
(1981) 10 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 129 of 1981

Mohan Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-10-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 299

Citation : (1982) ShimLC 62

Hon'ble Judges : Vyom Prakash Gupta, J

Bench : Single Bench

Advocate : Kamlesh Sharma, for the Appellant; Indar Singh, General and Kapil Dev Sud, for the Respondent

Final Decision : Allowed

Judgement

Vyom Prakash Gupta, J.—In 1960 the State of Punjab and Rajasthan had started the construction of Beas Project and a Board known as Beas Control Board was constituted by the Central Government on 10-2-1961. The decisions of this Board were to be implemented by the Punjab Government which was administering and executing the work of the Beas Project.

2. The Petitioners in pursuance to an advertisement in the Tribune dated 27-2-1965 issued by the General Manager, Beas Project Talwara Township, District Hoshiarpur, applied for the posts of Junior Specialists. The Junior Specialists were to hold the charge of Sub Divisions of the Beas Sutlej Link Project and their appointments were to be on contract basis for a period ranging from 3 years to 5 years. The Petitioner were selected for the posts and were appointed for a period of two years in the first instance. The appointment letters were issued to the Petitioners (specimens of letters are Annexures p. 2 and p. 3). The Petitioners after their selection and appointment executed agreements (specimen of agreement dated 11-2-1966 is Annexure P.4).

3. The Petitioners were posted as Junior Specialists against the vacancies of Sub-

Divisional Officer (Annexures P. 5 and P. 6). The terms of the service of the Petitioners were being extended from time to time, firstly for period of two years and then for a period of one year. The services of the Petitioners were terminated on 30-6-1981 because no orders of extension were issued from 30-6-1981 onwards.

4. The Petitioners have now filed the present petition on 2-6-1981, claiming that they are the employees of the Central Government and that their services cannot be terminated. The Petitioners rely upon the judgment *Jaswant Singh and Others Vs. Union of India (UOI) and Others*, and claim that they be treated as regular temporary employees of the Central Government.

5. The petition was contested by the Respondents and the claim of the Petitioners was denied. The Respondents have alleged that the Petitioners have no right to claim themselves as regular temporary employees of the Central Government and that they were employed on a contract basis against specified posts. It is further alleged that the Petitioner's services have been rightly been terminated and the present writ petition should be dismissed as the Petitioners have no right to the posts and are in fact not Government employees. The plea of estoppel has been raised by the Respondents on the grounds that the Petitioners had specifically agreed to work on contract basis for which the Petitioners had given undertakings in writing in 1975. It is also alleged that the Petitioners had been specifically told in 1973 that they are not Government employees and, therefore, the writ petition is liable to be dismissed on the ground of laches and delay. I have heard Miss Kamlesh Sharma for the Petitioners and Shri Inder Singh, Advocate General and K.D. Sud, Advocate for the Respondents.

6. The learned Counsel for the Petitioners contended that the Petitioners entered the services originally on contract basis for a period of two years in February, 1966, but before the expiry of the period of two years the Punjab Re-organisation Act, 1966 (hereinafter called the Punjab Act) was enforced and in accordance with the provisions of Section 80 of the Punjab Act, the Petitioners became employees of the Central Government. It was also contended that terms or the conditions of service of the Petitioners could only be changed or varied with the permission of the Central Government. The learned Counsel also contended that at the latest the agreement/contract of the Petitioners expired after five years and, therefore, after expiry of five years either a new contract had to be entered between the Petitioners and the Central Government or the Petitioners are to be treated as employees of the Central Government. The least status which could be given to the Petitioner was that of regular temporary employees of the Central Government. It was vehemently argued that the services of the Petitioners could not be terminated on 30-6-1981. The learned Counsel also contended that persons junior to the Petitioners have been retained in service while the services of the Petitioners have been terminated and the rule "last come first go" has not been followed. It was contended that rule of estoppel

is not applicable and that there is no delay and laches in filing the petition. The learned Counsel referred to 1980 SC 115 (supra) in support of her contention.

7. The learned Counsel for the Respondents contended that the Petitioners have no right to the posts and, therefore, the present petition under Article 226 of the Constitution is not maintainable. It was contended that the Petitioners were employees on contract basis only and they are not Government employees and that the rules governing the services of the Government employees are inapplicable in the case of the Petitioners. The judgment 1980 SC 115 (supra) was sought to be distinguished. It was contended that the petition should be dismissed on the ground of delay and laches as well as on the ground of estoppel.

8. I have considered the contentions of the learned Counsel for the parties and have also gone through the record of the case.

9. It is admitted that the Petitioners were initially employed on contract basis for a period of two years in February, 1966. The Petitioners executed agreements in February 1966. The perusal of different clauses of agreement (specimen Annexure P. 4) reveals that the Petitioners were treated for all practical purposes as Government employees. They were given the status of a gazetted rank and were to enjoy all the benefits and privileges etc. which are available to the persons of gazetted rank, that is, the Sub-Divisional Officers. It is mentioned in Clause 15 of the agreement that if the agreement is silent on any of the matters, then all the rules etc. which are applicable to the Government employees were to apply to the Petitioners. In short the Petitioners were to be treated as Government employees although employed on contract basis for a fixed term of two years (which can be extended upto five years).

