
(1995) 09 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4156 of 1982

Roshan Lal

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 14-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 25G
Punjab Municipal Act, 1911 — Section 45(1)

Citation : (1996) 112 PLR 660

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Deepinder Singh, for the Appellant; Charu Tuli, AAG for the Respondent No. 1, J.R. Mittal and K.K. Garg, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Almost thirteen years ago the petitioner was removed from service vide order Annexure P2 dated 17.9.1982 passed by the Executive Officer, Municipal Committee, Malerkotla in the purported exercise of powers u/s 45(1) of the Punjab Municipal Act, 1911 (for short, the Act). During all these years, it has not been possible for the Court to take up the case for hearing and without going to the reasons for the failure of the institution to hear the grievance of the petitioner for more than one decade. I cannot refrain from observing that unusual delay has caused immense injury to the petitioner. In such like matters, the petitioner as well as the respondents suffer for no fault of theirs. It is, therefore, high time that counsel for the parties and the Court make earnest endeavour to decide the pending cases at the earliest.

2. The petitioner who joined the service of the Municipal Committee, Malkerkotla as Safai Sewak in the year 1962 was confirmed on that post in the year 1975 only to be thrown out of the job vide Annexure P2. Respondent No. 2 paid him a

sum of Rs. 482.80 ps. as wages for one month's period. Section 45(1) of the Act which has been referred to in the impugned order reads as under:-

"45 Notice before discharge. (1) In the absence of a written contract to the contrary, every officer or servant employed by a committee shall be entitled to one month's notice before discharge unless he is discharged during a period of probation or for misconduct or was engaged for a specified term and discharged at the end of it."

3. The argument of the learned counsel appearing for the respondent No. 2 is that u/s 45(1) of the Act, the respondent No. 2 is entitled to terminate the service of a temporary as well as permanent employee by giving one month's notice and, therefore, the exercise of power u/s 45(1) by payment of wages equal to one month's notice is perfectly justified. Learned counsel argued that the Statute does not make any distinction between temporary and permanent employees. He urged that the impugned order should not be nullified on the ground of violation of Articles 14 and 16 of the Constitution of India. In support of his arguments, Shri Mittal relied on a decision of the Full Bench of this Court in *Ram Nath Vs. The State of Punjab and Others*,

4. In my opinion, the aforesaid arguments of Shri Mittal cannot be accepted. No doubt, Section 45(1) does not expressly make any distinction between a temporary and permanent employees, but, a close look at the provision shows that it deals with the employees who are on probation. If the employer wants to terminate the service of a probationer otherwise than by way of punishment, power u/s 45(1) can be used. This narrow interpretation of Section 45(1) is necessary to make it constitutionally valid. If I was to read Section 45(1) as governing the cases of permanent employees and I was to hold that the Municipal Committee can dispense with the service of a permanent employee by giving him one month notice or pay in lieu thereof, the provision would be open to attack on the ground of unconstitutionality, namely, violation of Articles 14 and 16 of the Constitution of India.

5. In *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, their Lordships of the Supreme Court reaffirmed the principle of law laid down in some earlier decisions that a provision which empowers an employer to dispense with the service of a permanent employee by giving a notice of specified period or pay in lieu thereof, is unconstitutional.

6. The same view has been expressed by a Constitution Bench of the Supreme Court in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* 1991 (1) S.C.C. 600. By a majority of 4:1, the Supreme Court approved the ratio of the judgment in *Central Inland Water Transport Corporation's* case (supra). If in the face of the law declared by the Supreme Court, Shri Mittal's argument is accepted, the provisions contained in Section 45(1) of the Act will be liable to be declared as unconstitutional. However, in my opinion, it is not necessary to construe the provision in the manner suggested by Shri Mittal because it is one of the settled

cannons of interpretation of statutory provision that if more than one interpretation of a statutory provision is possible, then the Court should prefer the one which makes the provision constitutionally viable as against the one which renders it unconstitutional.

7. In view of the above, it must be held that the termination of the service of the petitioner brought about vide Annexure P1 is illegal and is unsustainable in law.

8. Another reasons for quashing the impugned order is the failure of the employer to comply with the rule of "last come first go". The statement made by the petitioner in paragraph 6(iv) of the writ petition that persons junior to him were retained has gone uncontested. This is so because the respondents have not filed reply to the writ petition. Therefore, the Court will have to proceed on the premise that the persons junior to the petitioner were retained in service at the time of passing of the impugned order. Though Rule of "last come first go" finds mentioned in Section 25-G of the Industrial Disputes Act, 1947 but its genesis is in Article 14 of the Constitution of India. Articles 14 and 16 of the Constitution of India require that while terminating service of an employee, the employer must keep in mind the seniority and the junior should be removed from service before his senior can be asked to go home. This principle has to be kept in mind while terminating the service of a permanent or a temporary employee and violation of this principle without any reason or rhyme leads to an irresistible conclusion that the action of the employer is unconstitutional arbitrary and unfair. This proposition of law emerges from the judgment of the Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, .

9. For the reasons mentioned above, the writ petition is allowed. The order dated 17.9.1982 (Annexure P2) is declared illegal and is hereby quashed. The petitioner shall be entitled to reinstatement and all other consequential benefits except monetary benefits for the intervening period. For monetary benefits, the petitioner shall be free to avail the remedy available to him u/s 33-C(2) of the Industrial Disputes Act, 1947 in view of the law laid down by the Supreme Court in *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, . The petitioner shall get costs of Rs. 1000/- from the Municipal Committee.