

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2278 of 2015
Date of Decision: 11.02.2015

Revenue Union Sinchai Vibhag-Punjab
through Subhash Chander Modgil

..... Petitioner

Versus

The State of Punjab and another

..... Respondents

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

Present: Mr. R.K. Chopra, Sr. Advocate,
with Mr. Pawan Kumar, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.(Oral)

The grievance in this petition filed by numerous Canal Patwaris through their registered union is that they are overburdened with work and are being made to collect cess imposed by the State which is not their duty but that of the Lambardar.

A direction by way of mandamus is sought to the respondents to fill up numerous vacancies lying unfilled in the department. It is urged that when there are only 550 Canal Patwaris working across the State against a sanctioned strength of 1680 posts for the last three decades, the vacant posts should be ordered to be filled so that the onerous burden of work is evenly shared. It is submitted that even in cases of promotion to the higher post Canal Patwaris are still made to perform duties attached to the lower post as well which is creating heartburn in the rank and file of the cadre.

Be that as it may, the question of filling up posts of Canal Patwaris is the business of the Government in discharge of work through the appropriate numerical strength of the cadre in its functional necessity. This can be revaluated by carrying out a cadre review exercise where posts can be increased or decreased according to the work load and the unit strength fixed according to desired output in relation to duties to be performed in the administration of the department of Irrigation, in the branch where the petitioners, represented collectively through their union, belong. However, it is not the business of the Court to issue directions to Government to fill up posts and no such directions may be issued in view of the dicta laid down in **Shankarsan Dash vs. Union of India**, (1991) 3 SCC 47 that the Court cannot ordinarily issue such directions, holding that the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus, cf. **S.S. Balu v. State of Kerala**, (2009) 2 SCC 479. The Government is not bound to fill up the existing vacancies within a particular time-frame, cf. **Asha Kaul v. State of J&K**, (1993) 2 SCC 573. This is the legal position, ordinarily obtaining, but remains subject to non-discriminatory action and reasonableness on the part of the State which controls the cadre and must always be seen acting fairly, proportionately and equitably to the cause.

The petitioner-Union have brought their grievances to the notice of the higher authorities through a collective legal notice dated December 09, 2014 (P-5) served on the respondents to redress their grudges. It is said in the petition that no action has been taken on this legal notice addressed to the Secretary to Govt., Department of Irrigation, Punjab and the Chief Engineer/Canals, Chandigarh.

Mr. R.K. Chopra, learned Senior counsel submits that in the circumstances, a direction may be issued to the respondents to expeditiously decide the aforesaid legal notice by treating the present petition, as well, as a supplementary representation so that they may know their stand upon a decision and where they stand. The real grudge of the union, as I understood what Mr. Chopra addressed, was the great distances commanded by one Canal Patwari and the large territory involved for each of them to perform their duties effectively but which remains in the domain and discretion of the implementers of the rules of service in the exigencies and efficiency of administration. The rub of the petitioning union is that there are too few people to man too much area individually. The Court can say little on this or their plight which is for the employer to see and measure.

Without expressing any opinion on the merits of the case, this Court is of opinion that a grievance is a grievance and deserves to be redressed for whatsoever it is worth so that there is peace and harmony maintained among the functionaries of the State whose minds are agitated and, therefore, I should think it appropriate to issue a direction to the competent authority in the respondents to take up the legal notice together with the pleas presented in this petition and pass an appropriate order

thereon. In this, the competent authority will endeavour to decide the memorial as soon as it is practicably possible while looking to the complexities of the issues which may be involved, which may in the ultimate analysis depend largely on a cadre review exercise carried out with a view to rationalize the work of Canal Patwaris and distribute the burden of the yoke equitably, reasonably and in a non-discriminatory manner. If such an exercise has not been carried out so far, it is expected that the legal notice etc. would be decided within a reasonable time and in right earnest and the issues examined realistically. If hearing is required, the registered Union may be given such opportunity through its knowledgeable office bearer/s as deemed fit.

The petition stands disposed of in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

11.02.2015
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