(2013) 05 P&H CK 0204

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 6583 of 1999, 14466 of 1997 and 4352 of 2000 (O and M)

Ramji Dass and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

Citation : (2013) 171 PLR 341 : (2013) 4 SCT 196

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Rajiv Atma Ram and Mr. Saurabh Arora, for the Appellant; Vishal Garg, AAG, Punjab for Respondent No. 1, Mr. Amit Singh Sethi for Respondent No. 2 in CWP No. 14466 of 1997 and Mr. J.S. Puri for Respondent No. 2 in CWP Nos. 6583 of 1999 and 4352 of 2000, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The writ petition is at the instance of the employees of the respondent-Corporation who have a grievance that even when there are sufficient number of employees available who are fit for being promoted to the next higher post, they are being denied the opportunity by the Corporation by filling up the promotion post on deputation from the State departments. That the respondent-Corporation was created by taw for better administration and for regulating tubewell operations and for promotion of agriculture is not in doubt. The Articles of Association of the Punjab State Tubewell Corporation contain a provision that "Government may from time to time issue such directives as they may consider necessary in matters of broad policy and in like manner may vary or annul any such directive." The action of the respondents giving rise to this batch of writ petitions is contained in Annexures P-6 to P-9 that purport to determine the quota of deployment in the State Tubewell Corporation from the Irrigation Department of the State of Punjab through the communication dated 25.09.1995. The State directed that the Corporation will follow and modify its by-laws, policy of promotion and recruitment so as to have 50% of the posts filled up in the cadre of Assistant Engineer, Divisional Engineer and Superintending Engineers from the Punjab Irrigation Department. This is stated to be pursuant to a power with the State to control broad policy decisions of the corporation. The source of recruitment to the promotion post as including an appointment by deputation is not in doubt. The issue for consideration is whether a corporation could be compelled to follow a directive from the State without the Board itself acting on the exigent circumstances that would promote its own workers'' welfare. Promotion is an important ingredient to keep the morale of the workforce and if the employees have a grievance that their own chances of promotion are being fettered by a State intervention, normally the Corporation is entitled to defend itself by saying that it had valid reasons to fill up the posts. As it has turned out in this case, during the pendency of the writ petition all the petitioners have come by benefit of being appointed to the promotion post but the appointment orders were issued subject to the outcome in the writ petition and this was shown through an interim direction of this Court on 28.09.2000.

2. Before the arguments got under way, I requested the counsel appearing on behalf of the respondents to take instructions on whether the petitioners would be allowed to continue in the promotion posts and the cases could be treated as not requiring any further adjudication. The counsel for the respondents desire that an adjudication of merits be made to assess whether the power of the State to issue directives would include even a mandate to apply the percentage of quota applicable for deputationists. The issue which falls for consideration is not in an unchartered territory. It has come for consideration before this Court and the Supreme Court on several situations. Typically, while examining the power of a State to control the activities of a Corporation established by law, in PSIDC Karamchari Union and another v. State of Punjab and others (2004) 4 SCT 553, the Court considered a challenge against the withdrawal of reimbursement of financial benefits, like, reduction in reimbursement in respect of outdoor medical treatment as well as reduction of House Rent Allowance from 25% to 15% of emoluments. The PSIDC was supporting its own decision to a directive from the Government and invoked a clause similar to a clause which we are dealing with in this case. The Division Bench raised a question whether the directive given by the State Government could be treated to come within the broad policy in the conduct of affairs of the Corporation. The Bench ruled that this would not fall within such broad terms of policy and held that the instructions made were untenable and quashed the same. There has been a decision on the same subject also in The Punjab Financial Corporation Employees Welfare Association and Another Vs. Punjab Financial Corporation and Others, . The employees of Welfare Association were challenging the directives issued by the Government to the Corporation who were getting House Rent Allowance to the extent of 25% of the basic pay suffered reduction to 15% purporting to be at the behest of such directive to the State. This was again come to be bad in law. In S.S. Sodhi Vs. State of Punjab and others, the issue in challenge was a directive relating to the appointment to the post of Manager (Marketing) of the Marketing Board. The

