IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 426 of 2010
Date of Decision : **May 21, 2015**

Alka Khanna and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

1. **Whether Reporters of Local Newspapers 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.R.K.Kartikeya, Advocate for
Mr.Sanjiv Bansal, Advocate for the petitioners.

Mr.Manjit Singh Naryal, Addl.AG, Punjab.

Mr.Anil Kshetarpal, Sr.Advocate with
Mr.Piyush Aggarwal, Advocate for
respondents No.3 to 5.

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HARINDER SINGH SIDHU, J.

This writ petition has been filed praying for quashing the orders dated 15.12.2009 (Annexue P-19), vide which the petitioners were retrenched from service, and also to quash the appointment of respondents No.8 to 22, with consequential relief of directing the

respondent – Board to adjust the petitioners in place of the contractual employees.

The factual background of the litigation is that the petitioners joined the respondent - Punjab Tourism Development Corporation (for short `the Corporation') on different posts i.e. Receptionist, Clerk, Utility Worker, Sweeper, etc. between 1994 to 2000, as is depicted in the chart Annexure P-3. It is stated that petitioners No.5, 6, 8 and 9 have been appointed on compassionate grounds. As the Corporation was running into losses, the State Government took a decision to disinvest the same and consequent thereto, various properties of the Corporation were sold 2004 onwards. The Corporation floated Voluntary Retirement Scheme (VRS) and many of its employees opted for it. 359 employees opted for voluntary retirement, out of which 310 were relieved but relieving of remaining employees was kept in abeyance on the ground that their services were still needed by the Corporation. However, the petitioners were either not eligible or did not apply under the said scheme. The petitioners, however, continued to work with the Corporation.

The State Government in a meeting held on 26.3.2008 decided that Punjab Heritage and Tourism Promotion Board (for short `the Board') be constituted and the said Board could hire services of employees through a placement agency. A copy of the minutes of

the said meeting has been appended as Annexure P-5. Consequently, vide order dated 2.9.2008 (Annexure P-6), various posts were revived/created in the Tourism Department. Accordingly, vide the letter dated 27.11.20008 (Annexure P-7), the Board started appointing staff through placement agencies.

The resultant effect, it is averred, is that on the one hand the State Government decided to close down the Corporation and on the other hand, it created the Board and has been making fresh appointments in the Board. It is averred that while making appointments in the Board, no procedure is being followed and the posts are being filled up through service providers without inviting any applications or issuing any public notice, which is contrary to the norms of making public appointments. The Corporation in its meeting held on 29.6.2009 decided that 32 employees covered by VRS be replaced by substituting them with contract employees taken from the placement agencies. Vide communication dated 3.2.2009, the Government of Punjab directed the Corporation to transfer and hand-over its property to the Board by 31.10.2009. Thereafter, the Corporation directed its employees vide communication dated 6.11.2009 (Annexure P-17) to close the functioning of the running tourist complexes and hand-over the same to the Department of Tourism. Thereafter, the petitioners received the retrenchment orders dated 15.12.2009 (Annexure P-19), which have been impugned in the

present writ petition.

It is the case of the petitioners that they have been working for nearly 15 to 20 years and cannot be replaced by fresh hands. It is further stated that the work of the Corporation is still continuing as the properties of the Corporation have been transferred to the Department of Tourism and the Board. The work of the employees of the Corporation is sought to be taken from contractual employees, which is impermissible. It is stated that petitioners No.2, 7 and 9, though employees of the Corporation, had been deputed to work at Holiday Home Centres being managed by Gulmohar Tourism Complex, Holiday Home Limited, which is the subsidiary company of the Corporation. The said Company has not been wound up or dis-invested, therefore, terminating the services of the petitioners and employing fresh employees against them is illegal.

Separate written statements have been filed by the respondents.

In the written statement filed on behalf of respondents No.1 and 2, it has been stated that the Government had taken a conscious decision to close down by way of disinvestment all such public sector undertakings/ Corporations, which are showing continued losses. Consequently, a VRS policy was formulated by the Department of Disinvestment vide notification dated 24.2.2003 (Annexure P-4). As per this policy, all persons employed on

permanent/regular basis and working against regular sanctioned posts are eligible to seek voluntary retirement provided they have completed five years of service and have at least five years of service remaining before their superannuation. Like other Corporations running into losses, the Corporation invited applications from eligible employees to opt for the VRS. The said options were accepted on 2.7.2003. However, as the Corporation was still in the process of disinvestment, some staff was retained despite their VRS offers having been accepted. It was clearly stated in the order dated 8.7.2003 that the relieving of the employees, whose VRS stood accepted vide order dated 2.7.2003, has been kept in abeyance.

