
(1977) 04 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3122 of 1972

Sohan Lal etc.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-04-1977

Acts Referred:

Punjab Civil Services Rules — Rule 10.2, 2.21
Punjab Reorganisation Act, 1966 — Section 79, 79(1), 79(4), 79(5), 80

Citation : (1977) 2 ILR (P&H) 582

Hon'ble Judges : S.S. Sandhawalia, J; S.P. Goyal, J

Bench : Division Bench

Advocate : Kuldip Singh, for the Appellant; D.S. Nehra, Arun Nehra for Respondent No. 2 and H.S. Hooda, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, J.—Whether the Government employees engaged in the construction work of the Bhakra Nangal and the Beas Projects immediately before the appointed day of the 1st of November, 1966, are deemed to be on foreign service or on deputation to the respective Management Boards of the said Projects is the significant-question which is before this Bench on a reference.

(2) The three connected writ petitions C.W. No. 3122/72--Sohan Lal and Ors. v. Union of India and Ors. C.W. No. 2215/72--Raj Kumar Gupta and Ors. v. Union of India and Ors. and C.W. No. 1820/71--J.D. Jain and Ors. v. Union of India, etc. raise similar, if not identical, questions of fact and law. Learned Counsel for the parties have, therefore, agreed that the judgment in C.W. No. 3122/72--Sohan Lal and Ors. v. Union of India and Ors. would govern all the three cases. A reference to the facts of the aforesaid petition would, therefore, suffice.

3. The thirty-three writ Petitioners were apparently the employees of the undivided State of Punjab who were working in various capacities on the construction work of the Bhakra Nangal Project prior to the reorganisation of the State in the year 1966. By virtue of the Punjab Reorganisation Act, 1966, the

Bhakra Management Board was constituted by the Central Government under the provisions of Section 79 of the said Act. By Sub-section (4) of Section 79 it was provided that every person who immediately before the constitution of the said Board was engaged in the construction work of the said Project shall continue to be so employed under the Board on the same terms and conditions as were applicable to him before such constitution until the Central Government by order directs otherwise. In the wake of the reorganisation of the State, the Petitioners were allocated to and stand integrated in the employment of the State of Haryana. It is their case that with effect from the 1st of November, 1966, which is the appointed day under the Punjab Reorganisation Act, the administrative control of the Bhakra Management Board vested with the Central Government and the Petitioners, therefore, were no longer under the administrative control of the State of Haryana to which they have been allocated. In this manner, the Petitioners claim that they have to be automatically treated as being on foreign service with the Bhakra Management Board and therefore, entitled to all the relevant benefits as laid out in Chapter X of the Punjab Civil Service Rules, Volume I, Part I, which pertains to foreign service and deputation within India.

4. It has been averred on behalf of the Petitioners that their case falls within the definition of foreign service as laid out in Rule 2.21 of Chapter II of the Punjab Civil Service Rules, Volume I, Part I. By way of analogy it has been averred that the employees of the Haryana State who were working in the Haryana State Minor Irrigation (Tubewells) Corporation Ltd. are entitled to the deputation allowance and therefore, it is claimed that the Petitioners cannot be deprived of the same whilst working under the Bhakra, Management Board. In the alternative it is sought to be made out that the Petitioners are in any case deemed to be on deputation to the Bhakra Management Board because their services with the Bhakra Management Board are on a temporary basis and the said Board may at any time in, consultation with the Haryana State and with the previous approval of the Central Government, return any of the Petitioners to his parent department. In sum, the Petitioners' case is that they are on deputation and on foreign service after the promulgation of the Punjab Reorganisation Act, 1966 and the subsequent allocation of their services to the State of Haryana.

5. The Petitioners moved the State of Haryana (Respondent No. 3) for the grant of deputation allowance whilst being employed with the Bhakra Management Board vide Annexure "E", dated the 8th of June, 1970, attached to the petition. However, the Respondent-State vide Annexure "H", dated 21st September, 1970, declined this request on the ground that by virtue of Section 79(4) of the Punjab Reorganisation Act, 1966, the staff working on the Project has to continue on the same terms and conditions of service as were applicable to them before the 1st of November, 1966, until the Central Government by order directs otherwise.

