
(2005) 07 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3669 of 1997

Om Parkash Sharma

APPELLANT

Vs

Indian Red Cross Society and Another

RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Civil Services Rules — Rule 17, 24, 7.17
Red Cross Society Act, 1920 — Section 5

Citation : (2005) 141 PLR 271

Hon'ble Judges : S.S. Nijjar, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : Kuldip Sanwal, for the Appellant; Govind Geol and Padamkant Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—A Division Bench of this Court by order dated 25.7.1997, admitted this writ petition to be heard by a Division Bench. The necessary facts as also the questions of law which arise in the present writ petition, have been succinctly summed up and set out in his Lordship's inimitable style by Hon"ble Mr. Justice J.L. Gupta. We, therefore, propose to reproduce the entire admission order to avoid repetition of essential facts and the questions of law raised in the writ petition. The order dated 25.7.1997 reads as under:-

"The petitioner who was appointed as an Executive Secretary in the Office of the District Red Cross Society, Gurdaspur "for a term of three years extendable upto five years..." vide order dated February 21, 1995, is aggrieved by the order dated February 28, 1997 by which he has been retired w.e.f. February 28, 1997. He prays that this order may be quashed.

The respondents contest the petitioner's claim. It has been averred that the society "is a philanthropic body for providing aid to the sick....The society does not perform any governmental or sovereign function nor does the State has any

deep or pervasive control... so as to qualify the same to be called as an instrumentality or an agency of the State.... The present petition is therefore, wholly incompetent...." It has been further averred that the petitioner is "a retiree from D.C. Office Gurdaspur, is a civil pensioner and is governed by the Punjab Civil Services Rules, Vol.II. Rule 7.17 of the ibid rules provides that a retired government employee should not be re-employed.... As per the Punjab Government instructions circular No. 727 dated 17.2.1967, even if a retiree is re-employed... the period of re-employment cannot exceed one year at a time and in any case beyond the age of 60 years. Even otherwise,...the executive committee of the Society, which is the apex decision making body has decided that the age of retirement of the employee of the society shall be 58 years and extendable upto 60 years in case of his good work and health. Thus, no employee is entitled to continue in employment in the Society beyond the age of 60 years. Admittedly, the petitioner having attained the age of 60 years, he has no right to continue and the order of his relieving, therefore, suffers from no infirmity." It is also claimed that "the appointment order Annexure P.I ... having not been approved by the executive committee/managing body of the society, which is competent to make appointments of the staff of the society under Rule 24 of the rules made by the Indian Red Cross Society in exercise of its powers u/s 5 of the Indian Red Cross Society Act, 1920, confers no right in the petitioner especially to the extent it is contrary to the statutory rules, binding instructions and its own resolution". On these premises, the respondents claim that the writ petition deserves to be dismissed.

The petitioner has filed a replication. He has referred to the Constitution of the Society to indicate that the Governor is the Parton-in-Chief, the Chief Minister-the President, the Health Minister, the Chairman, the Director of Medical Services, the Vice-Chairman of the Society. At the district level, the Deputy Commissioner is the Ex-officio President, the Additional Deputy Commissioner is the Senior Vice President and the General Assistant to the Deputy Commissioner is the Honorary Secretary. The members of the Society are civil servants like the Sub Divisional Officer (Civil) of each Sub Division, Senior Superintendent of Police, the District Transport Officer, the Assistant Excise and Taxation Commissioner, the District Education Officer, Tehsildars, Executive Engineers, District Managers, District Food and Supply Officers and other public servants who wield influence in connection with funds. Each of these officers is given an annual target of collection. A copy of the proceedings of the meeting held on November 9, 1995 has been produced as Annexure P-7 with the replication. Still further, it has been pointed out that Civil Writ Petition No. 3261 of 1995 had been filed against the appointment of the petitioner. A written statement had been filed on behalf of the respondents in which it had been inter alia averred that the appointment was legal and valid. The allegation that the procedure under Rule 17 had not been followed was denied. It was averred that the approval "will be obtained in due course of time from the executive committee".

On behalf of the petitioner, it was contended that the appointment having been

made for a period of three years, his services could not have been terminated before February 27, 1998. The impugned order by which the petitioner was ordered to retire w.e.f. February 28, 1997 is, thus, illegal. The claim made on behalf of the petitioner was controverted by Mr. Govind Goel, counsel for the respondents. He contended that the appointment to the post of Executive Secretary had been made without issuing any advertisement. The petitioner was a back door entrant. He must go by the same method. In any case, the appointment was invalid as it had not been approved by the Executive Committee. Consequently, it conferred no right on him. Counsel also submitted that in view of the provisions of Rule 7.17, a pensioner could not have been appointed to serve beyond the age of 60 years. Lastly, it was also contended that the writ petition was not maintainable against the Society.

