
(2014) 09 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. Nos. 3 and 8 of 2010

Tejram and Ors

APPELLANT

Vs

Sunita and Others

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-H
Punjab Agricultural Produce Markets Act, 1961 — Section 43, 43(xxviii)

Citation : (2015) 1 LLN 793 : (2015) 1 SCT 44

Hon'ble Judges : Satish Kumar Mittal, J;Arun Palli, J

Bench : Division Bench

Advocate : Ravinder Singh Hooda, Advocates for the Appellant; Vinod S. Bhardwaj, Addl. A.G., K.K. Gupta, Rishi Pal and Partap Singh, Advocates for the Respondent

Judgement

Arun Palli, J.—These are intra-court appeals, under Clause X of the Letters Patent, against a judgment rendered by the learned Single Judge dated 22.07.2009, vide which the civil writ petitions preferred by the respondents herein were accepted and the order dated 15.12.1993 (Annexure P-21) was set aside, vide which the appellants (who are referred to as private respondents in the judgment being assailed) were placed above the respondents in the seniority list of Clerks. A brief background, to an extent it would be essential and expedient, would be in order.

2. In the year 1979, Haryana State Agricultural Marketing Board (for short, "the Board"), constituted under The Punjab Agricultural Produce Markets Act, 1961 (for short, "Act 1961"), advertised 15 posts of Clerk-cum-Auction Recorder. However, 266 Clerks-cum-Auction Recorders including the appellants were recruited by the Board during the months of April to June, 1979. As the recruitments were made far in excess than the advertised posts, services of 251 appointees were terminated vide order dated 04.09.1979. As many as eight writ petitions bearing C.W.P. Nos. 3299, 3467, 3471, 3502, 3503, 4302, 4323 and 4342 of 1979 were preferred in this court by the terminated employees including

the appellants. And vide order dated 31.03.1980, the said writ petitions were dismissed by this court and terminations were held to be valid. However, on behalf of the Board, this court was assured:

"During the course of arguments, Shri Kuldip Singh, learned counsel for the respondent, even gave an assurance That though at the moment there is no proposal to any sort to make a fresh recruitment to these posts, yet as and when such recruitment to be made, the cases of the petitioners would be duly considered for such employment. In view of this, I also do not find any merit in the allegation of mala fide leveled by the petitioner. As has been held earlier that the petitioners are the junior most person according to the merit list prepared at the time of the interview, their services have been rightly terminated in preference to those who have been allowed to continue."

3. Subsequently, on 17.05.1980, the Board again advertised 102 posts of Clerks - cum-Auction Recorders and applications were invited from the eligible candidates. Resultantly, the persons who were assured on behalf of the Board, represented for consideration of their claim. But as no heed was paid to their cause, they again approached this court in a batch of writ petitions challenging the fresh advertisement to fill up 102 posts of Clerks-cum-Auction Recorders, vide advertisement dated 17.05.1980. And also prayed that the Board be directed to re-employ them in terms of the assurance given to this court. The said writ petitions were allowed by the Division Bench of this court in case titled *Rajbir Singh and others v. State of Haryana and others*, 1993 (1) SLR 38. And this court held as thus:

"....For the reasons aforesaid, we allow these 10 petitions and direct the respondents to give opportunity of re-employment as Clerk-cum-Auction Recorders and Arrival Recorders to the petitioners and other retrenched workmen falling in the category of the petitioners whose services had been terminated enblock alongwith the petitioners in accordance with the provisions of Section 25-H of the Act in the manner provided in rule 77. Each petition is allowed costs..."

4. But as to how the claim of retrenched workmen for re-employment was to be addressed, the Division Bench in *Rajbir Singh's* case (*supra*) adverted to its own earlier short order made on 27.05.1982, and observed:

"1. That the petitioners and their like whose services had been terminated from the posts of Clerk-cum-Auction Recorders to be workmen and respondent Marketing Board to be industrial establishment in terms of the Industrial Disputes Act;

2. That the requisite averments in order to judge whether the provisions of Section 25-H of the Industrial Disputes Act can be invoked have been sufficiently pleaded;

3. That operation of Rule 75 of Industrial Disputes (Punjab) Rules 1958, which provides that workmen mentioned in Rule 75 shall also be deemed to be

workmen mentioned in Rule 76 and 77 is ultra vires the provisions of Section 25-H of the Industrial Disputes Act inasmuch as Section 25-H of the Act had required the prescription of the manner in which the opportunity was to be given to the retrenched workmen and not to provide as to whom the opportunity was to be given.

