

(2013) 05 P&H CK 0201
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11573 of 2002

Raj Singh Sandhu and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Citation : (2013) 4 SCT 230

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : R.K. Malik, Mr. Vijay Dahiya and Mr. Jagdish Manchanda, for the Appellant; Aman Chaudhary, Additional Advocate General, Haryana, for the Respondent

Judgement

Tejinder Singh Dhindsa, J.—This order shall dispose of four Civil Writ Petitions i.e. No. 11573 of 2002 (Raj Singh Sandhu and others v. State of Haryana and another), No. 15505 of 2008 (Karam Singh and others v. State of Haryana and others), No. 15892 of 2008 (Kartar Singh and others v. State of Haryana and others) and No. 17470 of 2008 (Kanta Devi and others v. State of Haryana and others) as identical issue is involved in these bunch of petitions. Facts, however, are being noticed from Civil Writ Petition No. 11573 of 2002. The challenge in the instant writ petition is to the order dated 19.4.2002, Annexure P4, whereby the claim of the petitioners seeking absorption against the post of Social Studies Masters has been rejected.

2. Brief facts that would require notice are that the petitioners were engaged as Instructors under the aegis of an Adult Education Scheme on various dates between the years 1981 to 1987 purely on part-time basis on a fixed honorarium. Such Scheme came to be discontinued by the State Government w.e.f. 28.2.1990 and consequentially, the services of the petitioners were terminated. It would be apposite to notice that on account of discontinuation of the Adult Education Scheme, apart from the petitioners, the services of approximately 5000 part-time Instructors were terminated w.e.f. 28.2.1990. At

that point of time, some of the petitioners herein as also other similarly situated persons had approached the Hon"ble Supreme Court raising a grievance that they were entitled to be absorbed in Government service and an order dated 17.11.1992 was passed in Writ Petition (C) No. 503 of 1992 titled as "Karamvir Singh and others v. State of Haryana and others" to the following effect:

In the facts and circumstances of this case we direct the State of Haryana to consider these petitioners and all others similarly situated for absorption in the State-Services to the posts to which they are eligible and can be considered in accordance with the Rules and Instructions. The said consideration shall be done as and when the vacancies for these petitioners are made available. While complying with the directions issued by us the State of Haryana shall keep into consideration similar directions issued by this court in earlier cases. The State may also take into consideration the administrative exigencies which may arise. The petitioners shall be entitled to age relaxation as and when they are absorbed in the Government service. The writ petition is disposed of with the above directions. No costs.

3. Thereafter on 14.11.1999, the State Government issued an advertisement inviting applications for filling up 2127 posts of Social Studies Masters. At such stage, the petitioners approached this Court in terms of filing Civil Writ Petition No. 4651 of 2002, titled Raj Kumar Sandhu v. State of Haryana and others, raising a claim that directions had already been issued by the Hon"ble Supreme Court as regards their absorption and, accordingly, such directions be carried out first in point of time before making fresh appointments by way of direct recruitment in pursuance to the advertisement dated 14.11.1999. The aforementioned writ petition came to be disposed of by Division Bench of this Court vide order dated 19.3.2002, Annexure P3, by directing the State Government to consider the case of the petitioners in the light of order dated 17.11.1992 passed by the Hon"ble Apex Court in the case of Karamvir Singh (supra). The claim of the petitioners seeking absorption stands rejected in the light of impugned order dated 19.4.2002, Annexure P4, which, in turn, has led to the filing of the instant writ petition.

4. Learned counsel for the petitioners would vehemently argue that the rejection of the claim of the petitioners is in direct conflict and in violation of the orders dated 17.11.1992 passed by the Hon"ble Supreme Court at Annexure P1. It has been argued that the matter as regards claim of the petitioners seeking absorption attained finality in the light of the directions issued by the Hon"ble Supreme Court vide order dated 17.11.1992, Annexure P1, and, as such, it would not be open for the State Government to have deviated from the same and to have rejected the claim of the petitioners. It has been argued that the petitioners on account of having rendered service on the post of Instructors over a considerable length of time and coupled with the fact that they all are qualified for the post of Social Studies Masters, they were vested with a right to be absorbed as such. Learned counsel has further argued that the impugned order

cannot be sustained on the short ground that reliance therein has been placed on a subsequent order dated 6.9.1993 passed by the Hon"ble Supreme Court which was in relation to some other employees and had no relevance insofar as the claim of the petitioners is concerned.

