

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

Civil Writ Petition No.22072 of 2011 (O&M)
Date of Decision: July 31st, 2015

Ordinance Civilian Karamchari Sangh, Bhartiya Mazdoor Sangh, Jalandhar

...Petitioner

Versus

**The Commanding Officer, 23, Field Ammunition Depot, 56 A.P.O.,
Suranassi, District Jalandhar & others**

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Rajesh Sethi, Advocate &
Mr.Arun Biriwal, Advocate,
for the petitioner.

Mr.Brijeshwar Singh Kanwar, Advocate,
Standing Counsel,
for Union of India.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition by the Ordinance Civilian Karamchari Sangh, Bhartiya Mazdoor Sangh, Civil Lines, Jalandhar is to the impugned action of the respondents in not respecting and honouring the settlement dated 21.7.2008 (Annexure P-7) and as well as for the implementation of the order dated 11.4.2011 (Annexure P-10).

Mr.Rajesh Sethi, learned counsel appearing on behalf of the petitioner-Union submits that the members of the petitioner-Union were

recruited through proper channel-employment exchange in pursuance to the instructions issued by the higher authorities in the year 1994 and after putting in about 3-4 years of service, on 1.8.1994 the services of 184 workmen were terminated without issuing any notice, much less, any valid order and after the termination of the workmen, respondent No.2 conducted interview on 14.9.1994 for employment of fresh workmen, which was in utter disregard of the mandate contained in Section 25-H of the Industrial Disputes Act, 1947. The workers/Union were compelled to seek a reference and the Labour Court, on the basis of the consensus, passed an order dated 21.7.2008 (Annexure P-7). The relevant portion of the same is extracted herein below:-

“As per office memorandum dated 30.4.08, this case was fixed in pre Lok Adalat meeting on 21.7.08 Ludhiana Camp for its disposal by adopting the mediation and conciliation mechanism. With the efforts of the Tribunal, the workmen agreed to withdraw their reference. The management also agreed that they will be moving to the Govt.of India for engaging the workmen on daily wage who are in reference. The workmen made a statement that there is a consensus that after getting the sanction from the Central Govt. for executing the job for the daily wage workers, the workmen whose name are in the reference shall be given priority. The prescribed authority of the management and the workmen during the hearing of this case in pre Lok Adalat agreed upon the above mentioned terms and conditions. It is proposed to dispose off this reference in Lok Adalat. Accordingly the reference is returned to the Central Govt. as settled in Lok Adalat. Central Govt.be informed. File be consigned.

21.7.08

Sd/-21.7.08

(G.K.Sharma)

Presiding Officer,

Central Govt.Industrial Tribunal-cum-Labour

Court-I, Chandigarh.”

Since the aforementioned award of the Labour Court was not acceded to, an application dated 14.7.2009 (Annexure P-8) was submitted to the Presiding Officer and on directions of this Court contained in the order dated 15.02.2011 passed in Civil Revision No.1049 of 2011 (Annexure P-9), it resulted in settlement between the Management and the petitioner-Union vide order dated 11.4.2011 (Annexure P-10). It has further been submitted that despite the settlement, the respondents did not honour the same, which necessitated the petitioner-Union to send a legal notice dated 1.10.2011 (Annexure P-11), but the respondents did not adhere to the same, rather vide Annexure P-12 dated 14.11.2011 issued a publication inviting applications for recruitment of Mazdoor and Firemen by fixing the age limit as 18-25 years and minimum eligibility qualification as matric.

It has also been submitted that during the interregnum, i.e., in the year 1996, 25 persons, vide Annexure R-4, have been taken into job. The notice dated 12.11.2011, alleged to have been sent through registered post two days before the advertisement (Annexure P-12), was an attempt to comply with the settlement, which though was motivated for the reason that the cases of all the petitioners were rejected without communication of any order on the ground that they did not fulfill the eligibility conditions and, thus, such action of the respondents/Management amounted to unfair labour practice.

Mr.Brijeshwar Singh Kanwar, learned Standing Counsel for the

Union of India-respondents submits that no doubt the Management had, in the year 1996, taken back into service 25 employees out of the list of 184 retrenched employees, but thereafter the Management has not taken any steps to recruit the Mazdoors/Firemen on daily wages. He further submits that even the status of the Sangh is under challenge as the same is not registered and they are not the members of the Bhartiya Mazdoor Sangh. He also submits that the settlement was in respect of engaging the workmen on daily wages, who were in reference and legal notice was also replied vide Annexure R-6, wherein it was mentioned that 4 vacancies of Firemen and 13 vacancies of Mazdoor are sought to be filled by causing an advertisement in the Newspaper and the letters to the affected candidates as per the list provided would be issued and they would be within their rights to apply for the said posts within 21 days from the date of the publication of the alleged advertisement. He, in support of his contentions, has relied upon the judgment of the Hon'ble Supreme Court rendered in **Nand Kumar Versus State of Bihar and others**, AIR 2014 SC (Civil) 2471 to contend that the persons, who are appointed on daily wages, were having the knowledge of all the consequences as having been appointed on daily/temporary basis and, therefore, they cannot have a right to invoke the theory of legitimate expectation for being confirmed in the post.