4. That the petitioners and their like whose services were terminated fall in the category of retrenched workmen and the provisions of Section 25-H of the Act were required to be complied with in regard to them by preferring them over all others including those who are even entitled to reservation of vacancies."

5. It would be crucial to point out at this juncture that, the respondents herein were appointed/promoted as Clerks in the Head Office, during the pendency of the lis in Rajbir Singh's case (supra) before this court. Pursuant to the decision of the Division Bench of this court, 251 terminated employees including the appellants were offered re-employment as Clerk-cum-Auction Recorders/Arrival Recorders vide separate but identical orders in the months of December, 1982 and January, 1983. However, the Board chose to adjust the appellants (respondents No. 3 to 51 in the civil writ petition before the learned Single Judge) in the cadre of Clerks (Head Office). Resultantly, appellants were placed below the respondents, who were originally selected/promoted in 1981 in the cadre of Clerk (Head Office). The seniority list of Clerks in the Head Office cadre was circulated vide letter dated 04.11.1982 and the respondents were shown above the appellants. Likewise, on 15.12.1986, the Board circulated a provisional seniority list of Clerks (Head Office), as it stood on 08.12.1986 and the same demonstrates that the appellants were shown as junior to the respondents in the said list.

6. As is discernible from the records, 34 out of 49 appointees, who were re-employed pursuant to the directions of this court in Rajbir Singh's case (supra), did not choose to file any representation or objection vis-a-vis their placements in the aforesaid seniority list. However, the rest 15 represented against the provisional seniority list, referred to above, but their representation was rejected on 06.05.1987. Some of those, being aggrieved by the rejection of their representation, preferred Civil Writ Petition No. 8659 of 1991 titled Shashi Bala and others v. State of Haryana and others, wherein they had claimed seniority over and above the respondents as Clerks. However, the said writ petition was dismissed by the Division Bench of this Court on 08.06.1991 on the ground of laches. Surprisingly though, vide letter dated 27.12.1991 (Annexure P-15), a decision was taken to assign seniority to the retrenched employees over and above the employees promoted/recruited during the years 1980-1982. Consequently, an order dated 27.05.1992 was issued by the Board for framing revised seniority list of Clerks (Head Office Cadre). Representations by the respondents against the said move were rejected and orders revising their seniority and placing them as junior to the appellants were passed on 15.12.1993. The said order i.e. dated 15.12.1993 (Annexure P-21) was

questioned vide Civil Writ Petitions No. 3299, 3467, 3471, 3502, 3503, 4302, 4323 and 4342 of 1979 that have been decided vide judgment being assailed in the appeals in hand.

7. Learned Single Judge, on a consideration of the matter in issue and the material on record, noticed that the cadre of Clerks in the Head Office was distinct from the cadre of Clerks-cum-Auction Recorders in the field staff. In reference to the Rules framed under Section 43 of the Act, 1961, it was further noticed that the qualifications prescribed for appointment of Clerks were different and mode of recruitment to the said posts could be either by direct appointment or by transfer or by deputation. While for Clerks-cum-Auction Recorders as field staff, it was partly by direct recruitment and partly by promotion. Likewise, even the promotion channels for the Clerks in the Head Office and for Clerks-cum-Auction Recorders in the field staff were altogether different. Learned Single Judge also observed that when the appellants were re-employed, all of them were considered as Clerks-cum-Auction Recorders, while some of them were adjusted as Clerks in the Head Office. Whereas, respondents were already working as Clerks in the Head Office much before the date of re-employment of the appellants.

