

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14615 of 1993

Date of Decision: 25.01.2016

Des Raj and others

... Petitioners

Versus

State of Punjab and others

... Respondents

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

Present: Mr. R.K. Sharma, Advocate,
for the petitioners.

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J.

1. Heard learned counsel at length. Perused the record placed on file. No ground for interference is made out. The petition is dismissed for the reasons that follow.

2. The petitioners were initially recruited in the Sericulture Wing in the Department of Industries, Punjab in the pay-scale of Rs.80-120. For reasons administrative, the Sericulture Wing was wound up and the petitioners were declared surplus. In normal circumstances, they would have lost their jobs. However, Government was alive to its moral duty not to leave them in the lurch. The officials who had been rendered surplus were adjusted in the Department of Technical Training & Industrial Training, Punjab but in their own pay-scale from where they came. However, since there were no posts of Sericulture Operators in the Department in which

they were re-deployed they were adjusted against available vacancies in the cadre of Clerks since they possessed the minimum qualification of Matriculation to be eligible for appointment as Clerk. This office order to this effect was passed on June 28, 1976 and endorsed on July 07, 1976. Four years later, sanction was accorded of their pay fixation and they were granted the revised scale of Rs.325-495 vide order dated October 22, 1980. Later, it happened that they were shifted to the Horticulture Department in the year 1994 where they served till they retired on reaching the age of superannuation.

3. The present petition was filed in the year 1993 while the petitioners were in service demanding a mandamus from the Court directing the respondents to grant the pay-scale of Clerks to the petitioners w.e.f. July 30, 1976 in the revised pay-scale of Rs.110-250 and to grant them all consequential benefits of pay and allowances etc. as admissible to them, flowing therefrom. The associate prayer in the alternative was for a direction to the respondents restraining them not to revert the petitioners as Sericulture Operators and their pay be regulated in the pay-scale of Clerks on the basis of their continuous length of service as Clerks. They prayed for pay protection under the rules. Still further, they prayed that the seniority list (Annexure P-14) be quashed and they be granted seniority with effect from the date of initial joining on the post of Sericulture Operator w.e.f. May 01, 1964 etc.

4. During the course of arguments, this Court asked Mr. Sharma to read out the original Punjabi language version of the Office Order dated June 28, 1976 (P-3) where the word “transferred” has been used while

translating the document in English. A reading of the document in the vernacular speaks otherwise. The translation is incorrect and wholly misleading to such an extent it could deflect the course of justice. The word “adjusted” is used written in Punjabi in the original document leaving no doubt that the petitioners were not “transferred” in 1976 but had been “adjusted” to save them from retrenchment. This makes the material difference and alters the argument when the two words connote different meanings in service law. If they were transferred from department to department the Government would remain under obligation to act differently.

5. Besides, in terms of the office order they were deputed as Clerks to work in their own pay-scale. The pay-scale of Sericulture Operators was lower than that of Clerks which gave rise to the demand. This part of the office order was not litigated by the petitioners till the present petition was brought in 1993 which is inactivity for a period of 17 years. If the petitioners were seriously aggrieved by the office order placing them in their own erstwhile pay scale, challenge to the same should have been brought within the period of three years from the date the cause of action accrued in within the time prescribed in Article 137 of the Limitation Act, 1963. If the matter is viewed from the angle of writ jurisdiction even then the cause of action is stale and would suffer from vice of delay and laches, unless the petitioners are able to propound a case of violation or a fundamental right preserved in Part III of the Constitution where the question of delay and laches may have to give way to the constitutional goal of equality of pay and opportunity and of equal treatment. None of this has

been presented in this case nor can it be said that the petitioners are in Court pressing fundamental rights. Their civil rights, if any, became 'stale' and 'dead' when the petition was presented and, therefore, I have no hesitation in declaring that on the date of filing of the petition neither did the petitioners have a right to the pay-scale of Clerks nor was the Department under a corresponding obligation to grant them that pay-scale. If the petitioners worked on the post of Clerks it was in an administrative arrangement to tide over re-deployment in the exigencies of service meant only to accommodate them in transit before permanent solutions were found since the post of Sericulture Operators did not exist in the department nor could be created against which they were merely "adjusted" to save them from losing their jobs altogether.

6. Seniority, they cannot claim in the department in which they were adjusted to disturb third party rights and their position would have to remain at the tail end of Clerks and even below directly recruited Clerks came in after them while they were serving, because they worked at best in an ex-cadre arrangement till they were finally absorbed and retired from service in the Horticulture Department.

7. Petition stands disposed of as above and file be sent to the record room.

(RAJIV NARAIN RAINA)
JUDGE

25.01.2016
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