

(1994) 04 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15290 of 1990

N.K. Sharma, District Manager, Punjab Agro Industries Corporation and Another

APPELLANT

Vs

The Punjab Agro Industries Corporation and Others

RESPONDENT

Date of Decision : 22-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1994) 108 PLR 417

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : P.S. Patwalia, for the Appellant; M.L. Sarin and Vinod Sharma, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—In this writ petition, petitioners are seeking mandate directing respondent No. 1 to count the period of ad-hoc/officiating service rendered by the petitioners towards their seniority. They are also seeking a further direction for quashing the final seniority list circulated by respondent No. 1 on 14.11.1990 and to place the petitioners above respondents No. 2 to 6.

2. As per the case set up by the petitioners in the writ petition, petitioner No.1 joined Punjab Agro Industries Corporation (for short the Corporation) on 12.4.1979 as an Apprentice Engineer. Vide order dated 29.10.1981, Petitioner No.1 was promoted to the post of District Manager on ad-hoc basis. Petitioner No.2 joined the Corporation as Chargeman Mechanical on 15.9.1970. Vide order dated 16.8.1983, petitioner No.2 was made to officiate as District Manager which post he joined on 22/23.8.1983. Some posts of Area/District Managers were advertised and a Selection Committee was constituted to fill up those posts. Vide proceedings held on 21.9.1984, 28.9.1984 and 26.10.1984, the Selection Committee regularised the promotion of petitioner No.1. Consequently, vide order dated 12.11.1984, petitioner No.2 was regularised as District Manager.

Further, according to the petitioners, a tentative seniority list was circulated by respondent No.1 on 21.11.1989 inviting objections thereto. Both the petitioners duly submitted their objections. Vide order dated 14.11.1990, final seniority list was circulated in which the petitioners have not been given the benefit of ad-hoc service towards seniority. In the writ petition, the petitioners have prayed that they be given the benefit of ad-hoc service and they be placed above respondents No.2 to 6 in the seniority list.

3. Respondent No.1 has filed separate written statement whereas respondents No. 2 to 6 have filed separate written statement.

4. Respondent No.1 has denied the assertion that at the time the petitioners were promoted on ad-hoc basis, the claim of all other candidates was considered. According to the respondents, petitioner No.1 was appointed on selection by a Regular Selection Committee in 1984, who was interviewed alongwith other candidates and accordingly, after regular selection, his services were regularised with effect from 9.11.1984. As regards petitioner No.2, respondent No. 1 has stated that he was appointed as Chargeman on temporary basis. Later on he was appointed as Assistant Manager, Workshop in the scale of Rs.300 to Rs.600 for a period of six months on temporary basis which period was further extended. Since the post, of Chargeman was abolished by the Board of Directors in the year 1979, petitioner No.2 was allowed to continue as Assistant Manager, Workshop, otherwise his services would have been terminated. He was further given the charge of District Manager in his own pay scale which was lower than the scale of a District Manager and started looking after the work of District Manager with effect from 22.8.1983. Petitioner No.2 applied for the post of Manager only on 20.9.1984 in response to a departmental circular. His name was considered by the Selection Committee and he was appointed as Manager on 12.11.1984 and completed his probation on 11.11.1985. Respondents have further stated that petitioner No.1 never worked as Manager before his selection.

5. Counsel for the petitioners contended that since ad-hoc promotion of the petitioners was followed by regular selection, the date of regularisation would relate back to the date of their initial promotion on ad-hoc basis. Counsel has placed strong reliance on the judgments; (i) The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, (ii) G.P. Doval and Ors. v. Chief Secretary, Government of U.P. and Ors. 1984 (2) S.L.R. 555, (iii) Surinder Singh Sekhon v. State of Punjab and Ors. 1993 (1)S.L.R.129.

6. Counsel for the petitioners further stated that the benefit of ad-hoc service was given to four Area Managers referred to in sub-para (iii) of para 9 of the writ petition but the same has not been extended to the petitioners and thus the action of the respondents is violative of Article 14 of the Constitution of India.

7. Having heard the learned counsel for the parties at some length, I am of the view that there is no merit in the writ petition.

8. It is clear from the written statements filed by the respondents that at the time when petitioner No.1 was appointed as District Manager on ad-hoc basis, claim of other eligible persons was not considered. Appointment/Promotion to the post of District Manager is made by the Selection Committee to be constituted by the Board of Directors. It is only at that time that the eligible persons are required to apply and their cases are considered by the Selection Committee. In the year 1984, the Corporation decided to fill up the posts of Manager/Area Manager by way of direct recruitment and also from amongst the Assistant Managers and other Officers of the Corporation. District Managers who were working on ad-hoc basis were also asked to apply for the said post. In response to the circular which was issued departmentally, petitioners applied and were interviewed by the Selection Committee. At one stage, counsel for the petitioners disputed that any application was invited or petitioners were interviewed but after going through the records which are called for by this Court, I find that the petitioners appeared for interview and had also marked their presence against their names on the attendance sheet of the departmental candidates called for interview. Record also shows that their case was duly considered by the Selection Committee and consequently they were promoted regularly with effect from 9.11.1984 and 12.11.1984 respectively. The judgments cited by counsel for the petitioners are of no help to the petitioners as in the instant case, as already noticed, petitioners when appointed on ad-hoc basis, were not selected by a regular Selection Committee. The matter would have been different if they had been promoted on ad-hoc basis after selection by a regular Selection Committee followed by regular appointments. The view that I have taken, finds support from the following observation of Supreme Court of India in *State of West Bengal v. Aghore Nath Dey*, 4 J.T 1993 (2) WB. 598 :-

"...conclusions (A) and (B) of the constitution Bench in the *Maharashtra Engineers*" case... have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A)... It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed "according to rules". The corollary set out in conclusion (A), then is, that "where the initial appointment is only ad-hoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority." Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad-hoc and not according to rules, being made only as a stop-gap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority. This being the obvious inference from conclusion (A), the question is whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the corollary in

conclusion (A), since the two conclusions cannot be read in conflict with each other."

9. Learned counsel for the petitioner is also not correct contending that benefit of ad-hoc service was given to four Area Managers, whereas the same has not been extended to the Petitioners. The case of the petitioners is not at par with the four Area Managers as they were duly selected by the Selection Committee and given ad-hoc appointments, followed by regular appointments, whereas the petitioners were selected for regular basis for the first time in the year 1984. The case of the petitioners in no way can be equated with that of four Area Managers.

10. Consequently, this writ petition is dismissed with no order as to costs. R.M.S. Petition dismissed.