

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 22.09.2015

CWP No.10601 of 2010(O&M)

Balbir Singh & ors. ... Petitioners
Versus

State of Punjab & ors. ... Respondents

CWP No.10576 of 2010 (O&M)

Amrik Singh ... Petitioner
Versus

State of Punjab & anr. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manu K. Bhandari, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, Addl. A.G., Punjab.

1. To be referred to the Reporters or not? .
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This order will dispose of two writ petitions bearing No.10576 and 10601 of 2010 as common questions of law and fact are involved in them which can be conveniently decided by a common order. The facts are taken from CWP No.10601 of 2010 for convenience and the parties would be referred by their status in this petition.

The brief facts are that the petitioners were appointed to Class IV posts of Chowkidar and Malis in the Excise & Taxation Department, Punjab after inviting their names from the employment exchange. A Department Selection Committee was constituted which

considered the cases of all those who had applied for the posts and recommended the names of the petitioners for appointment as Chowkidar-cum-Sweeper or Chowkidar-cum-Mali. Five of the petitioners joined service in October, 2002 while the last petitioner on January 20, 2003. While they were serving, State Government passed an order cancelling their appointments on the ground that their recruitment was not in consonance with the constitutional scheme of appointments consistent with the standards of Articles 14 & 16 of the Constitution of India. Aggrieved by the cancellation order, the petitioners approached this Court through CWP No.4339 of 2005, which was decided by the learned Single Judge on January 28, 2008 and certain directions were issued which in the operative part read as under:-

“After hearing learned counsel for the parties and upon perusal of the record, I am of the considered view that so far as communications inter se the departments of Excise and Taxation and Finance are concerned, the petitioners have no locus standi to impugn the same. However, in the light of the subsequent events, namely, creation of 33 posts of Chowkidar/Malis by the Excise and Taxation Department vide order (Annexure A-1), the petitioners are at-least entitled to seek a direction for consideration of their cases for absorption/adjustment against the same. Needless to say that while considering the case of the petitioners for absorption/adjustment, the department shall be guided by the Government policies, rules and/or the binding judicial precedents on the subject.

Consequently, and for the reasons afore-stated, this petition is disposed of with a direction to the respondents to consider as to whether or not the petitioners are entitled to be adjusted/absorbed against the newly created posts of Chowkidar/Mali. This direction, however, shall not be construed to mean as if the petitioners are necessarily required to be adjusted against the newly created posts. In other words, it will be open for the competent authority to take a conscious decision as to (i) whether or not the newly created posts are required to be filled up; (ii) if so, whether these posts are required to be filled up by inviting fresh applications through an open competition; and (iii) whether the petitioners who have worked on daily wages, are to be given priority for being absorbed/adjusted against the said posts.”

The consideration directed in the order was to take place within three months from the date a certified copy of the order was received by the department.

In view of the order passed by this Court, the State Government issued the administrative order dated May 27, 2008 endorsed on June 3, 2008 passed by the Assistant Excise & Taxation Commissioner, Patiala, being the competent authority, wherein the officer admitted to the creation of 33 posts of Class IV category to which the petitioners were appointed, which were sanctioned in the year 2006. Whereas the Government had banned recruitment in there circular letter dated May 10/13, 2002 issued by the Chief Secretary, Punjab advising the

department that the 33 newly created posts in the Excise & Taxation department would be taken up for fresh recruitment only when the ban was lifted. The appointing authority reasoned that the appointments would follow only after the ban on fresh recruitment was recalled and therefore the department was helpless in the matter. In case, the files of three of the petitioners, namely, Sh. Vijay Kumar, Kulbir Singh and Santokh Kumar are considered for appointment against 33 posts, it would be tantamount to violating the order of the Government and would be contrary to the extant policy of the State Government. It is also recorded in the impugned order dated May 27, 2008 that the newly created 33 posts will be filled up through open merit by inviting fresh applications or by calling names from the employment exchange or by any method decided by the State Government at the time of filling up these posts depending on the lifting of the ban on recruitment. When that event happens, then three of the petitioners would become eligible to apply for those posts when the recruitment process is initiated by the Government.

Aggrieved by the decision of the Assistant Excise & Taxation Commissioner, Patiala, the petitioners served a legal notice to Government pleading that the order was not in conformity with the directions issued by this Court in the aforesaid petition. In response to the legal notice, the department addressed a para-wise reply to the counsel who served the notice in which is stated that the cases of the three petitioners were considered. The crux of the decision taken by the three member Committee in 2008 set up for the purpose under the Chairmanship of the GS Sandhu Excise and Taxation Officer was as

follows:-

“In view of Bio-data discussed in respect of all the (overleaf) three candidates, it is proposed that keeping in view their experience, academic qualifications and orders of the Hon'ble High Court, all the three candidates may be adjusted against the posts of Chowkidar-cum-Sweeper or Chowkidar-cum-Mali, in the interest of natural justice.

Submitted.

