
(1990) 08 P&H CK 0089
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3885 of 1988

Suresh Chander Sharma (Dr.) and Others APPELLANT
Vs
The Haryana Dairy Development Cooperative Federation Ltd. RESPONDENT
and Another

Date of Decision : 01-08-1990

Acts Referred:

Constitution of India, 1950 — Article 311, 38, 41, 43
Haryana Co-operative Societies Act, 1984 — Section 37, 37(1), 37(2)

Citation : (1991) 1 ILR (P&H) 499

Hon'ble Judges : I.S. Tiwana, J;A.S. Nehra, J

Bench : Division Bench

Advocate : J.L. Gupta and Surya Kant, for the Appellant; J.S. Shahpuri, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—Learned Counsel for the parties are agreed that in view of the identity of facts and the contentions raised therein these four Civil Writ Petitions Nos. 3885, 3922, 3923 and 4028 of 1988 can conveniently be disposed of together. They are further agreed that for this purpose the facts stated in C.W.P. No. 3885 may be taken as fairly representative of the case of the other Petitioners.

2. The three Petitioners in this petition were initially employed as Management Trainees by the Respondent Federation. Later, two of them, i.e., Nos. 2 and 3, became full-fledged Managers, while No. 1 still continued to work as Trainee incharge (Procurement and Inputs), Milk Union, Rohtak. They have two/three years service to their credit. Now they have gone out of service on account of abolition of their posts. To impugn the termination of their services, their Learned Counsel Mr. J.L. Gupta, Senior Advocate, has raised these three principal contentions:

(i) The resolution of the Federation, dated May 4, 1988, abolishing certain

number of posts and more particularly those of the Petitioners, lacks bona fides.

(ii) The Federation had no legal authority to abolish the posts and declare the services of the Petitioners as surplus. This is more so in the light of the Directive Principles enshrined in Articles 38, 41 and 43 of the Constitution of India.

(iii) The abolition of the posts of the Petitioners is violative of Section 37 of the Haryana Cooperative Societies Act, 1984 as on prior permission of the Registrar, Cooperative Societies, Haryana was obtained to delete the class of employees like the Petitioners from the common cadre.

3. As against this, the stand of the Respondents, i.e. Haryana Dairy Development Cooperative Federation Limited and the Registrar, Cooperative Societies, Haryana, who filed a joint written statement, is, in their own words, as follows:

The answering Federation incurred the accumulated losses of roughly about 27 crores of rupees as on June 30, 1987. (Copy of the balance-sheet is Annexure Rule 3 to the reply)., The Federation, therefore) thought of taking measures to restrict their working to minimise the loss and to retrench the unnecessary staff which has been actually retrenched keeping its own working load. This retrenchment of the staff was necessary so that further losses are not incurred. The Federation, therefore, abolished certain jobs including the jobs of the 3 Petitioners.

Their services were terminated and they were given one month's salary in lieu of notice as provided in the terms of agreement. ...They were junior most officers in the Federation. ...Not only the services of these three Petitioners have" been terminated, besides services of 33 more employees have" also been terminated. The process of terminating the services of others besides the above 36 employees continues.

The Board actually came to the conclusion that over six hundred workers/supervisors can be retrenched being surplus. The steps to complete the process will definitely take further time. ...As a part of better management, steps are underway to reduce the surplus staff.

In order to establish its bona fides, the Federation has further pleaded:

Keeping in view the accumulated losses as evident from the balance sheet, economy measures were taken in order to relieve the Federation from the debt trap. An agenda was placed before the Board of Directors" in the meeting held on 4th May, 1988 where it was made clear that total requirement of the staff at present was 1494 and already there was a strength of 1725 employees. Surplus deficit staff to the extent of 636 and 405 respectively after making adjustment, surplus staff remained around 250 only. The services of the employees were terminated strictly in accordance with law laid down by the Hon"ble Supreme Court "last come-first go" and the posts of Management Trainees as already stated above were abolished as an economy measure in the bona fide belief.

In order to meet the challenge on the basis of Section 37 of the Cooperative Societies Act, it is stated that as abolition of posts has not led to defection of any class of classes of employees, there is no violation of the Section involved. There are many posts of Managers (Sales) against which senior incumbents to the writ Petitioner are holding charge and have been retained.

