

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 5356 of 2004

Pronounced On : 25.03.2015

Jatinder Singh and others Petitioners

Vs.

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Pawan Kumar, Senior Advocate
with Mr. Anshuman Pandher, Advocate
for the petitioners.

Mr. Sushant Maini, DAG, Punjab.

Ms. Kanchan Sehgal, Advocate
for respondents no. 2 to 4.

* * *

DEEPAK SIBAL, J. :

The petitioners, who are three in number, were engaged by the respondent – Punjab State Forest Development Corporation Limited (hereinafter referred to as – the Corporation) as Clerks on daily wages basis, between the years 1999 and 2000. On March 26, 2004, they knocked the

doors of this Court through the present writ petition seeking regularization of their services as also the grant of the minimum of the pay scales, as payable to Clerks serving the respondent Corporation on regular basis. Soon after filing of the present petition, the petitioners moved an application seeking interim protection against the termination of their services on the ground that their service were sought to be retrenched. On that application, on July 12, 2004, a Division Bench of this Court issued directions to the effect that the services of the petitioners may not be terminated. In spite of the above referred order, the petitioners were not taken back in service, which forced them to file a Contempt Petition before this Court (**COCP No. 1070 of 2004**). During the pendency of the Contempt Petition, on 26.10.2005, the respondents, in compliance with the interim protection granted by this Court, took the petitioners back in service as Clerks and it is on these posts, on which the petitioners continue to serve till date.

From the above, it is clear that as on date, each of the petitioners has served the respondent Corporation for about 15 years.

Though the present petition had been filed for seeking the above referred reliefs, however, at the time of arguments, learned senior counsel appearing on behalf of the petitioners has restricted his arguments and has prayed for adjustment of the petitioners in the respondent Corporation in view of the policy decision taken by the Government of Punjab dated 02.08.2011 (Annexure P-12).

I have heard learned counsel for the parties on the issue whether the benefit of the policy decision taken by the Government of Punjab dated 02.08.2011 (Annexure P-12), in the facts and circumstances of the case, can be granted to the petitioners.

Before I proceed further, it would be useful to refer to the relevant portion of the policy decision and the same is reproduced below :-

“4. The State of Punjab had taken a decision that the employees who have been retrenched from the Board/Corporations of the Punjab Government in order to adjust these employees in the Government Department/Corporations etc. against the vacant posts the upper age limit be relaxed to the extent of 48 years because 48 years of age has been relaxed keeping in view that at least the employee should serve in the other department for 10 years minimum. These employees on their re-employment/adjustment would not be entitled for benefit of seniority, pay fixation, counting their past service. These employees will be considered as fresh recruit and they are not entitled for

any other benefit except the benefit in age relaxation. These employees can be considered as direct recruit/fresh recruit with a condition that they shall be fulfilled the required educational qualifications. The said policy will not be applicable to those employees who have been relieved under the voluntary retirement scheme.

5. The aforesaid instructions are being issued on the permission of the council of ministers.” [Emphasis supplied by me].

A perusal of the above quoted portion of the policy decision taken by the Government of Punjab, the applicability of which upon the respondent Corporation is not denied, all retrenched employees are required to be adjusted in Government Departments/Corporations etc. against vacant posts. As per the above quoted policy decision, while granting such adjustment, the age limit for such retrenched employees is to be relaxed up to 48 years and that the adjusted employees are not entitled to pay fixation, continuity of service and also, that they would be considered as fresh recruits. Further, the above quoted policy decision makes it clear that the retrenched employee, would be adjusted, only if he possesses the requisite

educational qualifications for the post, against which he is to be adjusted.

It is admitted that all the petitioners are retrenched employees of the respondent Corporation.

This Court, vide order dated 26.09.2014, had directed the respondent Corporation to find out whether there were any vacant posts in the Corporation, wherein the petitioners could be adjusted in terms of the policy decision taken by the Punjab Government dated 02.08.2011 (Annexure P-12). In pursuance to the above referred order passed by this Court, the respondent Corporation filed an affidavit dated 25.11.2014, in which it has been stated that there are 15 vacancies available in the respondent Corporation. Paragraphs 3 and 4 of the affidavit dated 25.11.2014, filed by the respondent Corporation as referred to above, are reproduced below :-

“3. That as per the correspondence going on with Punjab Govt. as per policy of 2011 about 15 vacancies are available in other Divisions of the Corporation Viz. Clerks/Junior Assistants, still the applicants are not eligible under 2011 policy (Annexure R-1) of the Punjab Govt. framed as per decision given by the Hon'ble Supreme Court of India in Civil Appeal No.

3595-3612 of 1999 titled State of Karnataka v/s Uma Devi regarding regularization of daily wage workers working in various departments. As per the policy stated above, the employee can be considered for regularization who complete 10 years' service up to cut off date i.e. December 2006 but the petitioners have not completed 10 years' service upto December 2006 hence he is not eligible for regularization.

4. That as per para 4 of Annexure P-12 only age relaxation to the extent of 48 years has been given so that employee may serve the department with 10 years at least. But the employee is to fulfill other qualification which is lacking in the petitioners as explained above so the petitioners are ineligible to be considered and recruited as fresh recruits under Annexure P-12.” [Emphasis supplied by me].

