

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6583 of 2013

Date of Decision: 17.09.2015

Ashok Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. S.K. Rattan, Advocate,
for the petitioner.

Mr. Ashish Sharma, Addl. AG, Punjab.

Mr. Chaman Lal Premy, Advocate,
for R-6.

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

RAJIV NARAIN RAINA, J.

1. The Panchayat Samiti, Hajipur sent a proposal to State Government to fill up one post of Clerk lying vacant in its office. On special grounds approval was accorded vide letter dated June 22, 1995 issued by the Government of Punjab in the Department of Rural Development & Panchayats granting permission on the condition that the recommended person is duly qualified for the post of Clerk and in case, he is found eligible, action be taken at the level of the Panchayat Samiti keeping in view the Punjab Government instructions dated May 05, 1995. On the strength of this letter, the petitioner Ashok Kumar was appointed as a Clerk against a vacant post in the pay-scale of Rs.950-1800 with initial pay of Rs.1,000/-.

The appointment was temporary and was dependent on regular recruit becoming available the petitioner will be relieved from duty. The appointment was initially for 89 days from the date of joining. The appointment offer was June 29, 1995.

2. Later on, the Executive Officer, Panchayat Samiti, Hajipur received a memo from the Government dated January 02, 1996 on review of the case, intimating the Samiti that according to the Punjab Panchayat Samitis and Zila Parishads Services Rules, 1965 ("1965 Rules") the minimum qualification required for Clerks is Matric. No relaxation was permissible in educational qualifications. The Zila Parishad, Hoshiarpur was informed of the request initiated by the Samiti for regularizing the services of Ashok Kumar as Clerk that his case is not covered by the instructions dated January 18, 1995 issued by the Government. The request for regularizing the services of the petitioner was refused. However, twenty days after the communication of the letter from the Government, the Deputy Chief Executive Officer, Zila Parishad, Hoshiarpur drew up a final seniority list of Clerks in which the name of the petitioner was mentioned at Sr. No.24 with date of regularization reckoned from the date of joining service for the first time on 89 days basis. On April 16, 1998 the Government again advised the Panchayat Samiti, Hajipur making its meaning rather plain that employees working on 89 days basis could not be regularized in service. But the Samiti persisted otherwise in apparent defiance of the mandate of the Government to dispense with the services of all those who were employed on system of 89 days. It may be recorded that in between the contractual employment offered on 89 days basis a break of one day was

made in the case of the petitioner-Ashok Kumar. However, the services of the petitioner were extended from March 18, 1999 to June 14, 1999 again on 89 days basis though he was kept in the pipe line to be made regulariz, which meant the decision was kept in abeyance or at least that was the effect without saying so. The Samiti still persisted in retaining the petitioner though he was not qualified to hold the post of Clerk.

3. Meanwhile, the Government of Punjab granted sanction for constituting Selection Committees to fill up vacant posts under the 1965 Rules. These posts could be filled up by calling suitable candidates from the Employment Exchange or by public advertisement in regional newspapers after seeking prior permission of the Government and proposals were called from the respective Samitis/Parishads in the State.

4. On January 25, 2000 a resolution was passed by the Panchayat Samiti regularizing the services of the petitioner. The order has also been signed in ratification by the Rural Development & Panchayat Officer, Hoshiarpur, the District Sainik Welfare Officer, Hoshiarpur and Executive Officer, Panchayat Samiti, Hajipur. This resolution was converted formally on the same day by regularizing the services of the petitioner w.e.f. January 25, 2000 in the pay-scale of Rs.3120-5160 authenticated by the Executive Officer, Panchayat Samiti, Hajipur. Quite evidently, the decision was taken at the level of the Panchayat Samiti alone without reference to the Government for permissions, approvals and verification of the cases sent to it by the respective Samitis/Parishads. Since regularization by resolution ordered at the level of the Samiti was not verified by the Government the petitioner was again kept on extension of service on 89 days mode after