Mr.Sethi, in rebuttal, submits that there is a categoric averment in the replication that the workmen, who were part of the reference, were at par with 25 Mazdoors, who were recruited in 1996 and Management though sent a copy of the recruitment notice to all the applicants whose names were submitted and, therefore, it does not lie in the mouth of the Management to

say that the workmen, who were part of the reference, are only to be considered for daily wagers.

I have heard the learned counsel for the parties and appraised the paper book.

The question posed in the present writ petition is as to whether the respondent-Management has honoured the settlement/award (Annexure P-7) and the order (Annexure P-10). It would be apt to reproduce the settlement arrived at, which reads thus:-

*“ORDER OF THE PRESIDING OFFICER, CHANDIGARH
DATED 11.4.11.*

Case is taken up for hearing in Lok Adalat through conciliation mechanism. All the workmen are present. Prescribed Authority Major Geetanjali is present. Learned counsels for the parties are also present.

Long discussion took place. It came before this Tribunal that there is a deficiency of about 100 workers (approximately) in permanent cadre. It also came before this Tribunal that in case of emergency, this deficiency may increase.

It is settled that prescribed authority should move to the head office for getting the sanction for the appointment against the deficient posts. It is also agreed that while approaching the Head Office, demand for casual workers shall also be raised. It is further agreed upon that even if any single appointment or engagement will be made in permanent cadre or on casual basis, the same shall be as per the award dated 21.7.08 passed by this Tribunal. The management shall honour the award and preference shall be given amongst the workers who were party to the reference before this Tribunal.

It is furthermore agreed upon that representative of the workman shall visit to the office of the prescribed authority on

13.4.2011 and present a list of workers who are eligible and available. Major Geetanjali has shown her commitment and sincerity for implantation of the award passed by this Tribunal. All the workmen are satisfied with the above proposition. Subject to this, the application filed by the workmen is disposed of. File be consigned. A copy of this order be provided to the parties free of costs.

Sd/-P.O.

Chd.11.4.2011.”

On cumulative reading of the award dated 21.7.2008 (Annexure P-7) and order dated 11.4.2011 (Annexure P-10), it is crystal clear that the Management had given an undertaking before the Labour Court to give appointment against the deficient posts and it was agreed that even if any single appointment or engagement will be made in permanent cadre or on casual basis, the same shall be made as per the award dated 21.7.2008. It is further discernible that the concerned officer had shown commitment and sincerity for implementation of the award passed by the Tribunal, thus, keeping in view such settlement, the petitioners were very hopeful of seeking appointment on the posts on which they were working, but their hopes have been shattered when only 25 persons out of 184 retrenched employees were taken back into service, that too in the year 1996.

The causing of publication (Annexure P-12) dated 14.11.2011 by fixing age limit between 18-25 years and also minimum qualification as matriculation or equivalent has deprived the petitioners from submitting their applications, though the exercise has been done by the Management by sending a notice dated 12.11.2011 within two days before the advertisement calling upon them to apply in pursuance to the advertisement

and this fact is also evident from the contents of the reply to the legal notice (Annexure R-6). Since the petitioners did not fulfill the minimum age criteria and as well as the educational qualification, obviously they could not submit their applications for appointment and the stand of the Management that till date they have not recruited any casual/daily rated employees is not sustainable. It is a clear cut mandate of the settlement, which leaves no manner of doubt that it pertained to appointment on casual basis or permanent basis. The judgment of the Hon'ble Supreme Court in Nand Kishore's case (supra) does not apply to the facts of the present case as it was a case of employees, who were working on daily wages and sought confirmation. The instant case is not of such kind.

The action of the Management in appointing 25 employees out of 184 retrenched employees in the year 1996 is a colourable exercise of powers, much less, unfair labour practice and, thus, this is a discrimination amongst the same class as the petitioners have been left high and dry.

The action of the Management in posting the letter dated 12.11.2011 is basically a farcical exercise in order to show that the Management had attempted, much less, complied with the settlement, but the fact remains that they were in the knowledge that all the petitioners would not be selected for the reasons that they were not between the age 18-25 years, much less, had not even matriculate certificates.

For the reasons stated above, the writ petition is allowed. The petitioners are hereby ordered to be reinstated into service along with continuity of service. However, there shall be no order with regard to the awarding of back wages, but in order to defray the litigation expenses, the

Management is directed to pay consolidated sum of ₹50,000/- to the petitioner-Union and such exercise should be done within a period of two months from the date of receipt of certified copy of this order, failing which the compensation of ₹50,000/- shall entail further interest @ 12% per annum.

July 31st, 2015
ramesh

(AMIT RAWAL)
JUDGE