From the above affidavit filed on behalf of the respondent Corporation, it is admitted that as many as 15 vacancies are available in the respondent Corporation. The petitioners, being only three in number, can thus be easily adjusted against these vacancies.

Now, the question arises whether there is enough work load in the respondent Corporation justifying the adjustment of the petitioners. In this regard, a letter, pertaining to the petitioners, written to the Managing Director of the respondent Corporation, dated 09.03.2015, was produced in the Court by the learned counsel for the petitioners. The same is taken on record as **Mark-A** and a translated copy of the same is also taken on record as **Mark-A/T**. A copy of the same was supplied to the learned counsel appearing on behalf of the respondent Corporation to verify the contents thereof. After verifying the contents of the letter, the contents thereof were admitted. The letter dated 09.03.2015 in its entirety is reproduced below :-

“In reference to your letter, it is informed that two computer operators are working i.e. one is working in Revenue Branch and second is working in Accounts Branch and three Daily-wages Clerks are working according to the stay order granted by the Hon'ble High Court, Chandigarh under the Office Order No. 78 dated

26.10.2005, Division Office, Bhatinda.

Documents are attached herewith. At present, the case is pending in Hon'ble High Court. One Daily-wage Worker is working in Revenue Branch Divisional Office, Bhatinda and second is working in Shree Muktsar Sahib Project and third one is working in Fazilka Project. According to the present workload, two computer operators and three Daily-Wages Clerks are required to fulfill the requirements.

[Emphasis supplied by me].

A perusal of the above quoted letter clearly shows that services of all the three petitioners are required as per the existing work load in the respondent Corporation.

Now, the only issue that remains to be considered is whether the petitioners fulfill the qualifications for absorption as Clerks in the respondent Corporation. For this, the relevant Rules of the respondent Corporation, to which there is no rebuttal on behalf of the respondent Corporation, were shown to me, wherein it is provided that the educational qualification for the post of Clerk is Graduation. It is the admitted position that all the petitioners are graduates. They are, thus, eligible for adjustment

against the posts of Clerks.

In view of the above, according to me, the case of the petitioners is fully covered under the policy decision of the Government of Punjab dated 02.08.2011 (Annexure P-12), which admittedly is applicable to the respondent Corporation.

There were two submissions raised on behalf of the respondent Corporation, which need to be dealt with. It was submitted that at the time of filing of the present petition, the petitioners had withheld the factum of having been retrenched and thus, having not come to the Court with clean hands, they do not deserve any relief. Without prejudice to the above objection, on the applicability of the policy decision of the Punjab Government dated 02.08.2011 (Annexure P-12), it was submitted that the policy decision would apply only as and when the respondent Corporation decided to employ people and as the respondent Corporation had taken no decision to employ any Clerk, the benefit of the policy decision of the Punjab Government dated 02.08.2011 (Annexure P-12), could not be given to the petitioners.

So far as the first submission is concerned, though it is true that in the writ petition filed, initially the petitioners had withheld the factum of their retrenchment, but this fact was brought to the notice of this Court through a Miscellaneous Application filed soon after the filing of this writ petition (**C. M. No. 11399 of 2004**). After considering the contents of this

application, a Division Bench of this Court even granted interim protection in favour of the petitioners by directing that their services be not terminated. This order has not been modified till date.

In view of the above facts, I do not consider it a fit case, wherein I should deny the relief to the petitioners on the ground that when they had filed the present petition, they had withheld the factum of retrenchment of their services because soon after filing of the petition, this fact was brought to the notice of this Court by them through a Miscellaneous Application and this was much before the date when such objection was raised by the respondent Corporation.

So far as the other objection with regard to the non-applicability of the policy decision dated 02.08.2011 (Annexure P-12) on the petitioners is concerned, I find that this objection, on the part of the respondent Corporation, has to be considered only to be rejected. The affidavit filed on behalf of the respondent Corporation in pursuance to the order of this Court dated 26.09.2014 clearly reveals the existence of at least 15 sanctioned posts of Clerks lying vacant. Further, the letter dated 09.03.2015 (brought on record as **Mark-A**) also reveals the requirement of at least three Clerks in the respondent Corporation. The fact that the petitioners have been working on these very posts for the last about 15 years is also a fact, which cannot be lost sight of. Further, a perusal of the policy decision dated 02.08.2011 (Annexure P-12) requires the

Departments/Corporations in the State of Punjab to adjust the retrenched employees against vacancies, subject to only two riders that such employee should be possessing the requisite educational qualifications and that they would be adjusted as direct recruits. The only relaxation to be granted is with regard to the maximum age for entry into service.

In view of the above, the petitioners are directed to be adjusted as Clerks in the respondent Corporation as per the policy decision of the Government of Punjab dated 02.08.2011 (Annexure P-12), w.e.f. the date of the policy decision. As per the statement given by the learned senior counsel on behalf of the petitioners, which is duly reflected in the order of this Court dated 26.09.2014, the petitioners would not be entitled to any monetary benefits except continuity in service and that too w.e.f. 02.08.2011.

The present writ petition is allowed in the above terms with no order as to costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 25.03.2015
monika