8. On an analysis of the order passed by this court on 31.03.1980 and the Division Bench decision in Rajbir Singh's case (supra), learned Single Judge observed that the appellants had secured re-employment, it was not strictly by a situation that Section 25-H of the Act contemplated. In fact, it was the concession made on behalf of the Board that gave the appellants a straw to clutch. It was the imprimatur of the Division Bench through its judgment that gave the appellants a right to offer themselves for reemployment. The provisions of Section 25-H of the Act only afforded a right to the workmen to have preference in the matter of re-employment on his previous terms and conditions of service and the "reemployment" does not necessarily connote employment on the same terms as before. It was found that no new meaning could be given to the expression found in the judgment of the Division Bench that the appellants would be preferred over all others. Accordingly, it was recorded that the Division Bench in Rajbir Singh's case (supra) nowhere stated that the persons, who would be considered for re-employment under Section 25-H of the Act, must be taken to be re-employed even from the date when the vacancies were notified and some persons were posted to the promotion posts. It was observed that even if that was the decision, the appellants were canvassing for, such a relief should have been pressed/taken from the order of this court itself, if tenable at all. Consequently, it was concluded that a claim for re-employment was a special privilege dictated by principles of justice and fair play and affirmed by statute and the person that is re-employed gets the right only from the date of such re-employment and not from the assumed date that as soon as the vacancy arose, he should be treated as having been employed from that date. It would be apposite, at this point in time, to refer to the conclusions recorded by the learned Single Judge and the same read as thus:

"18. The Division Bench in *Rajbir Singh and others* (supra) nowhere states that the persons who would be considered for reemployment under Section 25-H must be taken to be re-employed even from the date when the vacancies were notified and some persons were posted to the promotion posts. If that was the decision which the private respondents were canvassing for, such a relief should have been pressed and taken from the order of the High Court itself, if tenable at all. A claim for re-employment is a special privilege dictated by principles of justice and fair play and affirmed by statute and a person that is reemployed gets the right only from the date of such re-employment and not from the assumed date that as soon as the vacancy arose, he should be treated as having been employed from that date. A lofty principle aimed at justice to secure to retrenched workmen cannot be worked to skew the process of normal seniority rule of the length of service and actual entry into service. It cannot also be used as an oppressive tool against persons who have actually occupied the posts lawfully. There could be instances where management keeps the vacant posts for some time before considering persons for re-employment under Section 25-H. If the logic as propounded by the private respondents were to be accepted, the persons who had to be considered for reemployment, must be taken as employees even when the vacancies arose and even before the management decided to actually re-employ them. This position is absurd and would mean rewriting management's power to recruit at the most opportune time which might have a bearing to umpteen other relevant considerations including management planning for timing their increased cadre strength and the financial exigencies that such a decision brings about. There will be no justice in according seniority to the private respondents whose initial appointment in 1979 was illegal. The posts did not exist; at any rate, there were no sanctioned posts to which they could be said to have been placed. In *Joyachan M. Sebastian Vs. Director General and Others*, , the Hon''ble Supreme Court has laid down in a slightly different situation of the effect of abolition of posts, but instead of retrenchment, the workmen had been accommodated to some other posts. The Court said that such appointment has to be treated as fresh appointment, and the employee would not be treated to claim seniority from his initial appointment on the post which stood abolished.

19. It must be noted that the claim to seniority for the benefit of private respondents over the promotees had been rightly rejected by the board at the first time. A challenge to the seniority was dismissed by this Hon''ble Court on the ground of laches but again the issue was brought about through a representation to the government which passed the order impugned in this writ petition. The decision of the High Court dismissing the writ petition on the ground of laches will not itself constitute a bar of *res judicata*, since the judgment had not been rendered on merits, as held in *Pujari Bai Vs. Madan Gopal*, . The fresh decision had been taken by the Government but it is clearly untenable for all the reasons adverted above."

9. We have heard the learned counsel for the parties and perused the records.

10. Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the learned Single Judge. All what he submits is that the directions issued by the Division Bench of this court in Rajbir Singh's case (supra), vide a short order dated 27.05.1982, postulate:

"That the petitioners and their like whose services were terminated fall in the category of retrenched workmen and the provisions of Section 25-H of the Act were required to be complied with in regard to them by preferring them over all others including those who are even entitled to reservation of vacancies."

11. He asserts that in terms of the directions issued by the Division Bench of this court, the appellants were not only to be considered for re-employment in terms of Section 25-H of the Act but they were to be preferred over all other employees including those who were even entitled to reservation of vacancies

12. He further asserts that the provisions of Section 25-H of the Act promise re-employment to a retrenched employee. The provisions envisage that if an employer intends to employ new hands, claim of a retrenched employee for re-employment is required to be considered first. He submits, as post-termination of services of the appellants in 1979, respondents were employed/promoted, on re-employment appellants would rank senior as they had a prior right of consideration.