State directive was quashed while dealing with the power of Punjab State Agriculture Marketing Board. In this case, the petitioners were claiming that their own chances of promotion were being subverted by the Government''s directive and the Corporation was intent on implementing the same without considering their just claims. The Corporation would have an answer that they had perforce to give effect to the directive of the State, since they are literally the creature of the State and at the initial stage when the Corporation was being set up, the entire administration was carried through by the employees of the State Government. Even the Managing Director was a Chief Functionary of the State on deputation. The State on its part, would contend that the directives were to be considered by the Board of Directors of the Corporation and if they had decided to give effect to the State''s directives, the petitioners cannot have any objection. The learned counsel for the State would also state that the challenge itself has lost its value since at the time when the petition was filed, they were challenging the order issued on 25.6.1995 providing for 50% quota for deputationists but this was actually reduced to 25% on 3.5.1999 subsequently and, therefore, the basis of the challenge in the writ petitions does not exist any more. This, I perceive to be an oversimplification. We have to grapple with an issue of whether the State would be justified in giving the said directives in whatever manner and expect the Corporation to follow the same or the Corporation on its own would also feel obligated to give effect to it only because the State has given such directives. The learned counsel appearing for the Corporation pleads with passion that the Corporation has no financial viability of its own and literally, it is the State which has to take care and foster its activities that could strengthen the purpose for which the Corporation was set up. It is dangerous that the Corporation is prepared to surrender its institutional integrity and autonomy so easily to the State diktat. The very purpose of setting up of a corporation will be defeated if the Corporation plays a stooge to State''s machinations.

3. I have deliberated on the issue whether the prescription of a broad percentage of quota for deputation or other such matters are not essentially issues of policy that the Court will not interfere. Indeed the counsel for the Corporation himself pleads that it is not as if the Government was interfering with the day to day activity of who was to be appointed to a particular post or meddling with the affairs of service of the workers. It has set out a long term policy by prescribing certain percentage of quota of employees from the State who would fill up the post of the Corporation as deputationists. The issue of what constitutes the service matter is not to be rigidly seen by whether a prescription of quota should be treated merely as a policy without really trenching upon the issues of service. It is again not to be seen as though that it is only the day to day functioning of the workers or regulation of the persons who were appointed to a particular post that could be understood as interfering with matters of service. The policy could under normal circumstances be seen as setting boundaries within which a corporation could perform. In this case, if the State was laying down a policy that whenever vacancies exist and if there were not sufficient number of persons in

the Corporation itself to fill up the posts, there could be deputation which could be drawn to a particular percentage, it could be stated that the State was laying down a broad policy for its enforcement. If the State was literally charting out a project as to how the Corporation shall fill up the posts and to what numbers, then the Corporation was surely allowing itself to be completely abrogated in its institutional autonomy and being led, blind-folded by State fiat. This is precisely the manner in which the decisions of this Court referred to above have understood, when they were interfering with directives from the State as to what shall be the percentage of benefit that they will obtain for housing and what shall be the allowances and concessions which employees would draw. There are indeed also matters of policy but they had a relevance to the day to day working and service conditions. Here, in this case, the petitioners have an immediate grievance that the Corporation was simply rejecting the claims to promotion on the ground that they had to observe the State directive to fill up the broad percentage for representation of Sate deputationists. As I have observed already, the objection cannot be that there could be no deputationist to man the particular posts. There has to be an objective assessment made if a broad policy is given to the Corporation to be followed and the Corporation is bound to deliberate the issue of the feasibility in the light of the better administration of the Corporation. At least when the workers of this Corporation were raising an issue that their claims must be considered, the Corporation could not wear the blinkers set by the State and plead in defence that they had to stick to the State directives. That would only mean that the Corporation was not prepared to take an objective decision and felt crippled in its own functioning by the State directives.

4. The argument by the counsel for the Corporation that the Corporation has literally no surplus finance or their own financial strength to discard the State directives only shows the abysmal servility to which the Corporation has allowed its own functioning. I am not examining whether such a Corporation should wind up and allow for State to take over as its own department. At least in these writ petitions when the petitioners were making an issue that their interests were not being sufficiently protected and deputationists from the State service were likely to displace them completely, there was a good enough reason for the State and Corporation to set their own ways in order and chart out the course of action and define the respective areas of control. That does not appear to have happened and I find the Corporation''s response has been merely anaemic without any rational justification for the way they have allowed themselves to be rendered effete.

5. The directives of the State which are made the subject of challenge in the writ petition cannot be allowed and they are quashed. I take notice of the fact that the petitioners have come by benefit of promotion during the pendency of the writ petition and these observations do not, however, become purely academic for it is a decision rendered in the light of the circumstances that the appointments were made subject to the decision of this Court and is hereby ruled

that the State directives were not legal and enforceable. The Corporation shall set its own terms of service without in any way allowing the State to trench upon its activities on a day to day basis or on its long term.

6. The petitioners have in this case been assigned to the posts of Assistant Engineer on their own pay-scale and that they would not be entitled to regular pay-scale and seniority as Assistant Engineer. The communication issued on 16.1.1998 states that it is only a temporary arrangement till the appointment of deputationists. Since I have held that quota prescribed by the State for deputationists without the Corporation itself taking an objective decision is not valid, the appointments made to the post allowing for persons to hold temporary charge must be taken as holding the post in the vacancies available for them and the respondents are bound to consider the appointment as made for post to which the petitioners were entitled. The scales for the promotion post shall be from that day when they held current duty charge and all the consequential benefits shall be calculated and released to them within a period of 12 weeks from the date of receipt of copy of the order. The writ petitions are allowed as above.