5. Per contra, Mr. Aman Chaudhary, Additional Advocate General, Haryana appearing for the State would advert to the written statement filed on behalf of respondents No. 1 and 2 and would submit that the Adult Education Scheme had been discontinued in the year 1990 in public interest as the State Government was not in a position to bear the huge financial expenditure of about Rs. 12 crores per annum. It has further been stated that framing of a Scheme relating to Adult Education and discontinuation of the same would relate to policy making and would lie within the domain of the executive. It has also been argued on behalf of the State that while passing the impugned order dated 19.4.2002, Annexure P4, the competent authority has kept in view the orders of the Hon"ble Supreme Court dated 17.11.1992, Annexure P1, as also subsequent orders dated 6.9.1993, Annexure P5. Learned State counsel would submit that in the light of the subsequent order dated 6.9.1993, the Hon"ble Supreme Court had clearly observed that since the posts stood abolished upon discontinuation of the Scheme, no directions for absorption could be issued, but as and when vacancies for regular recruitment are advertised and if the petitioners are found eligible, then the grant of age relaxation could be considered.

6. Having heard learned counsel for the parties at length and having perused the pleadings on record, I am of the considered view that there is no merit in these writ petitions.

7. Learned counsel for the petitioners have not been able to dispute the factual position that the subsequent order dated 6.9.1993 passed by the Hon"ble Supreme Court at Annexure P5 "Jai Karan and others v. Union of India and others" was also in relation to employees whose services had been dispensed with on account of closure of an Adult Education Scheme, and such employees were seeking directions as regards absorption. Undoubtedly, an order dated 17.11.1992 at Annexure P1 had been passed by the Hon"ble Supreme Court in the case of some of the petitioners, yet the State Government while taking a decision on the claim as regards absorption and, accordingly while passing the impugned order dated 19.4.2002, Annexure P4, could not have proceeded oblivious of a subsequent order passed by the Apex Court on the same very issue i.e. services of employees having been dispensed with upon discontinuation of an Adult Education Scheme and thereafter raising a claim for absorption. The order dated 6.9.1993 was categorical and the relevant observations were in the following terms:

We can not give directions to the State Govt. or the Central Govt. to continue the schemes since that is the executive policy of the Govt. as regards the absorption of the petitioners is concerned, since the posts have been abolished, equally we can not give direction for absorption. But as and when any vacancies for regular

recruitment in any other department are being advertised, if the petitioners are found eligible for applying for, it is open to them to apply for and in that event they are likely to be over aged, the concerned recruitment agency would receive the applications, consider their eligibility and in case if they are found to be eligible and fit for appointment and they are barred by age, then the age relaxation may be granted by the competent authority at the proof that the petitioners had worked in the schemes and necessary appointments may be given subject to fulfillment of other conditions. With these observations, the writ petitions are dismissed.

8. Even otherwise, even if the claim of the petitioners was to be considered in isolation and only against the backdrop of the order dated 17.11.1992 passed by the Hon'ble Apex Court at Annexure P1, still no case is made out. In such order dated 17.11.1992, directions had been issued to the State of Haryana to consider the case of the petitioners therein as also all other similarly situated for absorption in the State services to the post to which they are eligible in accordance with the Rules and Instructions. Insofar as the post of Social Studies Masters is concerned, the relevant statutory Rules governing the service recognized only three modes of recruitment i.e. i) 50% by direct recruitment; ii) 50% by promotion from amongst the JBT/C & V teachers having three years experience on the post of JBT/C & V teacher or iii) by deputation of the persons already in service. As such, it is clear that the claim of the petitioners seeking absorption to the post of Social Studies Masters even if accepted would amount to recognizing yet another mode of recruitment which would be alien to the statutory Rules and the same would not be covered in the light of order dated 17.11.1992 at Annexure P1. For the reasons recorded above, no case for interference is made out. Writ petitions, accordingly, stand dismissed.