
(2013) 04 P&H CK 0192
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9580 of 2010 (O and M)

Satish Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 2 PLR 829 : (2013) 4 SCT 580

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Namit Kumar and D.D. Gupta, A.A.G., Haryana, for the Appellant;
Naveen Gupta, Advocate for the Respondent No. 2 and Raman B. Garg, Advocate
for the Respondent No. 3, for the Respondent

Judgement

Rajesh Bindal, J.—The petitioner has approached this Court impugning the orders dated 28.2.2007 and 12.4.2007, whereby respondent No. 3 has been absorbed as Mandi Supervisor-cum-Fee Collector with retrospective effect, from 30.8.1989 and his seniority has been fixed at Sr. No. 315-A. Order dated 31.7.2007, whereby he is deemed to have been promoted to the post of Accountant w.e.f. 23.2.1996, Assistant Secretary w.e.f. 31.3.1999 and Executive Officer-cum-Secretary w.e.f. 31.8.2004, has also been challenged. Learned counsel for the petitioner submitted that respondent No. 3 was earlier working as Store Keeper with Haryana Tanneries Ltd. The aforesaid company was wound up. On closure, all the employees were retrenched. The case of respondent No. 3 was recommended for appointment in Haryana State Agricultural Marketing Board (for short, "the Board") as Head Clerk/Accountant on 7.3.1989. It was specifically mentioned in the letter of recommendation that no surplus employee was available for appointment to the post of Mandi Supervisor. Respondent No. 3 was interviewed on 10.8.1989. He was issued appointment letter as Clerk-cum-Typist on 29.8.1989 specifically mentioning therein that it was a direct appointment. Without any protest, respondent No. 3 joined the service on 30.8.1989. He made a representation on 1.6.1990 for protection of the pay drawn while working in Haryana Tanneries Limited. The same was rejected on

7.12.1990. Subsequent representation for the purpose was also rejected on 5.12.1994. Thereafter, respondent No. 3 filed a suit for claiming protection of his pay drawn while working with Haryana Tanneries Limited, which was decreed on 23.12.2000. The appeal filed by the Board was accepted on 18.3.2003. RSA No. 1857 of 2003 filed by respondent No. 3 against the aforesaid judgment of the learned lower appellate court is admitted and pending in this Court.

2. Learned counsel for the petitioner further submitted that respondent No. 3 was promoted to the post of Mandi Supervisor-cum-Fee Collector vide order dated 3.5.2002 as per his seniority. Prior thereto, the petitioner was appointed as Mandi Supervisor-cum-Fee Collector on 17.11.2000, hence, was senior to respondent No. 3 on the post. On 25.4.2005, respondent No. 3 addressed a representation to the Chief Administrator of the Board, however, the same was apparently presented to Hon'ble the Chief Minister. A note was put up by the Principal Secretary to the Chief Minister on 23.5.2005 that facts of the case be put to him at the earliest. In the aforesaid representation, the petitioner claimed that he deserved to be appointed as Accountant in the Board from the date of his initial appointment as was given to one of his juniors. Vide communication dated 28.2.2007, the Financial Commissioner and Principal Secretary to Government Haryana, Agriculture Department, directed the Chief Administrator of the Board that respondent No. 3 should be re-designated as Mandi Supervisor or Sub Divisional Clerk from the date of his absorption in the Board, as was already intimated vide communication dated 11.3.2005. As a consequence thereof, vide order dated 12.4.2007, respondent No. 3 was absorbed as Mandi Supervisor-cum-Fee Collector w.e.f. 30.8.1989. His seniority as Mandi Supervisor was fixed at Sr. No. 315-A between Chattar Pal and Smt. Veer Lata Jain, who were finding place at Sr. Nos. 315 and 316 respectively. The aforesaid order was passed in terms of the advice of the government vide communication dated 28.2.2007. Subsequent thereto, on 31.7.2007, respondent No. 3 was given deemed promotion from the post of Mandi Supervisor-cum-Fee Collector to the post of Accountant w.e.f. 23.2.1996, Assistant Secretary w.e.f. 31.3.1999 and Executive Officer-cum-Secretary w.e.f. 31.8.2004, as a result of which respondent No. 3 ranked senior to the petitioner. The petitioner came to know about the orders passed by the Board changing designation of respondent No. 3 retrospectively and also granting him promotions only when the provisional seniority list of Mandi Supervisor-cum-Fee Collector was circulated on 3.9.2009, where though respondent No. 3 was shown at Sr. No. 136 as against the petitioner at Sr. No. 104, but in column No. 8, it was mentioned that respondent No. 3 is promoted as Secretary. Thereafter, the petitioner made a representation to the official respondents on 5.3.2010, however, the same was not responded to.

