to the members of a Selection Board constituted by it, before cancelling a dubious select list of candidates for appointment to civil posts prepared by such Selection Board is not and cannot be a requirement of either law or any principle of natural justice. It is so, for the reason that no member of a Selection Board acquired any vested right or interest in sustaining a select list prepared by the Selection Board. Besides, there is no personal right or interest of any member of a Selection Board which could be adversely, affected by the Administration cancelling a select list of candidates prepared by Selection Board when it is found to have been prepared by the Selection Board in unfair and injudicious manner. Therefore, there can arise no need to any Administration to afford an opportunity of hearing to the members of the Selection Board before cancelling a dubious select list of candidates for appointment of civil posts, prepared by it. Hence, we must hold that the CAT was wholly wrong in setting aside the Chandigarh Administration's Order by which the dubious select list of candidates for appointment as conductors in CTU prepared by Selection Board constituted by it had been cancelled, on its erroneous view that non affording of an opportunity of hearing to the members of the Selection Board before cancelling its select list had vitiated that Order. This would be our answer to the question adverted to at the outset.

18. The Hon''ble Supreme Court also rejected the arguments of the counsel for the Respondents that selected candidates ought to have been given an opportunity of hearing. In paragraph 6 of the judgment, the Hon''ble Supreme Court noticed the arguments of the counsel for the Respondents, which are as under:

But. he contended, rather very strenuously, that the judgment of CAT under appeal was required to be sustained for the reason that the cancellation of the

select list of candidates prepared by the earlier Selection Board had been made by the Appellant (Chandigarh Administration) without proof of corruption charges levelled against the members of that Selection Board in the matter of selection of candidates and further without affording an opportunity of hearing to the candidates in the select list to sustain the same.

19. The aforesaid arguments were rejected in paragraph 10 of the judgment by the Hon''ble Supreme Court, by observing as under:

What remains for our consideration is the contention of the learned Counsel for the Respondents that the Respondents who were the selectees in the select list should have been heard by the Chandigarh Administration before it cancelled the list as a dubious one. According to learned Counsel, non-affording of an opportunity of hearing to the Respondents Selectees, before the select list in which they had found places as selected candidates for appointment in the vacant civil posts of conductors in CTU should be regarded by us as a sufficient ground not to disturb the judgment of the CAT under appeal, although the judgment itself is not rendered on that basis. The contention of the learned Counsel, in our view, is misconceived and hence calls to be rejected.

20. We are of the considered opinion that the facts and circumstances of the present case are also such that the Petitioners cannot complain of breach of rules of natural justice on the ground that no opportunity of hearing was given to them before appointments were cancelled. The appointments which have been directed to be cancelled by the Respondents are those which are based on dubious selections. In view of the law laid down by the Supreme Court, the approach adopted by the Respondents deserves to be upheld.

21. We are also not impressed with the submissions of the learned Counsel for the Petitioners that there has been any breach of Article 23 of the Constitution of India. This is not a case of Petitioners having been compelled to work without any wages. Rather, the Petitioners had managed to seek appointments against the posts which did not even exist. The procedure prescribed for selection was not followed. The appointments had been made wholly arbitrary. From the appointments orders it appears that the appointments had only been made upto 28th February, 2002. None of the posts have been sanctioned. Therefore, it could not be stated that there has been any exploitation of the Petitioners by the Respondents. We are of the considered opinion that the decision taken by the Respondents to cancel the appointments, is neither illegal nor arbitrary. There is no breach of Articles 14 and 16 of the Constitution of India. The Petitioners are at liberty to individually pursue their claim for wages that may or may not be due, depending on the facts and circumstances of each case, in an appropriate forum.

22. For the reasons recorded above, we find no merit in the present writ petitions and the same are hereby dismissed. No costs.