13. To our mind, the submission that is being advanced lacks conviction and cannot be imbibed, as is being demonstrate hereinafter.

14. What emerges from the decision of the Division Bench of this court in Rajbir Singh's case (supra) is:

(i) the retrenched employees would be afforded an opportunity of re-employment as Clerk-cum-Auction Records, and

(ii) though the posts of Arrival Records were the same as that of Clerk-cum-Auction Records, with a further direction that claim of the retrenched employees would be considered against 282 posts of Clerk-cum-Auction Records and Arrival Records.

15. 251 retrenched employees including the appellants were offered re-employment as Clerk-cum-Auction Records/Arrival Records. However, the Board chose to adjust the appellants in the cadre of Clerks (Head Office), albeit the appointment letters issued to them were for the post of Clerk-cum-Auction Recorder/Arrival Recorder. That was done on account of lack of adequate vacancies of Clerk-cum-Auction Records/Arrival Records with the Board in the Market Committees. This position is duly substantiated as appellant No. 5 (respondent No. 42 in the writ petition) though appointed as Clerk-cum-Auction Recorder but was asked to join as Clerk in the Head Office and on the contrary Rajbir Singh, who was a party in C.W.P. No. 756 of 1982, was issued an appointment letter for the post of Clerk-cum-Auction Recorder in the Market Committee. As has been demonstrated by the learned Single Judge, cadres of

Clerks in the Head Office and Clerks-cum-Auction Recorders as field staff, were altogether different. Haryana State Agricultural Marketing Board Service Rules, 1974, framed pursuant to Section 43(xxviii) of the 1961 Act, reveal that the qualifications mentioned for appointment of Clerks were different and mode of recruitment could be either by direct appointment or by transfer or by deputation. Whereas for Clerks-cum-Auction Recorders as field staff, was partly by direct recruitment and partly by promotion. So much so, even the promotion channels to the two posts were altogether different. As the said Rules are reproduced in detail in the judgment rendered by the learned Single Judge and analyzed in depth, we do not deem it expedient to extract them here in our judgment.

16. Thus, a right of re-employment in preference to all others including those who were entitled to reservation of vacancies, in terms of Section 25-H of the Act, had its relevance in the cadre of Clerks-cum-Auction Recorders/Arrival Recorders only. Just because the appellants, for administrative reasons, were adjusted in the cadre of Clerks (Head Office), cannot claim any preferential right qua seniority vis-a-vis them. Their re-employment stems from the decision of the Division Bench of this court and ex facie, no such benefit in terms of seniority or otherwise was even remotely conceived for them.

17. Quite naturally, the appellants were placed below the respondents in the cadre of Clerks in the Head Office as the latter were already working as Clerks much prior to their re-employment/re-induction. Likewise, in the two seniority lists dated 04.11.1982 and 08.12.1986, the appellants were shown junior to the private respondents. So much so, Civil Writ Petition No. 8659 of 1991 [Shashi Bala and others v. State of Haryana and others] claiming seniority over and above the respondents was preferred before this court and was dismissed on 08.06.1991 on account of delay and laches. Despite that being so, the authorities altered their decision and placed the appellants above the respondents, which to our mind was wholly untenable.

18. Provisions of Section 25-H of the Act are clear, concise and incapable of any misconstruction. The same clearly postulate re-employment for a retrenched workman. Needless to assert, the provisions envisage a valid termination or retrenchment. What needs to be noticed here is that re-employment of retrenched workmen in terms of Section 25-H of the Act is not a reinstatement. The provisions postulate a fresh appointment occasioned on account of employer intending to employ new hands. If the argument that is being advanced by the learned counsel for the appellants is accepted, it would mean that termination of the services of the appellants on 04.09.1979 was of no consequence in law, though upheld by this court vide order dated 31.03.1980. Ex facie, the provisions of Section 25-H of the Act does not restore status quo ante on re-employment of the workmen because the provision postulates valid termination. Needless to assert, it is the illegal or invalid termination that entails reinstatement with continuity of service. Thus, the appellants indeed cannot claim any deemed date

of re-employment or seniority from a date prior to their re-employment. In the wake of the position as set out above and the conclusions that have been arrived at by the learned Single Judge, there hardly exists any ground, least plausible in law, to interfere with the judgment being assailed in the present appeals. Same being bereft of merit are, accordingly dismissed. Parties are left to bear their own costs