3. While impugning the action of the official respondents in changing the designation of respondent No. 3 from the date of his initial appointment and granting him all consequential benefits nearly 18 years after he had joined service with the Board, learned counsel for the petitioner submitted that number of persons, who were seniors to respondent No. 3 including the petitioner, who

were affected with the action of the official respondents, were not afforded any opportunity of hearing, hence, the action of the official respondents is totally arbitrary and deserves to be set aside on this score.

4. It was further submitted that as per the letter of recommendation for appointment issued by the office of the Chief Secretary to the Government of Haryana to the Board, the case of respondent No. 3 was not recommended for appointment as Mandi Supervisor-cum-Fee Collector, as it was mentioned therein that there was no surplus employee available for appointment on the aforesaid post. His case was recommended for the post of Head Clerk/Accountant. In fact, respondent No. 3 was not even eligible for appointment on the post of Mandi Supervisor-cum-Fee Collector as Haryana State Agricultural Marketing Board Service Rules, 1974 (for short, "the Rules") required minimum qualification as Graduate with knowledge of the Punjab Agricultural Produce Markets Act, 1961 (for short, "the Act") and the Rules. Though respondent No. 3 was interviewed before his appointment in the Board, but that was for the post of Clerk-cum-Typist. As his knowledge of the Act and the Rules was not tested, hence, to appoint respondent No. 3 on that post retrospectively is totally illegal.

5. The next contention raised by learned counsel for the petitioner is that after the recommendations were made by the Government to the Board, respondent No. 3 was issued appointment letter on 29.8.1989. It was specifically mentioned therein that it was a fresh appointment. No benefit shall accrue to the petitioner on account of any service rendered earlier in any Government Department or Public Sector Undertaking. In case, the aforesaid condition as well as other conditions mentioned in the letter of appointment were acceptable, he was welcome to join duty. Respondent No. 3 in pursuance to the aforesaid appointment letter joined his duty on 30.8.1989 without protest, hence, he could not raise the issue regarding his entitlement to be appointed on any post other than offered to him at that time, which he willingly accepted.

6. Learned counsel further submitted that the only grouse of respondent No. 3 was that his last pay drawn in Haryana Tanneries Limited deserved to be protected as the representations made by respondent No. 3 to that effect were rejected on 7.12.1990 and 5.12.1994. Respondent No. 3, being aggrieved, filed a civil suit on 25.10.1997 raising the aforesaid grievance. Even at that stage, respondent No. 3 was not aggrieved of his appointment made on the post of Clerk-cum-Typist. In the civil suit filed, the only relief claimed was pay protection. Nothing was claimed that respondent No. 3 deserved to be appointed on any post other than Clerk-cum-Typist, on which he was appointed. The aforesaid civil suit was initially decreed, however, the appeal filed by the Board was accepted and now RSA No. 1857 of 2003 filed by respondent No. 3 is pending. The net result of the aforesaid proceedings is that respondent No. 3 had no grievance about his appointment on the post of Clerk-cum-Typist. Any such issue could not be permitted to be raised and consequently dealt with by the Government nearly 18 years after the initial appointment of respondent No. 3 in

the Board, as a result of which he has been ranked senior to many other employees already working in the Board. In support of this plea, reliance was placed upon *Balwinder Singh v. Punjab State Electricity Board* and another, 2011 (4) S.C.T. 231 : 2011 (4) SLR 732.