6. It is further the Petitioners' case that the employees who were allocated to the State of Punjab or to the State of Haryana and either working with the Beas Construction Board or with the Bhakra Management Board are entitled to

deputation allowance because the legislative provisions applicable to them are identical. A reference has been made on behalf of the Petitioners to certain communications pertaining to the deputation of Punjab Government employees to the Union Territory Chandigarh and to the Beas Construction Board.

7. On behalf of the Respondent-State of Haryana as also on behalf, of the Bhakra Management Board, the firm stand that has been taken is that the Petitioners do not and cannot possibly fall within the definition of foreign service as laid out in the Rules, it has been averred that the expenditure incurred on the salaries of the establishment and maintenance of the works of Bhakra Nangal Project is shared entirely by the participating States and thus, the Petitioners receive their pay out of the revenues of the participating State Governments. It is stated that the organisation of the Bhakra Management Board is merely an agency of the participating State Governments for the maintenance, repairs and operation of certain parts of the bhakra Nangai Project. Particular reliance has been placed by the Respondent--State on Annexure R-3/1 (attached to tneurepiy; which in terms provided even in 1963 that the transfer of Punjab Government employees to the Bhakra Nangai and the Beas Projects would not be considered as on deputation and no deputation allowance will be admissible to them. It has then been reiterated that Section 79 of the Punjab Reorganisation Act, 1966, in terms provides that the employees working on the project would continue to do so on the same terms and conditions of service as were applicable to them before the constitution of the respective boards until the Central Government by order directs otherwise, in para 10 of the return of the Respondent-estate it is averred that the Petitioners have neither been deputed to nor sent on foreign service but their services have been placed under the Bhakra Management Board by operation of law u/s 79 of the Act.

8. In the return filed on behalf of the Board it is further highlighted that deputation allowance in all cases is allowed and settled with the approval of both the borrowing and the lending Governments and in, the present case neither of these conditions can even remotely be said to be satisfied. It is averred that the Petitioners even before the 1st of November, 1966, were admittedly not getting any deputation allowance whatsoever for working on the Bhakra Nangai Project and they are not entitled to any such allowance thereafter under the provisions of Section 79(4) of the Act. It is categorically averred that the Petitioners have not been transferred by the Haryana Government to the Bhakra Management Board on a temporary basis as claimed by them but since they were already working on the Bhakra Nangal Project on the appointed day their services were automatically placed under the control of the Management Board constituted thereunder.

9. Before advertng to the respective contentions on either side it is worthwhile noticing that the virtually admitted position is that prior to the Punjab Reorganisation Act, 1966, the construction work on the Bhakra Nangal Project and the Beas Project was already in progress departmentally. On the

reorganisation of the State of Punjab special provisions for the Bhakra-Nangal and Beas Projects were made by Part VIII of the Act which provided for the constitution of the two statutory bodies namely the Bhakra Management Board and the Beas Construction Board for the continuance of the work on the aforesaid Projects. It deserves express mention that the legal position vis-a-vis the Bhakra Management Board u/s 79 and the Beas Construction Board, u/s 80 of the Act is identical and the material and corresponding provisions are in pari materia. It, therefore, suffices to first set down the relevant parts of Section 79 of the Punjab Reorganisation Act for facility of reference around which a substantial part of the argument must turn. The corresponding provisions regarding the Beas Construction Board are laid out in identical terms in Sub-section (3) of Section 80 of the Act:

Section 79. Bhakra Management Board.--

(1) The Central Government shall constitute a Board to be called the Bhakra Management Board for the administration, maintenance and operation of the following works, namely:

* * *

* * *

(4) The Bhakra Management Board may employ such staff as it may consider necessary for the efficient discharge of its functions under this Act.

Provided that every person who immediately before the constitution of the said Board was engaged in the construction, maintenance or operation of the works in Sub-section (1) shall continue to be so employed under the Board in connection with the said works on the same terms and conditions of service as were applicable to him before such constitution until the Central Government by order directs otherwise;

Provided further that the said Board may at any time in consultation with State Government Or the Electricity Board concerned and with the previous approval of the Central Government return any such person for service under that Government or Board.