At the end of the arguments, it was mentioned that this writ petition may be heard alongwith Civil Writ Petition No. 3261 of 1995 which has been filed to challenge the petitioner's appointment.

Since the case had been argued before us at considerable length, we are inclined to go into the matter. However, keeping in view the fact that the very appointment of the petitioner is under challenge, we consider it appropriate that this writ petition should be heard alongwith C.W.P. No. 3261 of 1995. It is directed to be heard with C.W.P. No. 3261 of 1995. In view of the important issues arising in the case, we think both the writ petitions should be heard by a Division Bench. We order accordingly.

Let both the writ petitions be listed for hearing at No. 1 before an appropriate Bench on August 1, 1997."

2. It was pointed out that the very appointment of the petitioner herein had been challenged in C.W.P. No. 3261 of 1995. It was prayed that both the writ petitions be heard together. The aforesaid writ petition had been disposed of as having become in-fructuous, by order dated 3.2.2004. The aforesaid order reads as follows:-

"Present: Mr. M.P.S. Goraya, Advocate with Mr. Shahnaz Singh Goraya, Advocate for the petitioner.

Mr. A.S. Nabewala, Advocate for the respondents.

Mr. Nabewala, on instructions from his client, states that the order, Annexure P-6, dated 11.5.1993 may be taken as withdrawn. We order accordingly. This writ petition is thus disposed of as infructuous with a direction that the petitioner, who has since retired, will be given all consequential benefits that are due to him on the premise that the order aforesaid had never been made. The necessary benefits be released to the petitioner within a period of three months positively from the date that a certified copy of this order is supplied to the respondents. Dasti."

3. A perusal of the admission order shows that the respondents have taken a

preliminary objection to the effect that a writ petition would not be maintainable against the Society. The aforesaid question of law is no longer *res Integra*, in view of the judgment rendered by a Division Bench of this Court in the case of *The District Red Cross Society. Sirsa v. Radha Kishan Rajpal and Anr.* 2005 (1) S.L.R. 781. The Division Bench, after considering the same question which has been raised by the respondents in the present writ petition, has held as follows:-

"24. We respectfully agree with the views expressed by learned Single Judge in *Pant Raj Sachdev's* case (*supra*) and hold that a writ under Article 226 of the Constitution of India is maintainable against the Red Cross Society and its Branches and the learned Single Judge did not commit any illegality by entertaining the writ petition filed by the respondent."

4. This being the position, the writ petition cannot be dismissed on the sole ground I that it is not maintainable.

5. The present writ petition had earlier come up for hearing on 4.7.2002 and it was dismissed for default as none appeared for the petitioner. Thereafter, the petitioner filed C.M. No. 20364 of 2003, seeking restoration of the writ petition. Notice of C.M. was issued to the counsel for the non-applicant for 13.10.2003. Thereafter, the C.M. was listed for hearing on 7.11.2003, when none appeared for the petitioner. In the interest of justice, the matter was adjourned to 12.11.2003. The matter was again listed for hearing on 4.12.2003 and again none, appeared for the petitioner. The C.M. was also dismissed for default. The petitioner, therefore, filed C.M. No. 27874 of 2003 in C.M. No. 20364 of 2003 in the present writ petition. After noticing the facts narrated above, the Division Bench, by order dated 10.9.2004, restored the writ petition to its original number and file. We, however, notice that even at that stage Mr. K.S. Cheema, Advocate appeared for the Advocate, of the petitioner-applicant. Today again, when the matter was called for hearing, none appeared for the petitioner. However, Mr. Goel, learned counsel appearing for the respondents, very fairly stated that the question of maintainability of the writ petition has already been decided by a Division Bench of this Court in the case of *The District Red Cross Society, Sirsa v. Radha Kishan Rajpal and Anr.* (*supra*). He had also reiterated the submissions which were made before the earlier Division Bench which had admitted the writ petition. Mr. Goel, had pointed out that even if the petition is to be allowed, the maximum relief that can be granted to the petitioner, would be the grant of emoluments from 28.2.1997 till 21.2.1998.

6. At this stage, Mr. Kuldip Sanwal, learned counsel for the petitioner appears in Court and expressed his desire to make submissions on behalf of the petitioner. We permit him to do so.

