
(1996) 03 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3502 of 1987

Shri Ashok Kumar Pathania	Vs	APPELLANT
Indian Council for Child Welfare and Others		RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1996) 113 PLR 426

Hon'ble Judges : Swantatar Kumar, J;R.P. Sethi, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; R.S. Mittal Satinder Pal Kaur and Amit Rawal, for the Respondent

Final Decision : Dismissed

Judgement

Swatantar Kumar, J.—By means of the present writ petition under Articles 226/227 of the Constitution of India the petitioner is praying for issuance of an appropriate Writ, order or Direction for quashing the impugned order of termination dated 6.11.1986 and for grant of all consequential reliefs flowing therefrom. Before we direct ourselves to discuss the various submissions made by the petitioner in person and by the counsel for the respondent, we consider it appropriate to refer to some basic facts necessary for adjudication of the present case. The petitioner who was working as Assistant Secretary (Accounts and Administration) was directed to look after the duties of the Secretary of Indian Council of Child Welfare, Haryana, hereinafter referred to as the Council, vide order dated 30.3.1982. Subsequently and in furtherance to the resolution of the Council the President of the Council vide order dated 8.2.1983 appointed the petitioner as Secretary on regular basis. For the officiating period, the petitioner was to get the pay scale of Assistant Secretary plus Rs. 200/- as special pay, while from the date of the said order, the petitioner was required to receive salary in the pay scale of Rs. 1500-60-1920-80-2000/-. The petitioner was put on probation for a period of one year from 30.3.1982. The petitioner claims to

have served the council with great sense of sincerity and responsibility and his work was appreciated by all concerned and he was awarded gold medal by the then Governor of Haryana who is also the President of the Council. Various commendation certificates were issued to the petitioner. Last in this regard was issued on 8.6.1984, a copy of which has been placed as Annexure P/9 on the record. As per rules the age of retirement of the petitioner would be 60 years and this was so resolved by the Executive Committee of the Council in its resolution dated 9.9.1972. Upon successful completion of the probation period of one year the petitioner was confirmed as Secretary of the said Council vide order dated 19.4.1983. Vide order dated 14.1.1986 the pay scale of the Secretary was revised and the petitioner was held entitled to receive the salary in the sum of Rs. 1700-60-2000-75-2150/-. The allegation of the petitioner is that as he was not succumbing to the pressure of certain highly placed officers in the Secretariat, there were certain vested interests which were trying to harm the petitioner and his allowance etc. were not released and in fact vide order dated 8.2.1993 the special pay of Rs. 200/- was not given to him, against which he had moved a representation and the said order was corrected. In the meeting of the Executive Committee of the respondent held on 6.11.1986 at 3.30 P.M. the constitution of the Council was amended and was put to the annual general meeting of the respondent at 4.30 P.M. on the same day. As a result of this amendment the post of the Secretary of the Council was declared surplus and consequently the services of the petitioner were terminated and he was given the order of termination dated 6.11.1986 along with a bank draft representing the three months salary. The petitioner was immediately relieved from service. On these facts the petitioner has raised various submissions.

2. The respondents in their counter originally filed, had not refuted or rebutted the allegation, of mala fide properly and in fact some of the allegations made by the petitioner would be deemed to have been admitted by the respondents in absence of specific and definite reply to such allegations. Separate written statements have been filed on behalf of the Indian Council for Child Welfare respondent No. 1 and respondents No. 4 and 5. It has been stated in the counter that the action is bonafide and as the post itself was abolished the services of the petitioner were consequently terminated. According to the respondents the petitioner could not be reverted to the original post because he was directly appointed to the post of Secretary of the respondent Council.

3. The respondents have raised a preliminary objection as to the maintainability of the writ petition. According to the respondents, respondent-Society is not a State within the meaning of Article 12 of the Constitution of India and as such is not amenable to the writ jurisdiction of this Court. The counsel for the respondents have relied upon an order of the Division Bench of this Court and that of the Supreme Court in this regard.

4. Prima-facie we feel that the petitioner has an arguable case on merits as well as in response to this preliminary objection based upon certain other detailed

judgments of the Hon''ble Supreme Court of India and various High Court. But, in view of the order of Division Bench of this Court and the order of the Supreme Court, we find it unnecessary to go into various contentions raised on behalf of the petitioner. Thus we proceed to discuss the preliminary objection raised on behalf of the respondents with regard to the maintainability of the present writ petition. Counsel for the respondents has placed reliance upon the judgment of Division Bench of this Court in Civil Writ Petition No. 12329 of 1993. Navtej Singh v. Haryana State Council for Child Welfare etc. decided on 22.2.1995 where the Court relying upon the order of the Supreme Court dismissed the writ petition being not maintainable. The Division Bench held as under :-

"In view of the Preliminary objection taken by the respondents we do not find any force in this petition which is dismissed."

5. The Hon''ble Supreme Court in the case of Smt. Savtri Devi v. The State of Haryana and Ors., SLP (Civil No. 9566 of 1980) held that Child Welfare Council is not a State within the meaning of Article 12 of the Constitution of India and while dismissing the SLP on this ground alone passed the following order :-

"8.1.80-This matter was called in for hearing today (afternoon).

CORAM:

P.N. Bhagwati.

Bharulislam.

For the Petitioner : Mr. G.K. Srivastva and Mr. Sarwa Mitter, Advocates.

For the Respondent Nos. 2 and 3 : Mr. V.K. Tarkunde, Sr. Advocate Mr. A.K. Goel, Advocate.

Upon hearing the counsel, the court dismissed the SLP on the ground that no petition can lie against the District Council which is not a State within the meaning of Article 12 of the Constitution. Sd/- Court Master."

6. The petitioner who is appearing in person has relied upon some judgments of Hon''ble Supreme Court as well as of High Court to argue that keeping in view the constitution, functions and financial control over these Societies of the State of Haryana, the respondent-Council has to be treated as a State and/or an instrumentality of the State functioning for a public purpose and, thus, amenable to writ jurisdiction. In this regard he relies upon Sheela Barse Vs. Secretary, Children's Aid Society and others, .

7. We are afraid that in view of the clear order of the Supreme Court of India as reproduced above we are unable to hold that the respondent is a state or instrumentality of the State within the meaning of Article 12 of the Constitution of India and consequently amenable in writ jurisdiction before this Court. In view of the above we hold that the present writ petition is not maintainable and is liable to be dismissed on this short ground alone.

8. In result, the petition is dismissed as not maintainable. There shall be no order as to costs.