# IN THE PUNJAB AND HARYANA HIGH COURT
# AT CHANDIGARH

**CWP No.10117 of 2012**

**Date of Decision:27/07/2015**

Mohan Singh …Petitioner

Versus

State of Punjab and another … Respondents

**CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. Karan Bhardwaj, Advocate for the petitioner.

Mr. Sushant Maini, D.A.G. Punjab.

Mr. Anil Kshetarpal, Sr. Advocate with
Mr. M.S. Saini, Advocate for respondent No.2.

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

**DEEPAK SIBAL, J.** **( Oral )**

Through the present petition, the petitioner, who was an employee of respondent No.2-Punjab Tourism Development Corporation (hereinafter referred to as "the Corporation") challenges his retrenchment. He further seeks a direction that he be absorbed in any other department of State of Punjab.

The above issue stands settled in a recent judgment of this Court passed in CWP No.426 of 2010; Alka Khanna and others v. State of Punjab and others; decided on 21.5.2015 which was a petition filed by co-employees of the petitioner seeking similar relief. After considering the matter in great detail, this Court dismissed the petition by holding as under:

*"The question whether the retrenched employees of loss making Government corporations have a right to be absorbed in the State Government service or in the service of other statutory corporation has been examined by the Courts on various occasions. It has been held that once such employees have been retrenched and paid the statutory compensation or they have accepted the VRS, no directions can be given for their retention in service or absorption in any other Government undertaking.*

*In* ***State of Orissa v. Orissa State Handloom Development Employees Union, (2004) 13 SCC 29,*** *the Orissa High Court while upholding the decision of the State Government to close down the Orrisa State Handloom Development Corporation had directed that the employees of the Corporation who did not opt for voluntary retirement would be provided alternative employment in the Government of Orissa or government undertakings under a scheme to be worked out by the Government.*

*The Hon'ble Supreme Court reversed the direction of the High Court that alternative employment be provided by holding as under:*

*"**4.** We are of the view that while the High Court was correct in refusing to interfere with the order of the State Government to close down the Corporation, it erred in directing the Government to offer alternative employment to those employees who did not accept the voluntary retirement scheme."*

*It, however, granted time to the employees to apply for the Voluntary retirement schemes.*

*In* ***Avas Vikas Sansthan v. Engineers Assn., (2006) 4 SCC 132, at page 148 :***

***"59.*** *It is well settled that the power to abolish a post which may result in the holder thereof ceasing to be a government servant has got to be recognised. The measure of economy and the need for streamlining the administration to make it more efficient may induce any State Government to make alterations in the staffing pattern of the civil services necessitating either the increase or the decrease in the number of posts or abolish the post. In such an event, a department which was abolished or abandoned wholly or partially for want of funds, the court cannot, by a writ of mandamus, direct the employer to continue employing such employees as have been* *dislodged."*

*To similar effect is the decision of the Hon'ble Supreme Court in* ***Karnataka Forest Development Corpn. Ltd. v. Workmen of Karnataka Pulpwood Ltd., (2007) 14 SCC 221, at page 229 :***

*"... No order of merger has been passed. No decision by a competent authority under the Companies Act had been taken. Indisputably, the appellant and the Company have not merged. In the absence of any valid order of merger of two different entities, evidently the relationship of employer and employee between the respondents and the said Company, as had been obtaining, continued. Furthermore, as soon as the closure of an undertaking became effective, it is trite that the said relationship ceased to exist.*

*20. The right of the workmen, therefore, was only to receive the amount of compensation. If the State is not in a position to take upon itself the financial burden of the appellant Corporation for appointing the workmen concerned; direction to continue their services could not be issued."*

*Two division bench decisions of this Court have on earlier occasions dismissed petitions filed by employees of the Corporation challenging their retrenchment. In Civil Writ Petition No.15597 of 2004 titled* ***`Chet Singh vs. State of Punjab and another' decided on 8.5.2006****, a Division Bench of this Court while taking note of the continued losses being incurred by the Corporation, observed :*

*"We have perused the written statement. It is stated by the respondents that the Corporation has been incurring continue losses. The Punjab Government had already taken a decision for disinvestment of Punjab Tourism Development Corporation on fast track. The Corporation in the process of disinvestment offered a scheme of Voluntary Retirement to its employees. Out of all 367 eligible employees, 360 have opted for voluntary retirement and the complex in which the petitioner was working had accumulated losses to the tune of Rs.54.64 lacs for the last 5 years. Consequently, it was necessary to prematurely retire the petitioner along with the employees working in other loss producing units. We are of the opinion that the decision taken by the respondents cannot be said to be either arbitrary or unjust."*

*In another Civil Writ Petition No.17742 of 2005 titled* ***`Chander Jyoti vs. Punjab Tourism Development Corporation and***

> ***another', decided on 22.4.2008,*** *a Division Bench of this Court held :*
>
> *"After hearing ld. Counsel for the parties, we are of the considered view that as the Corporation is in the process of disinvestment and the Petitioner has already been declared surplus and has been relieved from service, therefore, he has no legal enforceable right to remain in service.... "*
>
> *Thus there is no merit in the petition and the same is dismissed."*

From a perusal of the above, it is clear that both the prayers made by the petitioners have been considered and rejected in the case of similarly situated employees.

Learned counsel for the petitioner has not been able to persuade the Court to arrive at a different conclusion except to say that prior to his retrenchment, the petitioner had been sent on deputation to different Boards/Corporations of the State of Punjab and in spite of the favourable recommendations by those Boards/Corporations, the respondent-Corporation did not consent to the petitioner's absorption therein.

The petitioner had no right to be absorbed in the Boards/ Corporations to which he had been sent on deputation. Further, the Boards/Corporations wherein the petitioner had been sent on deputation had merely made recommendations for his absorption. Such recommendations do not clothe the petitioner with any right. Still further, non grant of consent by the respondent-corporation to the above said recommendations resulting in the repatriation of the petitioner from the Boards/Corporation where he was sent on deputation back to the respondent-Corporation were never challenged by him. He rather accepted such repatriation. Even in the present writ petition, there is no challenge made to his repatriation. The Boards / Corporations where the petitioner had been sent on deputation have also not been arrayed as parties to the present writ petition.

In view of the above, finding no merit in the present writ petition, the same is ordered to be dismissed.

No costs.

**( DEEPAK SIBAL )**
**JUDGE**

27.07.2015
rajeev