
(2014) 11 P&H CK 0189

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 526 and 1054 of 2012 (O and M)

Mukhtiar Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2015) 3 SCT 142

Hon'ble Judges : Mahesh Grover, J.

Bench : Single Bench

Advocate : R.K. Chopra, Senior Advocate, Amit Chopra and Dinesh Kumar, for the Appellant; Sudeepti Sharma, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Mahesh Grover, J. By this order I will dispose of C.W.P. Nos. 526 and 1054 of 2012. The petitioners were employees of Punjab Women & Children Development and Welfare Corporation (hereinafter referred to as PUNWAC) which was closed on account of the losses that it had suffered. A decision was taken at that point of time that the surplus employees beyond the functional requirement be absorbed in Government service or other public undertakings of the State if they possess the prescribed qualifications vis-à-vis the available posts. It was also stipulated that till their absorption takes place, they will continue to serve the Corporation on the terms and conditions admissible to them. The State Government then absorbed the employees who were declared surplus by the Corporation on the principle of Last come first go. By implication, the persons who were junior most in the Corporation, stood benefited by the absorption in Government service.

2. The petitioners and some other similarly situated persons continued to work in the Corporation with an expectation that they too would be absorbed. On 13.3.1995, the Government came out with a set of instructions and stated that after 13.3.1995, the surplus employees of various Corporations and Boards were not to be absorbed, but were given the benefit Golden Handshake.

3. It is not in dispute that the petitioners and other persons who were not given the benefit of absorption in Government service, were given this benefit of Golden Handshake. A challenge was made by way of C.W.P. Nos. 18263 of 1996 and 8789 of 1994 as also some other petitions which find mention in the impugned order as well as in pleading that the employees who were absorbed in service, were junior to the petitioners therein and thus the action of the respondents was discriminatory and arbitrary. During the course of proceedings in these petitions, learned counsel representing the State put forward proposals that in case the petitioners therein made a representation, the matter would be looked into by a Committee to be headed by the Chief Secretary. The Court then disposed of the petition in the light of the proposal made by the learned counsel for the State, but preserved the rights of the petitioners and made an observation offering a fond hope that the State would act as a model employer and attempt "to wipe out the tears of the employees who had been in the corridors of the Court since 1993".

4. The respondents then issued a letter Annexure P-14, based on a decision taken in a meeting under the Chairmanship of the Chief Secretary on 26.10.2010 which indicated that the appointment letters were to be issued to retrenched employees or employees to be appointed on the basis of available vacancies as per the required qualifications. It was noticed in this letter that five posts of Child Development Project Officers of direct recruitment are lying vacant and in case the petitioner opts for it, he could be considered for appointment to the said post in the unrevised pay-scale of Rs. 7000-10980/-. This letter was addressed to Mukhtiar Singh son of Inder Singh. It is alleged in para-18 of the petition that similar letters were written to the petitioners in C.W.P. No. 526 of 2012. This has not been denied by the learned counsel for the respondents. Subsequent thereto, Annexure P-15 was sent by the incumbent to whom Annexure P-14 was issued accepting offer of the respondents.

5. However, the petitioners were not granted the adjustment as offered to them by virtue of Annexure P-14, but instead, an order dated 18.5.2011 was passed negating their claim for re-employment primarily relying upon the instructions dated 13.3.1995 and the fact that Golden Handshake had been given to the petitioners and expressing helplessness to accommodate the claims of the surplus employees as it was likely to lead to several difficulties which have been noticed i.e. the petitioners not being in service for a long time and secondly with the change of circumstances, qualifications have been changed from time to time and it would be improper to re-employ such employees. This order is now impugned by the petitioners.

6. In C.W.P. No. 1054 of 2012, a similar order has been impugned which bears a different date i.e. 18.5.2011/25.5.2011.

7. Learned counsel for the petitioners contends that once a decision had been taken by the respondents as mentioned in Annexure P-14 to offer employment and the petitioners having accepted the same unconditionally, the respondents

could not have passed further orders in this regard to decline appointment to the petitioners. Besides, it is stated that rehabilitation of these employees continued till the year 2000 and the resultant effect of the decision of the respondents to adjust the junior most employees has led to an anomalous situation where the persons who are seniors and have put in a number of years of service, stand to loose out in the process even though they are on the wrong side of age while the junior ones have found employment.

8. The respondents, on the other hand, justify their decision on the very same reasoning which is reflected in the impugned order.

9. I have considered the issues raised before this Court and find that the unfortunate situation in which the petitioners are placed now, is largely a creation of the State itself. No coherent policy was adopted by them at the time of closure of the Corporation to address the issue of surplus employees. Even though initially it was stated that surplus employees would be rehabilitated in other Departments which process was indeed adopted, but yet no proper policy was framed in this regard so as to address the concern of the employees who abruptly found themselves on the roads. Even when the petition was preferred by these employees as early as in 1994-1995 and upon its disposal in 2010, the respondents kept on offering an olive branch to the petitioners. It would have been more appropriate if they had put an end to the miseries of the petitioners by simply stating that once Golden Handshake had been effected, there will be no question of re-adjustment of the petitioners in any other Department. For some strange reasons, an impression was given to the Court that a High Powered Committee would look into the grievances to rehabilitate the petitioners prompting the Court also to go along with such an impression and express its hope centered on sympathy and equity. For equally strange reasons, an appointment was indeed offered atleast to five of the petitioners in C.W.P. No. 526 of 2012 which offer was also accepted, but then another order was passed where the Stated reverted to its original stand denying readjustment of the petitioners on the grounds which do not offer any great insight into the difficulties with which the State is confronted with. They are justified in saying that after a long time being away from service, it may not be prudent to offer employment to the petitioners to say that changed circumstances of qualifications have also been transformed without any corresponding material to substantiate such a reasoning. The impugned order can be termed to be an attempt to shrug of what indeed is a difficult situation.

10. In the considered view of this Court, such an order when contrasted with the situation, offered after a prolonged litigation, does not offer justifiable reasons expected of a High Powered Committee chaired by a Chief Secretary. As noticed above, the respondents were not justified in making false assurance to the petitioners which has only further compounded their misfortune.

11. This takes the Court to the next complex question as to what can be offered to the petitioners at this stage. The Court has already observed that not offering

employment at this stage was possibly a sound reasoning but had negated the subsequent aspect of the impugned order regarding changed circumstances or transformation of qualifications since there was no basis to observe as such. It would have been more appropriate if the respondents had explored the availability of the vacancies which could be offered to the petitioners and then evaluated their claims and the possibility of their re-adjustment.

12. From the State there is an expectation of a model employer and an equally model conduct. It cannot be seen as a tease or tormentor to raise the balloon of aspirations only to prick it. Be that as it may, considering the fact that respondents themselves have kept the hopes of the petitioners alive, I will deem it appropriate to direct the respondents to re-adjust the petitioners in service for whatever little tenure remains. They would not be entitled to any further benefit for the intervening period. All the petitioners have unequivocally stated before this Court that they would be willing to work on a post which is even of a lesser status than the qualification that they possess. The respondents will keep this in mind. For the reason that there are nine petitioners (in both petitions) before this Court, the benefit is restricted to only these employees and to none other. The necessary exercise of rehabilitating the petitioners be concluded as expeditiously as possible, but not later than four months from the date of receipt of a certified copy of this order.

The petitions stand allowed.