

(1995) 08 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13404 of 1993

Sanjay Kumar Sharma

APPELLANT

Vs

The Haryana Labour Welfare Board and Others

RESPONDENT

Date of Decision : 25-08-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1995) 111 PLR 611

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Ashish Aggarwal, for the Appellant; Mahavir Sandhu, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner who was employed as a Labour Inspector on February 27, 1989, complains that his services were illegally terminated vide order dated August 7, 1991. It is alleged that various other persons had been appointed on purely adhoc basis after terminating the petitioner's services. This, according to the petitioner, is arbitrary and violative of the rule enunciated by their Lordships of the Supreme Court in State of Haryana v. Piara Singh 1992 2 P.L.R. 647 (S.C.). It is further submitted that the action is also violative of the provisions of Articles 14 and 16 of the Constitution in as much as one Mr. Shiv Kumar Saini who had been appointed on purely adhoc basis on April 10, 1989, is still continuing in service. According to the petitioner, the termination of the services of a senior while his junior is allowed to continue is discriminatory and cannot be sustained. The petitioner prays for the quashing of the order of termination and for a direction to the respondents to retain him in service.

2. The respondents have controverted the petitioner's claim. It has been pointed out that the petitioner has deliberately concealed material facts inasmuch as he has not disclosed that he had filed a civil suit No. 279 of 1991 on August 14, 1991, which was dismissed as withdrawn on September 7, 1991. It has been

further pointed out that vide letter dated November 21, 1990, the petitioner has been informed that he should "complete the target of recovery of unpaid accumulations, failing which no further extension in service will be allowed." Thereafter, vide letters dated April 12, 1991, April 16, 1991, May 31, 1991 and June 7, 1991, the petitioner was advised to be careful and to improve his performance. He did not show any improvement. Consequently, vide order dated August 7, 1991, the respondents declined further extension in service.

3. These are the pleadings.

4. Mr. Ashosh Aggarwal, learned counsel for the petitioner contends that it is not permissible for an employer to replace one adhoc employee by another adhoc employee. He submits that the respondents have acted arbitrarily in terminating the petitioner's services and appointing others on purely adhoc and temporary basis. He further submits that the action is also violative of the provisions of Articles 14 and 16 of the Constitution inasmuch as one Mr. Shiv Kumar Saini who had been appointed as a Labour Inspector after the petitioner on April 10, 1989, was allowed to continue while the petitioner's services had been terminated. He thus, claims that the petitioner had a right to the regularisation of his services. The claim made on behalf of the petitioner has been controverted by the learned counsel for the respondents.

5. The two questions that arise for consideration are:-

(i) Is the action of the respondents violative of the provisions of Articles 14 and 16 of the Constitution?

(ii) Is the petitioner entitled to regularisation?

Reg: (i):

6. Admittedly, the petitioner had been appointed, on a purely adhoc basis. The appointment was for a period of 89 days. It could be terminated at any time without any notice or opportunity it is true that the appointment was periodically extended but every time the appointment was for a period of 89 days only. It is at the expiry of the period of appointment that the petitioner's performance was found to be wanting. He was given warnings. Letters were issued to him with a direction that he should improve his performance. He failed to do so. In this situation, the employer had no alternative except to terminate his service. I find no infirmity in the action of the respondents. It was in strict conformity with the terms of appointment that the petitioner's services were terminated.

7. Mr. Aggarwal has placed reliance on a decision in Piara Singh's case (Supra) to contend that it is not permissible for an employer to replace one adhoc employee by another adhoc employee. This is undoubtedly the normal rule. It is also correct that after the termination of the petitioner's services, certain appointments were made in the year 1992 on purely adhoc basis. However, in the circumstances of the present case, when it had been established that the petitioner's performance was not satisfactory and that it had not improved in

spite of the issue of various letters of advice, it cannot be said that the action of the respondents in terminating his services was arbitrary or unfair.

8. It was then submitted that Mr. Shiv Kumar Saini, had been appointed as a Labour Inspector on April 10, 1989. The petitioner having been recruited on February 27, 1989 was thus, senior to him. Mr. Saini was allowed to continue in service while the petitioner was not given any extension. This, according to the learned counsel, was violative of the provisions of Articles 14 and 16 of the Constitution.

9. Article 16 of the Constitution guarantees equality of opportunity in matters of appointment in services under the State. It ensures that equals should be treated equally. In order to prove the charge of discrimination, it is incumbent upon an employee to establish that he was similarly placed vis-a-vis the other. If it is shown that the two employees were similarly placed and yet a senior has been thrown out while a junior has been retained, it may be possible to sustain the charge of discrimination. In the present case, however, there is nothing on record to indicate that the petitioner and Mr. Shiv Kumar Saini were similarly placed. It has not been shown that the performance of Mr. Shiv Kumar Saini was found to be wanting or that any warning had been issued to him. In this situation, it cannot be said that the action of the respondents suffers from the vice of discrimination. Accordingly, the plea raised by the learned counsel cannot be sustained.

10. In view of the above, the first question is answered in the negative and it is held that the action of the respondents was not violative of the provisions of Articles 14 and 16 of the Constitution.

Reg: (ii):

11. The claim for regularisation as made out by the petitioner in the circumstances of this case is wholly untenable. It is true that the petitioner had worked for about 2-1/2 years. However, nothing has been produced to show that he had a right to be considered for regularisation in service irrespective of the fact that his performance had been found wanting. Accordingly, even the second contention raised by the learned counsel for the petitioner is rejected.

12. Lastly, before parting with the case, it deserves mention that the petitioner had filed a civil suit. It was withdrawn by him on September 7, 1991. The suit had been filed on August 14, 1991 after the passing of the impugned order. The suit was not withdrawn with permission to file a fresh one or to enable the petitioner to approach this Court through a writ petition. Even the factum of the filing of the suit was not disclosed to this Court. The petitioner has also not disclosed the fact that various communications had been sent to him by which he was advised to be more careful in future and improve his performance. This is a lapse.

13. Accordingly, I find no merit in this writ petition. It is dismissed. It is a fit case

for the award of costs to the respondents. However, since the petitioner is unemployed, I make no order as to costs.