In the written statement filed on behalf of respondents No.3 and 4, it has been stated that the petitioners have concealed material facts from this Court. The Corporation had suffered heavy accumulated losses and the Government took a decision to close down the same. Approximately 501 employees were working in the Corporation including regular, ad hoc and daily wagers/ contractual employees and all the employees of the Corporation have been relieved, although, in stages/batches. The petitioners constituted the last batch of employees relieved from the service of the Corporation. Rebutting the assertions of the petitioners that the functions of the Corporation have been transferred to the Board, it has been asserted that the objectives and functions of the Board are different from that

of the Corporation. The Board was set up by the Government of Punjab vide notification dated 14.8.2002. It was registered as a public charitable trust on 5.12.2002.

Regarding the allegation of the petitioners that the work of the Corporation is still continuing, the categoric stand of respondents No.3 and 4 is that the Corporation has been closed down. At present, the Board is getting managed three properties of the Corporation; one is a restaurant situated at Sirhind and another is at Kartarpur. Both these units have been kept open, only with a view to facilitate stoppage of Lahore bound bus between India and Pakistan as per the agreement between two countries. Except for serving food to the passengers of that bus, no other activity is being undertaken there. Besides, a petrol pump is being run from Madhopur, because of contract with Indian Oil Corporation. It has also been stated that to pay off the dues of its employees under the VRS and the remaining staff, properties of the Corporation had to be sold and remaining properties have been transferred to the Department of Tourism. The Department is planning to lease the same through the Punjab Infrastructure Development Board. It has been categorically denied that the Department or the Board is continuing the work of the Corporation.

Refuting the contentions of the petitioners that they have been substituted by fresh hands, it is stated in the written statement

that with a view to facilitate the closure of the Corporation, nine employees from the out-sourcing agency have been engaged. They had been engaged much prior to the relieving of the petitioners. No recruitment has been made after the services of the petitioners were dispensed with. The nine employees were recruited in the head office of the Corporation to help the finalization of the accounts. As soon as the process of winding up is completed and accounts finalized, these contractual employees from the outsourcing agency would also be relieved.

Regarding the claim of the petitioners that they have been deputed to work at the Holiday Home Centres being managed by Gulmohar Tourist Complex Pvt. Ltd, which is subsidiary of the Corporation, but has not been wound up or dis-invested, it has been stated that the Gulmohar Tourist Complex Pvt. Ltd. was being managed by the Corporation. The Holiday Home Scheme has not been transferred to the Board. The petitioners being employees of the Corporation cannot claim that they should be retained in service, once the entire staff of the Corporation is relieved.

Respondent No.5 – Board has also filed written statement averring that it has been appointing staff since 2002. The objectives of the Board and the Corporation are different and recruitment in the Board is only through an approved outsourcing agency, whose salary bill is being paid out of the funds of the Board and not by the

Corporation. At present, the Board is managing three properties of the Corporation; two restaurants and one petrol pump. It is also stated that the properties of the Corporation are being given on lease through Punjab Infrastructure Development Board and there is no proposal to run hotels, restaurants, petrol pumps and carry out other activities of the Corporation through the Board.

I have heard Learned Counsel for the parties and gone through the record.

When this matter came up for hearing on 11.2.2011, directions were issued to the State of Punjab to take an appropriate policy decision for absorption/adjustment of the retrenched employees. Pursuant thereto, the Council of Ministers took a policy decision dated 17.12.2011 (Annexure R-2), relevant part of which reads as under:-

> "*Council of Ministers on considering the memorandum dated 16.12.2011 submitted by Finance Department have decided not to absorb the retrenched employees of the Board/Corporations in the Govt. Departments and Public Sector Undertakings. However, these employees will continue to get the age relaxation as per para 1.3 of the memorandum to apply for different post in Punjab Govt.*"

In the affidavit dated 22.12.2011 filed by Sh. S.C. Aggarwal, Chief Secretary, Government of Punjab, while appending

the aforesaid decision of the Council of Ministers it was stated that after the year 1995 there is no existing policy for absorption of retrenched employees of the Boards and Corporations belonging to the State of Punjab, hence, the State of Punjab is unable to absorb such employees. The Council of Ministers decided not to make any policy for absorption of such employees. It was felt that the employees of the Boards and Corporations had been retrenched under VRS or through any other procedure, in accordance with law, as the State of Punjab intended to reduce the burden on the State exchequer. Absorbing those employees again would, in fact, negate the very purpose of disinvestment itself. However, these employees shall continue to get the age relaxation as per para 1.3 of the memorandum to apply for different posts in the Punjab Government.