It is plain from the provisions aforesaid that as regard the employment of persons who were immediately before the appointed day engaged in the construction work of the Bhakra Nangal Project, no volition was left by the statute either with the employees or their employer State Governments to withdraw from the employment on the said project. This was so both at the original stage on the appointed day under the Act and also at the subsequent stage when the aforesaid employees may have been allocated to the successor State of Punjab and Haryana. Thus as a matter of law, all persons employed on the project immediately prior to the constitution of Bhakra Management Board were bound to be continued to be so employed therein on the same terms and conditions as were applicable to them originally. The power to dispense with such

employment was vested either in the discretion of the Central Government, who might by order direct otherwise or in the alternative the Bhakra Management Board after consultation with the State Government concerned and with the approval of the Central Government return the services of such employees to their employer States. The significant thing that emerges is that the persons employed on the project were bound hand and foot to continue service under the Bhakra Management Board irrespective of either their own wishes or the volition of the State Governments to whom they may be allocated. It is only the Central Government itself or the Board with the approval of the Central Government who could choose to dispense with their services and return them to their original employers. It is against this background that the claim of the Petitioners that they must be deemed on foreign service with the Bhakra Management Board or in any case on deputation therewith has to be appraised.

10. Mr. Kuldip Singh on behalf of the Petitioners has staked their claim primarily on the ground that they must be deemed to be on foreign service with the Board because their case comes squarely within the definition thereof as laid in Rule 2.21 of the Punjab Civil Services Rules, Volume I, Part I. He, therefore, contends that the Petitioners are entitled to all the benefits enjoined by the provisions of Chapter X of the said Rules pertaining to foreign service and deputation within India.

11. In view of the argument aforesaid the language of Rule 2.21 becomes patently significant and the said rule may first be set down for facility of reference:

2.21. Foreign service means service in which a Government employee receives his pay with the sanction of Government from any source other than the revenues of the Union or State Government or a Union Territory.

The plain and brief language quoted above can hardly leave any manner of doubt that two conditions are paramount and have to be satisfied before an employee may be deemed on foreign service. Firstly, its very nature seems to be dependent on the volition of the employer and it is only when the Government sanctions such an employment that an employee is deemed to be on foreign service. Here the emphasis primarily is on the approval or sanction of the employer. One can hardly imagine an employee on foreign service without the sanction or the volition of an employer who may not either wish to part with the employee or be willing to sanction his service elsewhere. It is plain that only when this pre-condition of sanction or approval by the Government is satisfied that the next issue would arise as to the source from which such an employee receives his pay, namely, that this must stem from sources other than the State revenues. Even the learned Counsel for both the parties did not seem to be at any variance on the point that both the aforesaid conditions laid out by Rule 2.21 have to be satisfied.

12. The core of the controversy betwixt the parties is, therefore, firstly on the

issue of the sanction by the Government. Whilst Mr. Kuldip Singh contended that in the present case sanction should be assumed in favour of the Petitioners, Mr. Nehra on behalf of the Respondents contended forcefully that sanction implies a voluntary act of will by the employer and thus no question of sanction arises when something is imposed or enjoined by the command of law itself.

13. I am of the view that the Respondents are on firm ground in contending that no issue of sanction by the Government arises here by virtue of the clear and the mandatory language of Section 79(4) of the Act. Thereby neither the employees nor the State Governments are left with any choice so far as the continuation in service under the Board of the persons earlier engaged on the project is concerned. It is plain that the very word "sanction" implies a conscious application of mind and a freedom of choice to the sanctioning authority. Where, as here, there is no right to refuse continuity of employment under the Board, no question of sanction by the State Government can possibly arise. Grant of sanction or approval obviously is a voluntary act of the employer and cannot possibly be equated with a categoric statutory imposition from above. Therefore, one cannot possibly accede to the argument of the Petitioners' counsel that sanction of the State Government here must be presumed. There does not appear to be any warrant for creating any such fiction of presuming a sanction where in fact there is a clear and emphatic imposition by the law itself.