7. Still further, the contention is that the grievance raised by respondent No. 3 was highly belated. Though respondent No. 3 was appointed in the Board as Clerk-cum-Typist in August, 1989, the Government directed the Board to treat him appointed as Mandi Supervisor-cum-Fee Collector vide communication dated 12.4.2007 (Annexure P-10), nearly 18 years thereafter, un-settling the settled position in the seniority list in different cadres. In fact, the Government has no power to direct the Board for absorption or appointment of respondent No. 3 on a particular post. The action of the Government in issuing such directions is totally without jurisdiction.

8. On the other hand, learned counsel for the Board submitted that it had acted on the directions of the Government to treat respondent No. 3 appointed on the post of Mandi Supervisor-cum-Fee Collector from the date of his initial appointment. The direction of the Government could not be defied.

9. Learned counsel for the State submitted that the Government never directed the Board to do any particular thing. It had merely given an advice. The order was to be passed by the competent authority, that is why a request was sent and not direction. In case the Government was competent, it could have directed the Board to pass the order and not merely sent a request. Though the name of respondent No. 3 was recommended for appointment to the post of Head Clerk/Accountant, but there being no post of Head Clerk/Accountant in the Board and respondent No. 3 not fulfilling the eligibility condition for appointment to the post of Head Clerk/Accountant, he was offered the post of Clerk-cum-Typist. The representation made by respondent No. 3 for absorption on the post of Mandi Supervisor-cum-Fee Collector from the date of his initial appointment was considered and finding substance therein, advice was given to the Board to do the needful. It was further submitted that the needful was done by the Government finding that another person, namely, Shiv Goyal, who was working along with respondent No. 3 was adjusted as Accountant in the same pay scale, in which he was working with Haryana Tanneries Limited.

10. Learned counsel for respondent No. 3 submitted that the petitioner in the present case was appointed as Mandi Supervisor-cum-Fee Collector on 17.11.2000, whereas respondent No. 3 has been directed to be appointed as such w.e.f. 30.8.1989, hence, he cannot have a grievance being junior to him. Respondent No. 3 had made a representation raising his grievance way back on 1.6.1990 and even thereafter had been raising his grievance. His name was recommended to be appointed on the post of Head Clerk/Accountant for which he was eligible, however, he was appointed two posts below that in a pay scale lower than the scale drawn by him while working in Haryana Tanneries Limited. The other persons, who were recommended along with respondent No. 3, were

appointed as Head Clerk. The Government has power u/s 42 of the Act to direct the Board to do anything. Respondent No. 3 had not foregone his claim for being appointed on a higher post. Such a plea was not raised in the civil suit earlier filed for the reason that the claim to that effect was pending consideration with the Government. He further submitted that the Government vide its communication to the Board had merely directed redressal of injustice done with respondent No. 3. As the petitioner was not even in service in the year 1989, he did not deserve to be granted any opportunity of hearing.

11. Heard learned counsel for the parties and perused the paper book.

12. As is evident from the facts of the case, respondent No. 3 was earlier working in Haryana Tanneries Limited, which was closed down. As a result of the same, the employees working therein were retrenched. In terms of the policy of the Government, they were directed to be adjusted in various other statutory bodies. The case of respondent No. 3 was recommended for appointment on the post of Head Clerk/Accountant vide letter dated 7.3.1989 (Annexure P-2). It was mentioned therein that no recommendations are being made for appointment on the post of Mandi Supervisor-cum-Fee Collector as no surplus employee is available for that post. Respondent No. 3 was interviewed. He was given appointment on the post of Clerk-cum-Typist vide letter dated 29.8.1989 (Annexure P-3). It was specifically mentioned in the aforesaid appointment letter that it is a fresh appointment. No benefit shall accrue on account of any service rendered in any other Government or Public Sector Undertaking. As the conditions imposed in the aforesaid letter of appointment were acceptable to respondent No. 3, he submitted his joining report on 30.8.1989 (Annexure P-4) and continued working. As per his seniority, he was promoted as Mandi Supervisor-cum-Fee Collector on 3.5.2002 (Annexure P-7). The petitioner had a grievance when in terms of the directions issued by the Government, respondent No. 3 was absorbed on the post of Mandi Supervisor-cum-Fee Collector from the date of his initial appointment and as a consequence thereof was given three promotions with retrospective effect. Consequently, respondent No. 3 ranked senior to the petitioner and also number of other persons.

