
(1999) 01 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7697 of 1998

Rattan Lal and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1999) 01 P&H CK 0087

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Mahesh Grover, for the Appellant; Rupinder Khosla, for the Respondent

Judgement

Singhvi, J.—This petition has been filed for issuance of a writ in the nature of mandamus directing the respondents to reinstate the petitioners in service in accordance with the instructions issued by the Government vide circular letter dated September 26, 1996.

2. There is no dispute between the parties that the petitioners were appointed as Sewadars in the office of the Assistant Excise and Taxation Commissioner with effect from January 15, 1996 for a fixed period of 89 days and their services were terminated on June 27, 1996. The grievance of the petitioners is that inspite of the instructions issued by the Government on September 26, 1996 in the purported compliance of the orders passed by this Court in Civil Writ Petition No. 12080 of 1996, decided on August 16, 1996, the respondents have not reinstated them in service and in this manner, their fundamental right to equality in the matter of employment has been infringed.

3. The respondents have justified their action to discontinue the services of the petitioners primarily on the ground that they were appointed for a fixed period and on the basis of such appointment they did not acquire any legal right to remain in service. In para 5 of the written statement, the respondents have made the following statement :

"In reply to this paragraph it is submitted that some persons who were appointed on 89 days basis against Class IV posts in the Department of Health and Family Welfare fearing that they will not be given further extension on 89 days basis due to Government instructions issued vide No. 14/33/94-4PP3/9612, dated June 13, 1996, annexed as Annexure R I filed Civil Writ Petition No. 12080 of 1996, titled as Dilbagh Singh and others v. State of Punjab and others in this Hon''ble High Court in which notice of motion was issued for August 26, 1996 and learned Deputy Advocate General was directed to convey the message to the respondents of the said writ petition but due to communication gap, the services of some of the petitioners of Civil Writ Petition No. 12080 of 1996 were terminated, so they approached the Hon''ble Court by way of filing C.M. No. 16011 of 1996 which came up for hearing on August 16, 1996 before Hon''ble Justice Sri G. S. SINGHVI and Hon''ble Justice Sri M. L. SINGHAL. The Hon''ble Division Bench passed orders on August 16, 1996 which are annexed by the petitioners as Annexure P3, and the said writ petition was accordingly disposed of on August 16, 1996. Then the Punjab Government issued instructions vide letter No. 14/33/94-4PP-III/16767, dated September 26, 1996, copy of which is annexed with the petition as Annexure P4. It may be submitted that the Hon''ble High Court vide orders, dated August 16, 1996 passed in C.M. No. 16011 of 1996 in C.W.P. No. 12080 of 1996, has granted relief only to the petitioners of the said writ petition. It may also be brought to the notice of this Hon''ble Court that various persons who were not petitioners in C.W.P. No. 12080 of 1996 whose services were terminated in view of the instructions, dated June 13, 1996, filed writ petitions in this Hon''ble Court and those were either disallowed or dismissed as withdrawn. A copy of one such order dated May 21, 1998, passed by Hon''ble Justice Sri G. S. SINGHVI and Justice Sri IQBAL SINGH in C.W.P. No. 7250 of 1998 is annexed as Annexure R.2."

4. After hearing Sri Mahesh Grover and Sri Rupinder Khosia, we are satisfied that the prayer made by the petitioners cannot be granted.

5. Admittedly, the appointment of the petitioners did not precede by the advertisement of the posts or sending of requisition to the Employment Exchange with a view to enable other eligible persons to be considered for recruitment against the vacant posts of Sewadars. Therefore, there is no escape from the conclusion that the petitioners got entry in the service by back door method and they have been benefitted by fraudulent system of employment engineered by various officers of the Government. It is their misfortune that the respondents did not consider it appropriate to extend the tenure after June 27, 1996 after realising that the appointments made without sending requisition to the Employment Exchanges in accordance with Employment Exchanges (Compulsory Notification of Vacancies) Act 1959, and without issuing advertisement with a view to give opportunity of competition to other eligible persons were violative of the doctrine of equality embodied in Articles 14 and 16 of the Constitution. We, therefore, hold that the petitioners did not acquire any legal right to hold the post of Sewadars on which they were appointed in January 1996. As a logical

corollary, we hold that they are not entitled to be reinstated in service.