14. Mr. Nehra had also plausibly contended that as an employment on foreign service obviously implies a positive decision in consultation with the foreign employer. Indeed it postulates an application of the mind not only of the original employer but also of the employer who is borrowing the services of the employee. Foreign service further necessarily leads to fiscal results and a burden to the Exchequer which has to be consciously undertaken. In the present case where neither the employer nor the employee nor even the Management Board itself is left with any volition in the matter, one can hardly come to the conclusion that the pre-requisite of the definition of foreign service would stand satisfied.

15. The view aforesaid is further buttressed when reference is made to the very first Rule 10.2 in the chapter on foreign service and deputation in India. This is in the following terms:

10.2(a) No Government employee may be transferred to foreign service against his will

(b) Subject to the conditions laid down in these rules a competent authority may sanction the transfer of Government employee to foreign service in or out of India.

Reading Rule 2.21 with the above-quoted rule would lead to the further result that foreign service is indeed consensual in nature. It implies not, only the sanction of the employer Government but equally the consent of the employee who cannot be so transferred against his will. As I said earlier, u/s 79(4) neither the employer nor the employee is indeed left with any choice in regard to the

continuation of service under the Bhakra Management Board.

16. I am clearly of the view that the essential pre-requisite for foreign service, namely, a voluntary sanction by the Government is entirely lacking in the present case.

17. In fairness to Mr. Nehra one must notice that he had contended further that the second condition under Rule 2.21, namely, that the employee must receive his pay from any source other than the revenue of the Union or the State Government or a Union Territory, also does not stand satisfied in the present case. Relying on Sub-section (5) of Section 79 and the averments made in the return, counsel contended that the financial resources of the Bhakra Management Board were derived entirely from the States of Punjab, Haryana and Rajasthan and the Board was no more than a managing and accounting agency on behalf of these States. On these premises, it was contended that in fact the Petitioners receiving their pay from the Board were indeed getting the same from no source other than that of State revenues.

18. In view of the fact that I have earlier held that the first and the primary condition of the sanction of the Government here does not stand satisfied I think it unnecessary to examine and pronounce on the aforesaid stand of the Respondents.

19. Repelled on his primary argument, learned Counsel for the Petitioners had then contended rather half-heartedly that in case the Petitioners are not held to be on foreign service to the Management Board, they should be deemed to be on deputation thereto.

20. I am unable to find much merit in the alternative argument either. It was fairly conceded before us that there was no statutory definition of the word "deputation" in the Service Rules. However, it appears to be plain that the concept of deputation is equally consensual and involves the voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It may equally involve the consent of the employee to go, on deputation or not. Neither of these conditions are remotely satisfied in the context of Section 79(4) of the Act. All the considerations which have been noticed above in the context of foreign service seem to apply mutatis, mutandis as regards deputation as well.

21. The claim on behalf of the Petitioners to be treated as being on deputation is further negated by the reliance on behalf of the Respondents on annexure R. 3/1. This is a communication on behalf of the Government of the undivided State of Punjab as far back as the year 1963. Even as regards the employees of the State Government who were then working on the Bhakra Nangal Project, it was expressly laid down as follows:

The transfer of a Punjab Government servant from one Department to another Department under the Punjab Government including Bhakra Nangal Project, Beas

Project and Soil Conservation Board will not be considered as on deputation and no deputation allowance will be admissible.

It is plain from the above and indeed conceded on behalf of the Petitioners that prior to the constitution of the Bhakra Management Board the Petitioners who were working on the project were not receiving any deputation allowance. One fails to see how they can be on any better footing in view of the clear provisions of Section 79(4) which lays down that such employees would continue to work on the same terms and conditions as were applicable to them earlier. It was rightly contended on behalf of the Respondents that u/s 79(4) of the Act, the terms and conditions of service of the employees working on the project immediately before the constitution of the Board were frozen as they existed at the time and they were obliged to continue on the same terms under the Board. In this context therefore, no question of treating the Petitioners on deputation to the Board indeed arises. The second contention is equally devoid of merit and has to be rejected.

22. The writ petitions are without merit and are hereby dismissed. The parties will, however, be left to bear their own costs.