10. Before the expiry of two years of Petitioner's employment the Punjab Act was enforced on 1-11-1966. u/s 80(3) of the Punjab Act the Petitioners had to be retained in service because all the persons who were engaged in the construction or the work relating to Beas Project were to continue in their services as before till the Central Government by order directed otherwise. The Hon'ble Judges of the Supreme Court, in 1980 SC 115 (supra) have held that such employees appointed by or on behalf of Beas Control Board before 1-11-1966 become the employees of the Central Government. In view of the Supreme Court judgment (supra) the Petitioners can be treated as employees of the Central Government from 1-11-1966 onwards.

11. The next question which now arises for decision is as to whether the Petitioners will be deemed to be employees of the Central Government on contract basis in accordance with the terms and conditions of the original agreements executed by the Petitioners or whether they are to be treated as employees of the Central Government ignoring the aforesaid agreement.

12. There is no dispute that the agreement was originally for a period of two years only. After expiry of two years (that is, from February 1968) the aforesaid agreements became non-existent. Even if it held that the agreements Could

remain operative for a period of five years (that is till February 1971) then also the agreements became inoperative after February, 1971. After expiry of two years or latest five years a fresh agreement had to be entered. An agreement with the Central Government is only valid if it is in accordance with Article 299 of the Constitution of India. It is an admitted case of the parties that no such agreement in any prescribed form was ever entered or executed. The Petitioners were continuing in service and had been getting their pay and emoluments from the departments concerned. Annexures P. 7 to P. 13 prove that the Petitioner's term of service was being extended from time to time. It is also on record that the Petitioners had been making representations (Annexures P. 14 to P. 17) wherein they had been claiming that their services should be regularised. The services of the Petitioners were never regularized. The period of services of the Petitioners was being extended from time to time by the Beas Construction Board. There was no delegation of power by Central Government to the Beas Construction Board and, therefore, the unilateral act of giving extensions to the Petitioners from time to time has no effect. The only inference which can be drawn is that the Petitioners were continuing in service under the Central Government without any express contract and after the expiry of the term of the original contract. If this position is accepted then the Petitioners can be treated as employees of the Central Government on temporary basis and they being in service atleast from 1-11-1966 onwards, are to be treated as regular temporary employees of the Central Government. It is also noteworthy that sanction for the posts of the Petitioners as well as for other S.D.Os was being obtained jointly (vide. Annexure p. 23). It is also evident that the Petitioners were not appointed for any specific job because they have been holding the posts of S.D.Os at many times as is clear from Annexures P. 23, P. 24-A, P. 25, P. 26, P. 27, P. 28, PR-1 and PR-2. Besides this the Petitioners have also been shown to be senior to many persons in a joint seniority list, copy of which is Annexure P. 24. It is admitted that many persons who are shown to be junior to the Petitioners in Annexure P. 24 are still in service and that their services have not been terminated. It will be highly inequitable and discriminatory if the services of the Petitioners are terminated and the services of the persons who are junior to Petitioners in the list Annexure P. 24 are retained because on the principle of natural justice a person who comes last should vacate the post first of all if there is any retrenchment on the principle of "last come first go". The services Of the Petitioners are inter changeable with services of other persons because the Petitioners have been holding different posts at different times.

13. The principle of estoppel is not applicable because the different ingredients of estoppel have not been proved. The Petitioners gave undertakings in 1975, which are Annexures R1/A, R1/B and R1/C. The Petitioners never accepted their position in any other capacity except as temporary employees. The Petitioners have always been making representations that their services be regularised. Moreover these undertakings have no value because the Petitioners were always claiming to remain in service and they have only stated that they will continue at

their own risk without any financial liability on the project if the approval to extension in terms of their employment is not received Moreover the question involved in this petition are purely legal one and there cannot be any estoppel against law.

14. The present petition does not also suffer from any delay or laches, because this petition was filed on 2nd June, 1981 and the Petitioners were continuing in service till 30th June, 1981. The decision conveyed to the Petitioners vide letter dated 9-8-1973 (copy Annexure P. 17) is in fact no decision because it only states that Beas Project has no cadre of its own and the Petitioners had been appointed on contract basis and so cannot be adjusted on the project. In any case the Petitioners had been continuing in service regularly till 30-6-1981 and their rights were not at all effected, therefore, the question of delay and laches loses its importance.

15. In view of the above discussion, I allow this writ petition and order that the status of the Petitioners is that of regular temporary employees of the Central Government and they are entitled to be treated as such. This decision shall not effect the rights of the Respondents to take any action against the Petitioners permissible under law and the rules. In the circumstances of the case I leave the parties to bear their own costs.