
(1994) 04 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 475 of 1981

Sukhmander Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-04-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (1994) 107 PLR 700

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Vinod Sharma, for the Appellant; G.S. Cheema, AAG, for Respondent Nos. 1, 2, 4 and 5, P.K. Mukhenja and V. Ramasarup, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This order will also dispose of C.W.P.No. 510 of 1981.

2. In both these writ petitions orders dated January 17, 1981 issued by the Managing Director of the Bhatinda Central Co-operative Bank Ltd. Bhatinda (hereinafter called "the Bank"), are under challenge. Since the grounds for challenging these orders are common in both these writ petitions, it is proper to dispose them of by a common order.

3. In the first writ petition the petitioner Sukhmander Singh has come out with a case that he was appointed as Junior Clerk in the service of the respondent-Bank vide appointment letter dated 27.11.1979, which was issued after regular selection. This regular selection involved advertisement of the posts by the respondent-Bank, invitation of applications by it, and consideration of the competing claims of all the eligible applicants by a duly constituted selection committee. The petitioner joined service in pursuance of the appointment letter dated 27.11.1979. After about one year of his appointment the petitioner was served with a notice dated 2.12.1980 by the Managing Director of the respondent-Bank and he was called upon to show cause as to why his selection

for appointment as Junior Clerk be not upset. The petitioner made a representation against the said notice and the Managing Director of the respondent -Bank issued the impugned order dated 17.1.1981 seeking to terminate his services by giving one month's notice. The petitioner has questioned the termination of his services on a number of grounds to which a reference will be made later on.

4. In the second writ petition, i.e. C.W.P. No. 510 of 1981, two petitioners Sukhmander Singh and Gurmail Singh have made an identical challenge to the orders dated 17.1.1981. They too have claimed that they were given appointments as Junior Clerks by the respondent-Bank after due selection. They too were called upon to show cause as to why action be not taken for upsetting their selection. They had also submitted their representations whereupon the impugned order was issued.

5. Respondents Nos. 1, 2, 4 and 5 have filed a joint reply and have contested the writ petitions by asserting that after the appointment of the petitioners an enquiry that after the appointment of the petitioners an enquiry was got conducted in the matter of selection for the appointment of Junior Clerks and in that enquiry it was revealed that the petitioners had been given appointment despite being less meritorious and that reservation as per roster system had not been given effect to by the respondent -Bank. According to the respondents, on the basis of this report the Registrar, Co-operative Societies Punjab, issued directions to the respondent-Bank to take steps for the termination of the services of the petitioners. This was followed by a notice issued by the respondent-Bank and after the petitioners had filed their representations the impugned orders were passed.

6. Respondent No. 6 has filed a separate reply and, while raising a preliminary objection to the entertainability of the writ petitions on the ground that the respondent-Bank is not a State within the meaning, of the term under Article 12 of the Constitution of India, has by and large repeated those very averments which are found in the reply of respondents Nos. 1, 2, 4 and 5. In view of the virtual identity of the averments in the written statement of respondent No. 6, it is not necessary to give a detailed reference of the same.

7. The first and the foremost argument advanced by the learned counsel for the petitioners is that once they had been given regular appointments after due selection, it was not open to the respondent-Bank to have taken any step for termination of their services. They submitted that, having been appointed in pursuance of regular selection, the petitioners had acquired a status of substantive Junior Clerks and their services could not have been terminated except after an enquiry in accordance with the relevant rules and the principles of natural justice. This argument of the learned counsel for the petitioners cannot be accepted in the wide sweep in which it has been advanced. Although it is true that a person who is given appointment after regular selection acquires a right to hold the post but that right is not an absolute right. It is perfectly within the

