
(2002) 04 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2664 of 2001

P.C. Sharma

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-04-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25FFF(1)

Citation : (2002) 95 FLR 1172

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Hemant Kumar, for the Appellant; R.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Shri P.C. Sharma. petitioner, has filed the present writ petition under Articles 226/227 of the Constitution of India against the respondents and it has been prayed by the petitioner that a writ in the nature of certiorari be issued against the respondents by setting aside the notice of termination of service dated 5.2.2001 and directions be issued to the respondents No. 1 and 2 to treat him into service in preference to respondent No.3 Shri H.K. Ahuja.

2. The case set up by the petitioner is that respondent No.2-Corporation is a Company incorporated under the Companies Act with the State of Haryana holding the entire share-holding of the company. Thus, respondent No.2 is a Government Company, it has movable and immovable properties also. Respondent No.1 that is the State of Haryana constituted a committee for streamlining the functions in the various corporations, Cooperative Societies. Public Sectors Undertakings and in that committee the case of respondent No. 2 was also put up for merging the same with Haryana State Small Industries and Export Corporation. This was so done because both these Corporations were performing somewhat related identical functions. A decision was taken vide which both the corporations were amalgamated and the approval of the Government was taken. But later on in a meeting dated 21.12.2000 a fresh

decision was taken and it was decided by the Government that respondent No.2 Corporation should be closed and all the employees should be retrenched. This decision was taken on the ground that annual losses have increased considerably for the last five years and the performance of respondent No. 2 was not likely" to be satisfactory in the years to come. According to the petitioner, this decision is illegal, it was also decided on 21.12.2000 that all the employees except three should be retrenched and the properties of respondent No. 2 Corporation at different places should be disposed of by February. 2001.

3. Now, it is the grouse of the petitioner that he was appointed on 29.9.1976 as Senior Scale Stenographer. He was working to the satisfaction of his superiors. He worked as Private Secretary to the Chairman. He was even assigned additional work of Development Officer (Administration). Respondent No.2 was an industrial establishment. It did not comply with the principle of last come first go. Respondent No.3 was junior to the petitioner as per the seniority list Annexure, P-3. In fact, the petitioner was the senior most Private Secretary as per that joint seniority list, if the Government was to retrench the services of the employee, in that situation Mr. H.K. Ahuja, respondent No.2 who was junior to the petitioner should have been retrenched by retaining the petitioner but on the contrary the petitioner was served with a notice of retrenchment Annexure P-6 in terms of the provisions of Section 25-FFF(1) of the Industrial Disputes Act 1947 and it was contemplated that on the expiry of the notice period the petitioner shall be relieved after payment of closure compensation. According to the petitioner, this notice is illegal, arbitrary, unjust and discriminatory as respondent No.3 ought to have been retrenched on account of his juniority as his date of joining as Private Secretary was 5.4.1991 and that of the petitioner as Private Secretary was 17.10.1979.

4. Notice of motion was issued to the respondents vide order dated 24.2.2001 by the Division bench, which runs as follows:-

Learned counsel for the petitioner submits that respondent No.3-Shri H.K. Ahuja, Private Secretary to Managing Director. The Haryana State Handloom & Handicrafts Corporation Limited, Building of Design Centre, Sector 10-C. Chandigarh, is junior to the petitioner and in these circumstances in the event of retrenchment, respondent No.3 is to be retrenched first than that of the petitioner. In support of his contention, the learned counsel draws our attention to the seniority list Annexure P-3.

Notice of motion to respondents No.1 to 3 for 2.3.2001 on a limited aspect to convince the Bench about the seniority of the petitioner viz-a-vis respondent No.3. Dasti only.

5. In pursuance of the aforesaid order, a written statement was filed on behalf of respondent No.2. A preliminary objection was taken that the petitioner earlier filed a civil writ petition, seeking the quashment of decision to wind up respondent No.2 corporation and it was also a writ for mandamus seeking