giving a break of one day to keep his case alive for the period of service between March 13, 2000 and June 09, 2000. It transpires that the Government of Punjab in the Department of Personnel approved issuance of a policy scheme dated January 23, 2001 which reviewed the policy circular on regularization of work charged/daily wage and other categories of employees, which is at Annexure P-13. It appears that in the meanwhile the Government had been in the process of reviewing cases of unauthorized and illegal appointments made by the Zila Parishad and Panchayat Samitis after October 01, 1994 and in this exercise the name of the petitioner surfaced at Sr. No.68 which declared that he was on the list of employees illegally appointed by ignoring rules and regulations in appointing them to service. All the Executive Officers of Panchayat Samitis, were directed to terminate/remove the employees unauthorizedly appointed to service de hors rules after giving them notice and hearing. Hence, the fate of the petitioner was sealed by this circular dated October 25, 2001. Nevertheless, an exception was carved out subsequently on November 02, 2001 that where the employees were appointed through advertisement or by adopting due procedure of law then it was clarified that no action be taken against such employees in case they were appointed during the period when ban was imposed by Government across board on recruitment/appointments. The case of the petitioner obviously did not fall in the saving clause. After long protective struggle by both the Samiti and the petitioner his services were ultimately terminated on November 19, 2001 in deference to the command of the Government. It is not urged that State Government in the concerned department was not competent to intercede. When Government

had accorded approval to filling up the post of Clerk at the level of the Samiti which was occupied by the petitioner it came with a rider that the appointment must be in consonance with qualifications prescribed for the post in rules, 1965. If he got away with 5 years of service it mattered little. However long the service may be it was not a cure to illegal appointment.

5. Following the decision of the Supreme Court, the Personnel Department in the State Government issued a circular dated September 02, 2003 that the services of those employees be regularized, who are working on 89 days basis on or before June 13, 1996 and were appointed against regular post.

6. It is worth mentioning that the petitioner in the first instance had filed a civil suit against the letter dated March 13, 2000 which had granted him extension of service on 89 days basis w.e.f. March 13, 2000 to June 09, 2000 in absence of verification of the case of the petitioner for appointment sought from the Government. It was during the pendency of the suit that the termination order was passed on November 19, 2001 and the suit was rendered infructuous.

7. Aggrieved by the termination order and denial of claimed right to regularization, the petitioner raised an industrial dispute against the Panchayat Samiti, Hajipur by serving a demand notice invoking the jurisdiction of the Labour Tribunal for relief of reinstatement with consequential benefits for violation of the provisions of section 25-F of the Industrial Disputes Act, 1947 ("the Act") at the time of termination of services.

8. Conciliation having failed and the failure report submitted to

the Government under section 12(4) of the Act, the appropriate government referred the dispute to the Presiding Officer, Industrial Tribunal, Jalandhar vide Ref. No.881 of 2002. The trial started after the Samiti entered appearance by filing statement of claim/written statement. In quite a volte face from their earlier stand protecting its illegal appointment the Samiti contested the case. The Labour Court framed two issues. The first one was based on the objection of the management that the Panchayat Samiti was not an industry and the second one was to the effect that whether the termination of the services of the workman was justified and in order and if so to what relief the petitioner was entitled to. There is no gainsaying that the first issue had to be held against the management since the Panchayat Samiti qualified the test of industry in section 2 (j) of the ID Act as explained in **Bangalore Water Supply & Sewerage Board vs. R.Rajappa and others**, AIR 1978 SC 548; 1978 (3) SCR 207 and **The Corporation of the City of Nagpur vs. Its Employees**, AIR 1960 SC 675; 1960 (2) SCR 942. The seriously contested issue was with respect to termination whether it was good or bad, illegal, irregular or non-est.