competence of the employer to take appropriate action for termination of services of a person appointed after regular selection in case it is discovered that the selection is vitiated by violation of the rules or any other constitutional provision. In that eventuality what the employer is required to do is to comply with the rules of natural justice and then pass appropriate orders. What has the respondent-Bank done in the present case is to have given a notice to the petitioners to submit their representations against the proposed action and then it has issued the impugned orders. It can thus be said that the respondent-Bank has made an attempt to make a show of compliance of the rules of natural justice before taking action resulting in an adverse order qua the petitioners. However, what is to be seen by the Court in these cases is as to whether the notice given by the respondent-Bank to the petitioners was sufficient for real and substantial compliance of the rules of natural justice. A look on the contents of the impugned order Annexure P.4 as well as the averments made in the writ petitions and the replies filed by the respondents shows that some enquiry was conducted in the matter of selection made by the respondent-Bank as per the directions given by the Registrar, Co-operative Societies, Punjab. That enquiry was not held by associating the petitioners. Rather it was an enquiry held at the back of the petitioners. May be that the said enquiry was a fact-finding enquiry but this is an admitted position that the report submitted by the Inquiry Officer constituted the basis for initiation of action by the respondent-Bank under the directions of the Registrar, Co-operative Societies, Punjab. That report was not made available to the petitioners alongwith the notice dated 2.12.1980 or at any time thereafter. That report formed the material adverse to the petitioners and, therefore, use of the same by the respondent-Bank could have been justified only if the report was made available to the petitioners and they were given an opportunity to make representation against the contents of that report and to controvert the findings given by the Inquiry Officer. That having not been done, I have little hesitation in holding that before passing the impugned orders the respondent-Bank did not make real and substantial compliance of the rule of audi alteram partem.

8. The second submission made by the learned counsel for the petitioners is that even if there was some element of justification in the action taken by the respondent-Bank, it ought not to have terminated the service of the petitioners in view of the availability of vacant posts. By inviting Court's attention to paragraph 14 of the writ petition, the learned counsel submitted that once the petitioners had been found fit for regular appointment the respondent-Bank should have accommodated them against the available vacant posts. A look on the contents of the replies filed by the respondents shows that the averments made in paragraph 14 of the writ petition have not been controverted. It can, thus, be said that when action for terminating the services of the petitioners had been initiated the posts of Junior Clerks were available. In my considered opinion, the Bank ought to have applied its mind to this aspect of the matter before making the order of termination of services of the petitioners even though

it had found that the appointment had been given to the petitioners ignoring better merit of other persons and even after it had found that full compliance of the roster system had not been done. In cases of ad-hoc appointees also the Courts have taken the view that termination of services of the persons should not be brought about in case vacant posts are available. That view has been expressed in *Rattan Lal and Others Vs. State of Haryana and Others*, , and *State of Haryana and others Vs. Piara Singh and others etc. etc.*,

9. If that is the position of law in the case of ad-hoc appointees, then there was little justification for the respondent-Bank to have resorted to the methodology of terminating the services of the petitioners despite the availability of vacant posts.

10. Lastly the learned counsel for the petitioners avers that the petitioners have continued in service for the last 14 years by now and even though their continuance in service after 17.1.1981 is in the light of the injunction order passed by this Court, at this stage of their career the Court must not allow the respondent-Bank to bring an end to their employment. I have mentioned this argument of the learned counsel for the petitioners only in order to fortify the final relief which I am giving to the petitioner, though in my view it is not necessary to make any adjudication on the argument of the learned counsel of the petitioners about the legitimacy of the action which the Bank could have taken after decision of the writ petitions in case it was adverse to the petitioners. However, since I have already come to the conclusion that the order passed by the respondent-Bank on 17.11.1981 is vitiated on account of patent violation of the rules of natural justice and also on the ground that services of the petitioners could not have been dispensed with despite the availability of the vacant posts, I leave this question for decision in an appropriate case.

11. Before parting, I would dispose of the preliminary objection raised by the respondent-Bank about the entertain ability of the petitions. In my opinion, the preliminary objection raised by the respondents cannot be taken by the Court for long. It is sufficient to mention that the respondent-Bank had taken action under the direction issued by the Registrar, Co-operative Societies, Punjab, and so there can be no manner of doubt that a writ, petition under Article 226 of the Constitution can always be entertained and decided against the Registrar, Co-operative Societies, Punjab, who is a statutory Government Functionary. In the *The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another*, , the apex Court has held that a writ petition is maintainable against a co-operative society when an order passed by a statutory functionary like Registrar is under challenge.

12. For the aforesaid reasons, these writ petitions are allowed, the impugned order dated 17.1.1981 in both the writ petitions is declared illegal and is hereby quashed. The petitioners shall get all the consequential benefits.