
(1996) 09 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8647 of 1996

Satya Pal	Vs	APPELLANT
The State of Haryana		RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(F)

Citation : (1997) 115 PLR 328

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : R.K. Malik, for the Appellant; N.S. Bhinder, DA, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—The challenge in both these writ petitions is to Annexure P8, the order dated 31.5.1996, vide which the services at the petitioners Satya Pal and Madan Lal respectively were terminated. Satya Pal was appointed as Mali-cum-Chowkidar on 7.4.1986 while Madan Lal was appointed to the same post on 20.1.1986. Satya Pal was then appointed as Work Munshi on 10.7.1986 while Madan Lal on 20.1.1986 itself. Both these petitioners had filed Civil Writ Petition No. 9646 of 1988 praying that the respondents should frame a policy to regularise the services of the petitioners and their services should be regularised and the respondents should be restrained from dispensing with the services of the petitioners. This writ petition was disposed of by a Division Bench of this Court and the Court passed the following order:-

" The matter is covered by a Division Bench decision of this Court in Piara Singh v. State of Haryana 1988 (4) SLR 739. Accordingly the writ petition is allowed in the same terms with costs, which are assessed at Rs. 500/-.

The counsel for the petitioners has stated at Bar that after the stay was granted by this Court on 31.10.1988, the petitioners were relieved. If that is so, they would be entitled to be reinstated with continuity of service and other benefits.

Sd/- G.C. Mittal, Judge. Nov. 29, 1988. Sd/- S.S. Sodhi, Judge"

The petitioners continued to serve in the department but their services were terminated on 26.12.1992. The petitioners raised an industrial dispute and the matter was finally adjudicated upon and award in favour of the petitioners was published on 27.4.1995. Against this award the management had preferred a writ. The Division Bench issuing notice in the writ petition had limited it only to the question of payment of back wages. Thus, the award with regard to reinstatement had become final between the parties according to the petitioners. The management vide order dated 31.5.1996 Annexure P/8 to the respective petitions terminated the services of the petitioners. It is this order of the respondents which is assailed before this Court in both the writ petitions, mainly on the ground that the order is abuse of the authority, is contrary to the various judgments and in fact is directly violative of the policy decision of the respondents as contained in Annexure P/4 to the writ petition. A plea of discrimination was specifically taken in ground No. 2 of the writ petitions wherein it was stated that one Sat Pal and Rajinder who were appointed after the petitioners have been terminated to continue and in fact their services have even been regularised on the base of Annexure P/4.

2. The respondents filed reply to the writ petitions. The main plea was that the petitioners have been paid retrenchment benefits in accordance with the provisions of Section 25-F of the Industrial Disputes Act and as such dispensation of their services is in accordance with law. Further it was averred that the petitioners have got service pleas due to orders of the Court and they have no right to the post and no regular post is available. With regard to the plea of discrimination it was stated that the persons referred to were not employees of the same division and each division has a separate and individual identity. As such the plea of discrimination was without any valid premise.

3. Rejoinder was filed by the petitioners denying all these facts and reiterating and elaborating their stand in the writ petitions.

4. Both the learned counsel appearing before this Court fairly conceded that this case was squarely covered by the judgment of the Division Bench of this Court in the case of Subhash Chander and Anr. v. State of Haryana, C.W.P. No. 4378 of 1994 decided on 15.12.1994. The Division Bench of this Court in similar circumstances and upon the same basis and considering Annexure P/4 the instructions of the Government dated 27.5.1993, passed the following directions:-

"For reasons stated above, these writ petitions are allowed. The respondents are directed to pass appropriate orders for regularisation of services of the petitioners on the posts held by them on 31.3.1993, namely, the posts of Work Munshis/Work Mistris/Work Supervisors. Such orders should be passed within a period of two months from today. It shall, however, be open to the respondents to transfer and post the petitioners in any other project, circle or Division, in case it is found that their services can not be utilised in Rohtak circle. Each of the

petitioners shall get costs of Rs. 1000/- from the respondents."

5. Mr. Bhinder, learned counsel for the State argued that petitioners were not entitled to the benefit of Annexure P/4 as it was not a complete document and there were other earlier instructions governing the regularisation of employees. According to him the employees have to fulfil other conditions like being in regular employment for five years without 30 days of break at any time and 240 days in a year in addition to other conditions. This contention raised by the learned counsel does not appear to be correct for the reason that no such stand has been taken by the respondents in their counter affidavit nor they have annexed any such alleged instructions along with their counter. No such instructions have even been produced in Court. The Division Bench of this Court in the case of Subhash Chander (supra) had gone into the entire matter at great length and even there such a contention was neither raised nor pleaded. It is also conceded by Mr. Bhinder that the management has not preferred any appeal against the order of the Division bench. Thus, the same has become a settled final principle of law as far as this Court is concerned. To any mind these petitioners are entitled to the same relief which was granted to the petitioners in Subhash Chander's case (supra) by the Division Bench of this Court.

6. Another factor which the Court has to consider is whether the plea of retrenchment as taken by the respondents in their counter is in accordance with law and is sustainable. No doubt the management has a right to retrench its employees by following a procedure under the Industrial Disputes Act, but the retrenchment | basic principle is "last come first go" and that fact has not even been disputed in this counter that names of the persons stated in ground (2) of the writ petition were appointed after the petitioners and they have been permitted to continue and their services have already been regularised.

7. The plea that the employees belong to a division is again not well founded primarily for the reason that as per Annexure P/4 and the judgment of the Division Bench, every regular employee is liable to be transferred to any division in the State of Haryana. Thus, the policy framed by the respondents themselves clearly indicates that the argument now raised by the respondent is nothing but an after-thought to frustrate the claim of the petitioners. The respondents are bound by the judgment of the Division Bench of this Court and ought to have implemented the said judgment with parity without discrimination and ill-will to all the persons who were entitled to the benefits of the policy and judgment of Division Bench of this Court.

8. Some element of bias in the action of the respondents against the petitioners cannot be ruled out. The respondents earlier terminated the services of the petitioners and they were reinstated with full back wages and continuity of service. Back wages is a question pending in the writ Court in another writ, but reinstatement with continuity of service has become final between the parties and as such the respondents are bound by the Award and are obliged to implement the same in its spirit and substance. The attempt seems to be more

to frustrate the claim of the petitioners on one pretext or the other in spite of the fact that the petitioners were also given benefits of the Piara Singh's judgment by another Division Bench of this Court.

9. Learned counsel for the petitioners has specifically argued that the petitioner fulfil all qualifications in accordance with the policy of the respondents and are entitled to be regularised. The contention certainly needs to be considered and specially when the impugned order Annexure P/8 suffers from the-vice of bias and arbitrariness. There appears to be no justification in the plea of retrenchment. Probably it is the indirect method of rendering the award of the labour Court dated 27.4.1995 in effective and infructuous. Such an attitude would least be expected from a management of the State itself. There is not a whisper in the entire counter as to how and why the juniors have been permitted to continue in service and their services had been regularised in preference to the petitioners.

10. I find that these petitions have merit and the petitioners are entitled to the relief from this Court. Consequently Annexure P8 is set aside and quashed and further direction is issued to the respondents to consider the case of the petitioners for regularisation in accordance with the judgment of the Division Bench in the case of Subhash Chander (supra). The petitions are allowed with costs which are assessed at 1000/- each.