6. In Civil Writ Petition No. 7250/1998 of Smt. Kitabo Devi and others v. Secretary, Health and Family Welfare, Punjab and others decided on May 21, 1998, an exactly identical claim made by the petitioners who were appointed as Class IV employees in Health Department was negated by the Court. In that case, the Court considered the submission similar to the one made by Sri Grover and rejected the same by making the following observations :

"Learned counsel for the petitioners referred to the instructions issued by the Government vide circular letters, dated August 12, 1996, September 26, 1996, January 17, 1997, April 9, 1997 and July 25, 1997 and urged that in view of the stay order passed by the Apex Court on July 24, 1997, respondent 3 is duty bound to re-employ the petitioners as Class IV employees against the vacant posts. She argued that the failure of the respondents to pass appropriate order extending the term of the appointment of the petitioners is patently discriminatory and violative of Arts. 14 and 16 of the Constitution because the term of the appointment of similarly situated persons have been extended vide annexures P8/1 to P8/5 and P10. Learned counsel submitted that the official respondents cannot apply the methodology of pick and choose for giving ad hoc and temporary appointment to similarly situated persons and in any case, the existing employees cannot be replaced by fresh ad hoc appointees.

In our opinion, neither of the submissions of the learned counsel merits acceptance. A look at Annexures P1/1 to P1/4 and P1/6 shows that respondent 3 did not extend the term of the appointment of the petitioner 1 after expiry of the initial tenure of 89 days. Instead, he issued fresh orders appointing petitioner 1 for fixed term of 89 days. As a matter of fact, the time gap between the various orders is sufficient to prove that respondent 3 did not extend the term of the initial appointment of petitioner 1. This must be the position in the cases of other petitioners. Therefore, the argument of the learned counsel that the petitioners have been continuously working against Class IV posts is fundamentally erroneous. The fact of the matter is that the petitioners were given fixed term ad hoc appointment from time to time and it cannot be said that they are continuing in service since 1995.

Ms. Chatrath's contention that the petitioners have acquired a vested right to hold Class IV posts is clearly misconceived. Admittedly, the petitioners were appointed on Class IV posts without any selection. The posts against which they were appointed had not been advertised by respondent 3 or any other official respondent. No requisition was sent to the Employment Exchange as per the requirement of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. No committee was constituted for making selection. Rather, the petitioners were given back door appointments. On the basis of such appointments, no right much less a vested right has been acquired by the petitioners to be continued in employment after the expiry of the tenure specified in the last order of their appointments. Hence, no direction can be issued to the

respondents to reemploy the petitioners in service or to extend the terms of their appointments.

We also do not find any substance in the argument of Ms. Chatrath that respondent 3 is duty bound to reinstate the petitioners in service in view of the instructions issued by the Government vide circular letter, dated July 25, 1997. A careful analysis of that circular shows that it enables the competent authority to allow an ad hoc appointee to continue in service. However, it is not possible to read that circular as imposing a duty upon the competent authority to continue in service all back door entrants. That, in our considered opinion, is not the purport of the stay order passed by the Apex Court. In any case, any clarification in the order passed by the Supreme Court on July 24, 1997 can be made only by the Apex Court and not by this Court.

The petitioner's plea of discrimination cannot be entertained because the orders of initial appointments of the non-official respondents have not been placed on the record to show that they too were appointed without advertisement of posts and without sending requisition to the Employment Exchange. Without going through the contents of the orders of their appointments, we cannot record a conclusion that the non-official respondents are also beneficiaries of the fraud played by the appointing authorities who gave back door appointments in complete violation of the doctrine of equality embodied in Arts. 14 and 16 of the Constitution."

7. There is one more reason for not entertaining the claim of the petitioners. It is a settled proposition of law that the jurisdiction of this Court under Article 226 of the Constitution cannot be exercised for directing the respondents to reinstate the persons like the petitioners in service because that would amount to perpetuation of an illegality committed by the respondents at the time of initial appointment of the petitioners.

8. For the reasons mentioned above, the writ petition is dismissed.