Vide order dated 14.10.2011, this Court had directed the respondents to give details of all retrenched employees as well as other officials of the respondent-Corporation and also specifically state as to whether any other department parallel to Corporation is running at present or any other employees on contract basis are engaged or work requirement is there or not. In response to the said direction, an affidavit dated 9.11.2011 of Sh. Hussan Lal, Secretary, Department of Tourism, Government of Punjab was filed, mentioning that most of the properties of the Corporation were sold in the financial year 2006-07. Therefore, on receipt of sale proceeds, the

Corporation relieved 203 employees under the VRS, 16 regular employees were retrenched, 5 employees retired on attaining the age of superannuation and the services of 34 daily wagers were also dispensed with on payment of compensation as per the Industrial Disputes Act. At present, all the employees of the Corporation have been relieved except the Additional Managing Director, who has been brought in with a view to facilitate the winding up of the Corporation. Two accounting firms have been engaged for preparation of the accounts and minimum work force has been engaged through an approved outsourcing agency for helping the accounting firms. It is further stated that no department or Board parallel to the Corporation is running. The Board was set up vide Government of Punjab notification dated 14.8.2002 and it was registered as a Public Charitable Trust on 5.12.2002. The services of 47 employees have been engaged through the approved outsourcing agency in the Board. It was also explained that as per the agreement with Delhi Transport Corporation, Punjab Tourism is to provide food and snacks to the passengers going to and coming back from Pakistan on the buses being run by the Delhi Transport Corporation and Pakistan Tourism Development Corporation. Due to the agreement and the security reasons, the buses cannot be allowed to make halts at privately owned hotels/restaurants. Therefore, restaurants at these two places, namely; Tourist Complex at Kartarpur and Floating

Restaurant at Sirhind are being operated for limited hours and the bars and rooms have already been closed. The Board is not running the tourist resorts, tourist complexes or hotels/ restaurants of the Corporation, except the Tourist Complexes at Kartarpur and Sirhind.

Thus, it is clear that the State Government had taken a conscious decision to close down by way of disinvestment all such public sector undertakings/ Corporations, which were showing continued losses. A VRS policy was formulated by the Department of Disinvestment As per this policy, all persons employed on permanent/regular basis and working against regular sanctioned posts were eligible to seek voluntary retirement provided they had completed five years of service and had at least five years of service remaining before their superannuation. The Corporation had suffered heavy accumulated losses and the Government took a decision to close down the same. Most of the properties of the Corporation were sold in the financial year 2006-07. Thereafter, on receipt of sale proceeds, the Corporation relieved 203 employees under the VRS, 16 regular employees were retrenched, 5 employees retired on attaining the age of superannuation and the services of 34 daily wagers were also dispensed with on payment of compensation as per the Industrial Disputes Act. The employees of the Corporation were relieved in stages/batches. The petitioners constituted the last batch of employees relieved from the service of the Corporation. It has also

been categorically asserted by the respondents that the functions of the Corporation have not been transferred to the Board and the objectives of the Board are different from that of the Corporation. The allegation of the petitioners that they have been substituted by fresh/ contractual employees has been adequately explained by stating that those employees have been engaged only to facilitate the winding up process and would be relieved once it is complete. The State Government has categorically stated that since 1995 there is no existing policy for absorption of retrenched employees of the Boards and Corporations belonging to the State of Punjab, hence, the State of Punjab is unable to absorb such employees. It has expressed its inability to frame any policy for absorption of retrenched employees of Boards and Corporations by pleading that as employees of loss making corporations have been retrenched by offering VRS or otherwise in accordance with law, absorbing them would negate the very purpose of disinvestment. However, they will have the benefit of age relaxation while applying for other posts as per earlier decisions. The petitioners have candidly stated that they did not opt for the VRS as they were not eligible for the same. It has also not been denied by them that they have been paid the statutory retrenchment compensation.

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.

MAY 21, 2015 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

GIANENDER KUMAR
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I attest to the accuracy and
integrity of this document