7. Learned counsel for the petitioner submits that the stand taken in the present writ petition is not in consonance with the stand taken in the reply which was filed in C.W.P. No. 3261 of 1995. He further submits that the tenure post would only come to an end when tenure was exhausted on 21.2.1998. Since the tenure

of the petitioner had been cut short, the petitioner would be entitled to be deemed to have continued till 21.2.1998. He also submits that it was not necessary to get the approval by the Executive Committee/Managing Body, as the same had been waived, in view of the pendency of C.W.P. No. 3261 of 1995.

8. We have considered the submissions made by the learned counsel for the parties.

9. We first notice the submission of the learned counsel with regard to Rule 7.17 of the Punjab Civil Services Rules (Vol.11) Part-I Pensions. The aforesaid Rule 7.17 reads as follows:-

"7.17. A Government employee who is in receipt of a superannuation or retiring pension shall not be re-employed or continue to be employed in service paid from the Government revenues or from a Local Fund, except on public grounds and in a purely temporary capacity with the sanction of the competent authority."

10. The aforesaid statutory provision has been supplemented by the instructions issued by the Punjab Government vide Circular No. 727 dated 17.2.1967. Under the aforesaid instructions, it is provided that if a retiree is re-employed, the period of re-employment cannot exceed one year at a time in any case not beyond the age of 60 years. Mr. Goel has submitted that on the basis of the aforesaid Rule and the instructions, the respondents-Society had passed a resolution on 19.4.1973, which is as under:-

"Copy of Resolution No. 13 dated 19.4.1973 of the meeting of Executive Committee of the District Red Cross & St. John Ambulance Branches, Gurdaspur. No. 13 To place letter

No. Estt./73/618 13. The house unanimously decided that dated 20.1.73 from the organising the age of retirement of the Distt. Secretary, Pb. State Red Cross Branch, Red Cross and St. John employees, Gurdaspur Chandigarh intimating that the State be fixed at 58 years & extendable upto 60 Branch have fixed the age of retire- years in case of good work and health ment of Red Cross and St. John the employee. employees at 60 years. Submitted before the house for favour of approval and adopting for the employees of Distt. Red Cross & St. John employees. Sd/- Rajinder Singh, IAS, D.C. [President] 19.4.1973"

11. On the basis of the aforesaid, the learned counsel has submitted that even if Rule 7.17 and the instructions issued by the State of Punjab on 17.2.1967 are not ipso facto applicable, the Society is certainly bound by its own resolution. We find substance in the submission made by the learned counsel for the respondents. It is not necessary for us to express any opinion about the applicability of Rule 7.17 and the instructions of the Punjab Government dated 17.2.1967. It is settled proposition of law that a statutory society such as the respondents would be bound by the resolutions lawfully passed by the Executive Committee/Governing Body of the Society. Red Cross Society being a "Society" registered under the Societies Registration Act, is entitled to make rules for the

management, function, control and procedure of society. The Society has been constituted under the Red Cross Society Act, 1920. Section 5 of the aforesaid Act empowers the managing body to make rules for the management, function, control and procedure of the Society. Section 5(b) specifically empowers the managing body to lay down the conditions of appointment in term of office of Members of the Managing Body. The Resolution passed by the Society with regard to the maximum age, therefore, cannot be said to be without jurisdiction. Therefore, the petitioner could not have been permitted to continue beyond the age of 60 years in any event. Even otherwise, we notice that the appointment of the petitioner was not approved by the Executive Committee. The pendency of C.W.P. No. 3261 of 1995 would not convert an illegal appointment into a legal appointment. It is a settled proposition of law that all appointments which are made de-hors the statutory service rules are void ab initio and cannot create any legal rights. This view of ours finds support from the judgment of the Supreme Court in the case of *The Distt. Collector & Chairman Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. v. M. Tripura Sundari Devi* 1990(4) S.L.R. 237. In the aforesaid case, the Supreme Court has clearly held as follows:-

"6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of 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 person 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."

12. In our opinion, the aforesaid observations are fully applicable to the facts and circumstances of the present case. Since no allegation of misrepresentation has been made against the petitioner, therefore, it cannot be held that a fraud has been played on the Society. However, the appointment having been made against the resolution of the Society was clearly void. The petitioner could not be permitted to remain in service beyond the point when he reached the age of 60 years. Therefore, he was rightly retired from service at the appropriate time.

We find no merit in the present writ petition. Dismissed. No costs.