4. This stand of the Respondents appears to be wholly truthful and finds enough of support from the facts pleaded in the petition itself. Some of these are the Respondent Federation also went on Suffering losses, an approximate details of which from the year 1985-86 is as follows:

Year Amount (Rs in crore) Accumulated Loss

1985-86 2 . 00 18 . 50

1986-87 2 . 13 20 . 63

Ultimately the learned Managing Director drafted an agenda for putting it up in the meeting of Board of Directors with a fatal suggestion for removal of about 700 employees out of the total strength of about 1,700 employees. This agenda item was prepared for putting it up in the meeting of Board of Directors, held on 4th May, 1988,-vide Agenda Item No. 1062/67/88.

The meeting of the Board of Directors of the Respondent Federation has taken place on 4th May, 1988, and by accepting the agenda Item Annexure P. 5, it has been, resolved to terminate the services of all those employees suggested in Agenda Annexure P. 5 by abolishing their posts.

5. In the light of these facts, which are available from the pleadings of the parties themselves, it is difficult to appreciate as to how the action of the Respondent Federation in abolishing certain number of posts can be held to be mala fide or lacking, in bona fides. The action of abolition of posts is not directed towards the, Petitioners-alone but has rather been taken after a detailed study of the whole functioning of the Federation and with view to improve its economy. The authorities concerned found it inevitable to reduce the strength of the staff by abolishing the posts. All that has been highlighted by Mr. Gupta in this regard is that in the year 1987-88, the Federation secured a profit of rupees two crores and, therefore, with its improved working it could dilute the losses which it had already suffered.

6. Having given our thoughtful consideration to this aspect of the matter, we find that the Federation was not actuated with any ulterior motives in reaching the conclusion it has. If any value has to be attached to this submission of Mr. Gupta, then the Federation has to wait for another ten years or more to dilute its losses. The Petitioners or their Learned Counsel may have reasons to disagree or not to accept the conclusions (sic) by the Board of Directors of the Federation, but the action of the latter in finding certain number of posts as surplus and therefore terminating the services of the employees in the light of the well-established principle of "last come first go" cannot possibly be struck down on the ground of

mala fide.

7. For his second submission as noticed above, Mr. Gupta primarily relies on certain observations of their Lordships of the Supreme Court in *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, . It has been opined therein that the State has to discharge certain important obligations, such as to ensure the right to work, the right to free choice of employment, the right to protection against unemployment, equal pay for equal work, etc. In addition to this, Mr. Gupta also makes a reference to Articles 38, 41 and 43 of the Constitution to support this submission of his. However, he completely ignores that all that has been said by the Court in a case where the prayer of the Petitioners before their Lordships was for directions to confirm the daily rated and monthly rated employees as regular Government servants, and for payment of normal salary at the rates prescribed for the appropriate categories of Government servants and other service benefits. It was not at all a case of abolition of posts. In this very judgment, their Lordships recorded a note of caution in the following words:

It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. (Emphasis supplied).

The question whether the Government (employer) has a right to abolish a post in the service, came to be considered by a Constitutional Bench of the Supreme Court in a bunch of petitions and the judgment reported is *M. Ramanatha Pillai v. The State of Kerala and Anr.* 1974 (1) S.L.R. 225. The Bench concluded that:

The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of Governmental policy. Every sovereign Government has this power in the interest of necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public. *** **

The power to abolish any civil post is inherent in every sovereign Government. This power is a policy decision exercised by the executive. This power is necessary for the proper functioning and internal administration of the State ** **

The abolition of post may have the consequence of termination of service of a Government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution.

Whether after abolition of the post the Government servant who was holding the

post would or could be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post.

In the face of this authoritative pronouncement which is not only binding on all the subordinate Courts but even on the smaller benches of the Supreme Court itself (See 1989 S.C. 2027), the submission of Mr. Gupta as (ii) is totally meritless. Though it is hardly necessary to burden this judgment any further by referring to some latter decisions of the Supreme Court, and various High Courts, yet these two latter decisions of the Supreme Court can also be referred to with advantage i.e., *State of Haryana v. Shri Des Raj Sangar and Anr.* 1976 (1) S.L.R. 191 (Paragraph 7), and *K. Rajindran and Ors. v. State of Tamil Nadu and Ors.* 1982 (2) S.L.R. 196. The submission of Mr. Gupta made in the context of Articles 38 and 43 of the Constitution stands answered in the latter mentioned judgment in the following words:

It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But these articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal. The question whether a person who ceases to be a Government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the Court has no voice.