9. The Labour Court read the rule of recruitment to the post of Clerk in Panchayat Samities. The minimum qualification laid down was Graduate in case of direct appointment. The workman was only 10th pass. The Court held that the workman does not fulfil the essential and basic qualification. The law is clear on the subject that the essential qualifications cannot be relaxed as that would violate the guarantees of equality and of equal opportunity in Articles 14 & 16 of the Constitution of India. The court *a quo* aptly applied the law in **Municipal Council, Samrala vs. Raj**

Kumar, (2006) 3 SCC 81 wherein the Supreme Court held that if appointment is against rules and instructions then the employee concerned is not entitled to remain in service. The Labour Court went to the extent of holding that it was not necessary to give notice to the petitioner before his services were terminated which really meant that the rules of natural justice did not reach that far when the appointment was *ex facie* contrary to rule. The first letter of appointment on 89 days basis and subsequent extensions with one day break contained voluntary stipulation that the services can be terminated without any notice. This term was contractual in nature between employer and employee and was binding between the parties. The relationship between the parties was contractual and not one of official status. The initial appointment itself was a fraud on appointments to local bodies as tentative approval of Government was granted only in case **Ashok Kumar** fulfilled the minimum qualification for the post of Clerk. From day one, the petitioner knew he did not possess the essential qualification to hold the post and, therefore, his initial entry into service was not just irregular but was illegal. Illegal appointments arising on service law principles give no actionable right to a candidate who complain in a court of law, including quasi judicial labour courts and tribunals, that in such a case, the principles under the ID Act would apply. When the Supreme Court explained the meaning of the term retrenchment in **State Bank of India v. Shri N. Sundara Money**, AIR 1976 SC 1111; 1976 (3) SCR 160 and **Santosh Gupta v. State Bank of Patiala**, AIR 1980 SC 1219; 1980 (3) SCR 884 for any reason whatsoever, the Court did not give approval to *per se* illegal appointments to a post in public service, such as employment in

the Panchayat Samiti against a cadre post governed by rules of service.

10. Appendix 'A' of the 1965 Rules prescribes the method of recruitment of the post of Head Clerk [post of Clerk is not enumerated]. The essential qualifications for the post of Head Clerk in direct recruitment under the 1965 Rules are as follows:-

“(i) Graduate of a recognised university A Degree in Commerce or with Mathematics, or experience of accounts work in a Government office or in the office of a Local Authority will be preferred ; or

(ii) Intermediate or its equivalent with 2 years' clerical experience in a Government office or in the office of a Local Authority ; or

(iii) Matriculate with 4 years' clerical experience in a Government office or in the office of a Local Authority.”

11. Labour law adjudication must give full credit and effect while dealing with statutory rules of service by obeying the standards laid down in rules of service which have statutory status and are to be adhered to. The resolution appointing the petitioner and then regularizing him without approval of the State Government was an act of fraud committed on the statute. There can be no estoppel against statute and I think this is where the observations of Hon. M. Hidayatullah, CJI in *Rajappa* case (supra) are somewhat relevant to the issue and produce a new “line of thinking” or dimension in labour law as administered in labour courts on industrial law principles while dealing with the concept of “industry”. His Lordship indicated on the eve of laying down office, in the context of Article 310, 311 and services governed by rules of service with the following insight in paragraph 18 of the report: “Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles

310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication”. The main judgment in *Rajappa* of Hon. Krishna Iyer J. does not broach the subject picked out by Hon. CJI penning his separate note while concurring on the line of thinking adopted by the main author of the judgment which defines industry and still hold the field though the judgment stands referred to larger Bench on May 5, 2005 in **State of Uttar Pradesh v. Jai Bir Singh**, (2005) 5 SCC 1 for reconsideration of the *Rajappa* ruling.

12. Even assuming that the case fell within the folds of section 25-F of the Act and its admitted non-compliance even then reinstatement in the present case is a far cry and would not follow at all leave aside “automatically” even after returning a finding that section 25-F of the Act was violated. This aspect has not been broached by the Court *a quo* but should have been since the workman's argument hinged around violation of mandatory procedure in section 25F.