13. The case set up by respondent No. 3 is that he was working in the scale of Rs. 1400-2600 in Haryana Tanneries Limited. As his case was recommended for appointment on the post of Head Clerk/Accountant, he deserved to be appointed on that post, which was carrying same pay scale. A person junior to him was appointed as such. The Government had merely redressed the grievance of respondent No. 3. However, I do not find any merit in the submissions made. No doubt, vide communication dated 7.3.1989, the name of respondent No. 3 was recommended for appointment on the post of Head Clerk/Accountant and he was appointed as Clerk-cum-Typist, which appointment respondent No. 3 accepted at that time. The definite stand of the State as well as the Board in the written statements filed is that though the name of respondent No. 3 was recommended for appointment on the post of Head Clerk/Accountant, but there was no post of

Head Clerk available at that time and respondent No. 3 was not eligible to be appointed as Accountant, hence, he was offered appointment as Clerk-cum-Typist, for which he was found suitable. In the communication dated 11.3.2005 from the Financial Commissioner and Principal Secretary to Government Haryana, Agriculture Department, which has been referred to in the letter of the Government dated 28.2.2007 (Annexure P-9), in pursuance to which respondent No. 3 has been re-designated as Mandi Supervisor-cum-Fee Collector from the date of his initial appointment, it has been mentioned that though the name of respondent No. 3 was recommended for appointment on the post of Head Clerk/Accountant and various posts of Accountant were lying vacant in the Board in March, 1989, but still respondent No. 3 was not appointed on that post. The action of the Board was not found to be appropriate. It was considered as injustice with respondent No. 3 and he was directed to be given due benefit from the date it was given to a person junior to respondent No. 3. The facts in the aforesaid communication dated 28.2.2007 run contrary to the stand taken by the State as well as the Board in the written statements filed, wherein it has been specifically stated that respondent No. 3 was not eligible to be appointed on the post of Head Clerk/Accountant, hence, to claim now that he deserved to be appointed on the post of Head Clerk/Accountant is totally contrary to record.

14. Another important fact is that respondent No. 3 was not interviewed for the post of Mandi Supervisor-cum-Fee Collector, for which one of the eligibility conditions is knowledge of the provisions of the Act and the Rules.

15. There is merit in the contention raised by learned counsel for the petitioner as far as the delay in action by respondent No. 3 and State as well as Board is concerned. Respondent No. 3 in the present case was admittedly appointed fresh as Clerk-cum-Typist in the Board on 29.8.1989. It was on the basis of recommendations made by the State Government for absorption of the employees retrenched from Haryana Tanneries Limited. Accepting the terms and conditions, he joined the service. What is available on record is that respondent No. 3 made a representation for protection of his pay after he joined service in the Board and the same was rejected on 7.12.1990. Subsequent representation claiming the same relief was filed on 5.12.1994 (Annexure P-5) referring to the earlier rejection vide letter dated 7.12.1990. There is no representation available on record vide which respondent No. 3 ever raised the issue of his appointment on the post of Clerk as against the recommendations for the post of Head Clerk/Accountant. Respondent No. 3 filed a civil suit on 25.10.1997 impugning the action of the official respondents regarding protection of his last drawn salary in Haryana Tanneries Limited. Even in that suit, neither respondent No. 3 claimed the relief for his appointment on a post higher than the post on which he was appointed, which cause of action arose to respondent No. 3 immediately when appointment on the post of Clerk-cum-Typist was offered to him, nor he stated that relief for such a claim is pending consideration with any of the authority. The aforesaid civil suit was decided in favour of respondent No. 3 on 23.12.2000. The appeal filed by the Board was accepted by the learned lower appellate court on

18.3.2003. The judgment and decree passed by the learned trial court was set aside. However, RSA No. 1857 of 2003 filed by respondent No. 3 is pending in this court.