<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>
<i>G.S. Sandhu</i>	<i>SP Gupta</i>	<i>SS Chhina</i>
<i>ETO</i>	<i>ETO</i>	<i>ETO</i>
<i>Chairman</i>	<i>Member</i>	<i>Member</i>
<i>14.5.2008</i>	<i>14.5.2008</i>	<i>14.5.2008”</i>

In the para-wise response to the legal notice, the department expressed the following views:-

“11. That the cases of Sarvshri Vijay Kumar, Kulbir Singh and Santosh Kumar were accordingly examined in this office. They were found to be suitable for being appointed against the posts of Chowkidars/Mali, but they were not so appointed because Government had imposed a total ban on direct recruitment vide letter dated 10/13.5.2002 received from the Chief Secretary, Punjab. Only on account of this reason, the petitioners could not be given appointments as claimed by them. In case this ban on direct recruitment might not be applicable to the merits of the present case, then necessary clarification in this regard may be sent to this office for further action.

12. That there was no mis-interpretation of the directions of the Hon'ble Punjab and Haryana High Court as alleged. The petitioners could not be adjusted against the newly created posts on account of reasons mentioned against para 11 above.

13. In reply to para 13 of the notice, it is submitted that the case of the petitioners was examined in the light of the directions of this Hon'ble Court. The petitioners were otherwise suitable, but could not be appointed in view of ban imposed on direct recruitment by the State Government as mentioned in para 11 above."

The contents of para. 11 of the letter in response confirm that the cases of the petitioners were delayed in finalization for an unreasonable time only on account of the fact that the ban was imposed. It was not said that they were not entitled for consideration for regularization of their services when their case fell within the policy instructions on regularization of services of class IV employees then prevailing. On this account, the department had earlier sought a clarification from their superior officers in State Government to advise on the further course of action to adopt. The reply of the department is dated November 7, 2008. As the case of the petitioners was kept in limbo with no further action taken, the petitioners made a request under the Right to Information Act, 2005 to supply listed information. In response to RTI request, it was clarified by the PIO that the ban was clamped on "creation of new posts is still being effective". This did not convey that there was a ban on "filling" up of posts already created. In the present case, the

newly created posts come into existence in 2006. The department admitted that the Punjab Government had imposed ban vide letter dated 13.5.2002 on creation of new posts and filling them up and not on filling up of the vacant posts.

It is apparent that the instructions placed in the way of the petitioners was based on a misreading of the letter dated 13.5.2002 which may have imposed temporarily a ban on creation of posts but would happen when Finance Department created 33 posts in 2006 then the presumption is that the ban had been lifted. This misconception had led to the filing of the writ petition in which the petitioners claimed that there was sufficient material to conclude that the department was willing to regularize their services but refused to do so on the pretext of the Govt. letter dated 13.5.2012 which letter, according to the department, could not be violated as it was a direction of the Chief Secretary, Punjab. It appears that the authorities have manifestly misread the letter dated 13.5.2002 and assumed that it applies prospectively and therefore stands in the way of the petitioners to claim relief of regularization of their services.

The department in its written statement filed before this Court in the present case has contested the claim referring to the relief sought in the writ petition which cannot be granted. It is not possible to grant reemployment to the petitioners as prayed for as they ceased to be employees of the Government in 2006 from whence they not in service. The alternative prayer in the petition is for a direction to the department to decide demand notice dated 26.2.2010 within a stipulated time.

In view of the RTI response, there appears to the sufficient

material on the file of both these cases, which suggest the necessity of the Government/department to make a revisit of their decision and take a fresh look at the rights of the petitioners, if any. Needless to say that on reconsideration the Government would remain conscious that when the reason assigned in an administrative order does not pass test of judicial scrutiny on review and the reason is not found germane to the decision or irrelevant to such consideration then the administrative order cannot hold and must fall and deserves to be redone. The reason assigned to keep the case of the petitioners in abeyance was the manifestly on the wrong notion that there was ban on the recruitment of posts created in this case in 2006 four years after the ban was imposed in 2002 when the scam in the Punjab Public Service Commission, Punjab broke out and was part of damage control exercise initiated by the Punjab Government. It is then apparent that the letter relied upon was of no moment in decision making as far as the consideration of adjusting the petitioners against the 33 newly created. It also appears rather plain that the State has not implemented the decision of this Court in CWP No.4339 of 2005 decided on 28.1.2008 and a similar order was passed by the Division Bench of this Court relying on the order passed in CWP No.4339 of 2005 in CWP No.3913 of 2005, decided on 25.2.2008. A little while after the basic decision of the learned Single Judge was delivered in 2006, the Supreme Court pronounced judgment in **Secretary, State of Karnataka & ors. vs. Uma Devi & ors., 2006(4) SCC 1**, applies then the one time exception carved out in para 53 of the report for regularization required 10 years of service before cases could be considered for regularization and the

Punjab Government formulated policy as a consequence. This aspect would also be examined by the State Government in passing a fresh order with respect to the petitioners. In view of the totality of facts and circumstances and considering that the decision making process in the present case has been wide off the mark then interference is called for save and limited to put the case of the petitioners back on its rails for a just and appropriate decision at the hands of the competent authority in the revisit to examine the rights of the petitioners in the light of orders passed by this court (supra) and the observations made in this order.

For the foregoing reasons, both the petitions are partially allowed. The alternative prayer is accepted and the direction is issued to the competent authority amongst the respondents to hear the petitioners and pass a fresh speaking order keeping in view faithful implementation of the directions issued by the learned Single Judge in CWP No.4339 of 2005 and in the present order. Let the consideration takes place within 4 months from the date of receipt of certified copy of this order.

Order dasti.

(RAJIV NARAIN RAINA)
JUDGE

22.09.2015
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