13. If the relief of reinstatement would not flow automatically [or not at all] in the case of the present kind, then the next question which arises for consideration is whether this is a case for compensation in lieu of reinstatement for violation of section 25-F of the Act. To the mind of this Court, the answer lies largely in the nature of the initial appointment which was obtained illegally and in the molar teeth of the rule which forbade entry as Clerk without the regimen of a graduation degree (BA) from a recognized university or institution. Unfortunately, in the initial appointment itself the Rural Development & Panchayat Officer, Hoshiarpur participated on January 25, 2000 to give undue benefit to the petitioner. He

was a functionary of the State Government representing its local interest and that of the Panchayat Samiti and ought to have obeyed the law and not violated it. The officer should have desisted from putting his signatures on a piece of paper called a resolution regularizing the appointment of Ashok Kumar acting only on a report prepared by the Samiti on the work and conduct of the employee which was said to be satisfactory. It matters little whether it was satisfactory as the petitioner illegally continued to serve from June 29, 1995 to November 19, 2001 to the satisfaction of his friends in the Samiti when his services were rightly brought to an end on the binding advice received from the Department of Rural Development & Panchayats, Chandigarh vide letter dated October 25, 2001 calling upon the Panchayat Samitis including the Panchayat Samiti, Hajipur to immediately remove/terminate the services of all ad hoc employees appointed illegally in Panchayat Samities and Zila Parishads across Punjab. Therefore, contemplating a compensation package based on a void appointment in the present circumstances cannot be granted and the court cannot lend its hand to save such an appointment even on unique labour law principles and the protections afforded by the ID Act. Granting compensation to the petitioner I think would be putting premium on illegal appointment. Section 25F of the Industrial Disputes Act, 1947 was never designed by the framers as a protection against illegal appointments to cadre posts in violation of service rules either in Government service or in local bodies, boards and corporations. Any compensation package in lieu of reinstatement with respect to illegal appointments would be adding premium on misconduct of the appointing authority in making the appointment consciously in breach

of the rule of recruitment. This relief would be legally intolerable to be handed down to a claimant by the court. I would like to hold that no relief whatsoever is admissible to such an appointee who came from the back door. Neither can the services of the petitioner be regularized on first principles nor in view of the mandate of the Constitution Bench in **Umadevi-3** case reported in (2006) 4 SCC 1 since the present case does not fall within the four corners of the ratio in **Maharashtra State Road Transport Corporation & Anr. vs. Casteribe Rajya Parivahan Karmchari Sanghatana**, (2009) 8 SCC 556 explaining *Umadevi-3* as confined to orders which may not be passed in service matters claiming regularization [but not labour laws] and the scope of jurisdiction and power of the Supreme Court and the High Courts to make affirmative orders, the Supreme Court in *Umadevi-3* guiding courts not to pass orders regularizing “illegal” appointments etc. The petitioner's entry in service cannot even fall in category of “irregular” appointments. In any case, the question of regularization was not raised as a dispute nor was referred for adjudication to the labour court by the appropriate government. Thus, the issue cannot be gone into in the present proceedings when the argument was that if reinstatement is granted with continuity of service it would make for 10 years of service with the accompanying rights in paragraph 53 in *Umadevi-3*. But the directions in paragraph 53 are confined to legal appointments on daily wages, work charged and ad hoc service etc. in though not indicated but implicitly apply to low profile low paid jobs.

14. I would, therefore, not accede to the prayer of learned counsel Mr. S.K. Rattan appearing for the petitioner that the impugned award of the

learned labour court deserves to be set aside on account of error in not noticing and dealing with the effect of breach of mandatory sub-sections (a) & (b) of section 25F of the Act as fatal to the award. Since it is a quasi judicial order, this Court is free to supply other reasons in support of the conclusion that the reference eminently deserved to be declined. I do not see any fundamental flaw of law or fact in the work of the court *a quo* or an error apparent on the face of the record which would vitiate the award. The award is sound in its dispensation in declining relief of reinstatement and back wages or compensation in lieu of former.

15. There is no substance in the petition and for the reasons recorded above the same is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

17.09.2015
manju