16. Considering the aforesaid facts and then raising a grievance not with the Board where respondent No. 3 had been appointed, rather, with Hon"ble Chief Minister, a letter was got issued from the Government to the Board on 28.2.2007 for doing justice with respondent No. 3. As has already been discussed above, the aforesaid communication was on a wrong premise if considered in the light of the stand taken in the written statements filed by the State as well as the Board. If respondent No. 3 had any grievance on that account, he could raise such an issue within certain reasonable time after his appointment. Even the first letter issued by the Government in that regard was about 16 years after respondent No. 3 had been appointed as Clerk-cum-Typist in the Board. Final direction for re-designation of respondent No. 3 has been made in terms of a letter issued about 18 years of the initial appointment of respondent No. 3 in the Board. He was appointed on the post of Clerk-cum-Typist, which is the feeder cadre for the post of Mandi Supervisor-cum-Fee Collector. He was promoted as such as per his seniority on 3.5.2002. The petitioner was appointed as Mandi Supervisor-cum-Fee Collector on 17.11.2000, but now after about 18 years after his initial appointment, respondent No. 3 has been directed to be adjusted on the higher post of Mandi Supervisor-cum-Fee Collector, for which he was never recommended and interviewed and as a consequence thereof, on a single day has been granted three promotions treating him to have been appointed on the post of Mandi Supervisor-cum-Fee Collector from the date of his initial appointment, deemed to be promoted as Accountant on 23.2.1996, then deemed to be promoted as Assistant Secretary w.e.f. 31.3.1999 and finally Executive Officer-cum-Secretary w.e.f. 31.8.2004. It is relevant to mention that respondent No. 3 never worked on the post of Assistant Secretary. As a result of the aforesaid order dated 31.7.2007 (Annexure P-11), the petitioner has jumped the queue, as otherwise he was promoted on the post of Mandi Supervisor-cum-Fee Collector on 3.5.2002, but now has been treated as such w.e.f. 30.8.1989. All the persons, who were appointed during the aforesaid period of 13 years, will rank junior to the petitioner. None of them including the petitioner has been granted opportunity of hearing, which has resulted in unsettling the seniority list in all the cadres after a delay of more than a decade.

17. The contention raised by learned counsel for the petitioner that the Government does not have any power to direct the Board also has substance as firstly the stand of counsel for the State is that no such direction was issued, which was merely an advice, whereas the stand of counsel for the Board was that the action was taken on the directions of the State Government. No provision of the Act has been referred to under which such a direction could be issued by the Government to the Board. In fact, the Government should refrain from entering into such issues after decades and that too on wrong premise and without considering the ultimate effect of the order passed, which has resulted in

un-settling number of things settled long before and has further resulted in generating avoidable litigation.

18. For the reasons mentioned above, the impugned orders dated 28.2.2007 and 12.4.2007, whereby respondent No. 3 has been absorbed as Mandi Supervisor-cum-Fee Collector with retrospective effect from 30.8.1989 and his seniority has been fixed at Sr. No. 315-A and order dated 31.7.2007, whereby he is deemed to have been promoted to the post of Accountant w.e.f. 23.2.1996, Assistant Secretary w.e.f. 31.3.1999 and Executive Officer-cum-Secretary w.e.f. 31.8.2004, are set aside.

Respondent No. 3 shall be considered to have been appointed on the post of Clerk-cum-Typist from the date of initial appointment.

The writ petition stands disposed of.