directions not to retrench the services upon the decision of winding up of the Corporation. The writ has been dismissed. Therefore, the present writ petition is liable to be dismissed. It was also pleaded that the present writ petition has rendered infructuous as the petitioner has already been relieved from service on the expiry of the period of notice served under the provision of Section 25-FFF(1) of the Industrial Disputes Act and petitioner has also accepted the amount of retrenchment compensation amounting to Rs. 1,60,656.00 at the time of his relieving on 8.3.2001. It was also maintained that before taking the conscious decision of winding up of the Corporation by the State Government as well as by the Board of Directors, it was duly appraised that the Corporation has incurred losses in 21 years out of the last 25 years of its inception. The losses were Rs. 589.27 lacs during the last five years which had considerably increased. In view of the dismal financial condition of the Corporation, it was desired that it was not possible for the Government to run Corporation. The employees of the Corporation were not getting their salaries for several months together as a result of which the salary had to be paid out of the grants received from Central Government for various schemes or by the sale of the immovable properties of the Corporation. There was no other alternative but to wind up the Corporation. The employees of the Corporation had to be retrenched and after following due process of law the petitioner was served with the impugned notice annexure P-6.

6. On merits, the stand of respondent No.2 is that the tentative seniority list relied upon by the petitioner has no relevance as it was decided to retrench all the employees of the Corporation in view of the decision of its winding up. The core staff of the four employees of the Corporation and one from the Finance Department, Haryana who were already on deputation with the Corporation were retained only for the purpose of carrying out the winding up process and they that too shall be retrenched/repatriated upon the appointment of the Liquidator. While choosing the core staff four employees of the Corporation, only such employees have been retained who have the experience of the working of different activities of the Corporation irrespective of their original cadre. Since the service of Private Secretary is not required in the core staff, therefore, it is irrelevant plea on the part of the petitioner to stress on seniority ground. The aforesaid action of the retaining of the core staff was taken strictly in pursuance of the decision of the Board, With this broad defence, respondent No.2 has prayed for the dismissal of the writ petition.

7. A replication was filed by the petitioner to the written statement of respondent No.2 in which he reiterated his averments in the writ petition by denying those of the written statement.

8. Yet a rejoinder was also filed to the replication of the petitioner on behalf of respondent No.2.

9. I have heard Shri Hemant Gupta, Advocate, appearing on behalf of the petitioner and Shri K.K. Gupta, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of the case.

10. The first attack of the petitioner with regard to the decision of the Government to wind up the Corporation. has met the final death call with the dismissal of his earlier writ petition.

11. The only point which survives for determination is whether a mandate can be issued to the respondents to allow the petitioner to work as a Private Secretary in preference to Shri H.K. Ahuja, respondent No.3. Shri Hemant Kumar, learned counsel for the petitioner vehemently relied upon the seniority list Annexure P-3 and submitted that as per this list petitioner was much senior as compared to Shri Ahuja. A comparison of the date of joining of these two persons would show that Shri P.C. Sharma. petitioner, joined the cadre of Private Secretary on 17.10.1979 and Shri H.K. Ahuja became Private Secretary on 5.4.1991. Shri Hemant Kumar submitted that the principle of last come first go ought to have been adopted by the Board of Directors. Since Shri Ahuja was much junior to the petitioner, therefore, the services of the petitioner could not be terminated as per notice Annexure P-6.

12. The submission of the learned counsel for the petitioner may look alluring on the first floor, but on deeper scrutiny, I am of the considered opinion that it has no force altogether. The learned counsel appearing on behalf of the petitioner has given the assumed argument as if the cadre of Private Secretary is still in existence and workable in the Corporation. The fact is that it has been decided by the Government to wind up Corporation and to retrench the entire staff. As a result of that decision, virtually the services of the entire ex-staff of the Corporation stood terminated. The Board of Directors simply took a decision that till a Liquidator is appointed the activities of the Corporation had to be wind up. A skeleton staff in the capacity of caretaker staff was supposed to be retained. With this background, the Corporation took a decision that only four or five persons may be retained and their services may be utilised till the Liquidator takes over the control of the affairs of the Corporation. This arrangement was for the purpose of wind up process. In these circumstances, the Corporation had the right to avail the services of such persons who had the working knowledge of different activities of the Corporation irrespective of the original cadre. With the decision of the winding up and with the decision to retrench of the employees of the Corporation, there was no cadre of Private Secretary and as such the new arrangement was made for the purpose of utility, convenience and suitability. Question of seniority or juniority did not arise in such a situation.

13. In this view of the matter, I am of the opinion that this writ petition is totally devoid of any merit and there is no illegality in the impugned notice annexure P-6. The principles of natural justice or last come first go are not applicable in the present case. It was for the Board of Directors to see which particular official will be helpful in the given circumstances.

14. The net result is that the writ petition has not merit and the same is hereby dismissed.