Still larger question arises; can this right to work survive if it is also not seen by the citizen as the duty to work? The answer appears clearly to be in the negative if we cling on to our habits of thought and action.

8. The Third submission of Mr. Gupta is equally devoid of merit. It is primarily based on the following observations made in a Single Bench judgment of this Court in *Ravinder Kumar and Ors. v. The State of Haryana* 1990 (1) S.L.R. 805:

Apart from this, the impugned orders have been challenged and, in my opinion, successfully, on the ground that the impugned orders of abolition of posts held by the Petitioners could not be issued without the approval of the Registrar Cooperative Societies. This provision is a salutary one as it provides a check to control the arbitrary actions of the Cooperative Societies and in process to safeguard the interests of the employees. There is no specific approval of the

Registrar, Cooperative Societies, to the abolition of the posts. This has rendered the impugned, orders without jurisdiction.

This was a case where the learned Judge was dealing with the validity of "abolition of Construction Cell and the posts created" therein by the Haryana State Cooperative Bank Ltd. Chandigarh."

Whether it was a case of addition or deletion of any class of employees from the cadre is not at all clear from the report. We however find it difficult to concur with the above noted expression of opinion. This is how Section 37 of the Haryana Cooperative Societies Act, 1984, reads:

37. Constitution of Common cadre.

(1) The Registrar may require an apex society to constitute a common cadre of all or a specific class of employees in the service of that society or in the service of the Central Societies which are members of the apex society, or of the service of the primary societies which are members of the apex society or the aforesaid central societies.

(2) When a common cadre is constituted under Sub-section (1) the Registrar shall make rules to regulate recruitment and the conditions of service of such employees, and their strength in consultation with the cadre society:

Provided that the Registrar may add or delete any class of employees from the common cadre in consultation with the cadre society.

A bare analysis of this section reveals that the Registrar can require an apex society, central societies or primary societies who are members of the apex society to constitute a common cadre of all or a specific class of employees in the service of the societies and when such a common cadre is constituted he is entitled to make rules to regulate recruitment and other conditions of service of such employees and even to fix the strength of such employees in consultation with the cadre society. Proviso to Sub-section (2) enables the Registrar to add or delete any class of employees from the common cadre in consultation with the cadre society. He therefore is well entitled to constitute or reconstitute a cadre in consultation with the cadre societies. The section does not talk of any approval of the Registrar which the society is required to take while abolishing the post or reducing the strength of its employees in a particular cadre. Post and cadre are apparently two different connotations and this section does not at all obliterate that difference. Cadre as we know, means the strength of a service or part of a service sanctioned as a separate unit. The Registrar may well be entitled to lay down the strength of the employees of a particular society in consultation with the society while framing the rules to regulate the recruitment and other conditions of service of such employees, but once he has done so, the section does not give him any further power to deal with the matter except to change the structure of a particular cadre by adding or deleting any class of employees from the common cadre and that too has to be done by him in consultation with

the cadre society. So if there is no rule in the common cadre rules framed by the Registrar which requires the society to seek any prior approval of the Registrar before it abolishes any number of posts, the society's power to abolish a post or number of posts is not restricted or curtailed in any manner.

As is well indicated by the observations made in M. Ramanatha Pillai's case (supra), the power to create or abolish a post is essentially left to the policy and planning which the employer lays down for itself. This has essentially to be in the discretion of the society, i.e., the employer to create or abolish any particular number of posts in order to run its affairs efficiently. In the instant case, it is the conceded position that neither the Registrar has required the Respondent-Society to constitute any common cadre of all or any specific class of its employees nor has he framed any rules to regulate the recruitment and other conditions of service of the employees of the society. Therefore, no situation ever arose for the Registrar to exercise his powers in terms of the proviso to Sub-section (2) of Section 37 of the Act.

9. For the reasons recorded above, these writ petitions fail and are dismissed but with no orders as to costs.