

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.654 of 1999(O&M)

Date of decision:1.9.2016

Rajender Kumar & anr.

... Petitioners

Versus

Municipal Council, Sirsa & ors.

... Respondents

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

Present: Mr. Arvind Rajotia, Advocate, for petitioner No.1 and
Mr. Harkesh Manuja, Advocate, for petitioner No.2
in CWP No.654 of 1999
Mr. Sandeep Kotla, Advocate, in CWP No.15204 of 2000
Mr. SK Monga, Advocate, and
Mr. Anupam Bansal, Advocate, for
Mr. AM Punchhi, Advocate, in CWP No.2896 of 1999
Mr. SK Monga, Advocate,
in CWPs No.2897, 2898, 655, 1890, 4679 and 4680 of 1999 &
RSA No.2247 of 2002
Mr. KL Dhingra, Advocate, in CWP No.5021 of 1999
Mr. Ranjit Saini, Advocate, in CWP 13297 of 1999
Mr. Ashwani Gaur, Advocate, in CWP No.7643 of 2004
for the petitioner(s).

Mr. Sourabh Goel, Advocate, and
Mr. Sumeet Sheokand, Advocate, for
Mr. RS Tacoria, Advocate,
for respondent No.1 in CWPs No.654 and 655 of 1999.

Mr. Prashant, Advocate, for
Mr. Suman Jain, Advocate,
for respondent No.4 in CWP No.15204 of 2000.

Mr. Jagdish Manchanda, Advocate,
for respondent No.4, in CWP No.7643 of 2004.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. This order disposes of the above-mentioned first case as well
as the connected writ petitions* tabulated at the foot of the order, as

common questions of law and fact are involved in them which can conveniently be decided by a common order.

2. Heard the learned counsel for the parties on the points involved for determination at some length and perused the record on the writ files.

3. Without any doubt these petitions have to be dismissed on the short ground that the petitioners do not possess a shred of either civil or fundamental right to be offered appointment to public posts only for having substituted in a brief interlude regular hands during strike called by the drivers and conductors of public transport in 1996 and carried out the work of the Government in its moment of crisis in its effort to keep passenger transport rolling for the travelling public. They filled in for a short span of no more than two months till their services were discontinued when the striking workers returned to their respective duties and posts after the strike was called off, most of them by then pacified by a deal with the transport department.

4. Many years have flown by but still the petitioners hope for relief of reinstatement by reason of discrimination have not matured while some of them were fortunate by adjustment in jobs in terms of a policy meant for them by concession given by the State in gratitude and recompense for their timely services rendered in an emergency. I am inclined to think that it is far too late in the day to consider a plea of discrimination based on equal treatment at this distance of time when the petitioners and thus by no stretch of imagination they can find the relief claimed on the ground that many of them who were rustled up from the public in the rush and hurry in preventing further disruption of public utility

services in public transport to carry on temporarily the work of drivers and conductors of State buses etc. Those persons as against whom plea based on non-discrimination is set up were screened for appointment on parameters set down as policy measure of repaying gratitude and were absorbed subject to the conditions laid down.

5. The petitioners appear not to have fulfilled adopted criteria for re-induction in service in terms of the policy. But can the petitioners be appointed to Government service by Court mandamus to hold public posts without laying down solid foundations in the petition for the relief claimed. They have served their purpose in helping the State in its hour of need like all citizens must to as a duty to fellowmen. But their reward will not translate automatically to give them a run of regular appointments to government service for decades with cost paid by the public exchequer.

6. Their compensation and relief lies elsewhere which is not within the realm of authority conferred to the High Court by the Constitution of India under Article 226, which provision is designed to abide by the law of equality of opportunity in Article 16 of the Constitution of all eligible candidates in the employment market. Simply invoking sympathy and equity will not alone be of help. There are limitations of self restraint placed on the Court, designed by the Courts themselves remaining cognizant of its own boundaries marked and evolved by what was given by the Constitution to the High Court while sanctioning constitutional power in issuing “directions, orders or writs” including the six in Article 226, “or any of them”. Triggering off extraordinary power in an extraordinary manner is extraordinarily antithetical to the rule of law. To trigger reaction in the

executive field is ultimately in negation of the rule of law itself in making exceptions. Judicial power does not grow out of the barrel of a gun, while judicial restraint is the more effective emollient to apply as it injures no citizen at the cost of another potential right-holder.

7. And if one is forced to return in time to history with the law undergoing constructive yet painful but expected change, as it must, the mind inevitably is then obsessed with old cherished norms but at the same time receptive to a pasture of new ideas and in this transformation the mind is ever shaped by a collision of fresh legal ideas as against the ones' of yesteryears, producing sometimes startling results, the past clouded and forgotten to memory and lost forever to time and tide grappling today with the fast changing times. Our present is mixed with the past and may produce stupefying effects, as in this case, to wit, if relief were given today based on a lightning strike called by the staff in the Transport Department in yesteryears holding the State Transport at ransom and the petitioners lending their helping hand. The State took measures but succumbed to pressure on a compromise. Then the strikers, to my mind, should have been dealt with sternly, as no one can paralyze public interest. The refrain has been that private interest must yield to public interest. But this is ruminating in the remote past in search for relief today which could only come by executive decision being a managerial function shaped only by policies of the day. This is everyday experience in handling old regular cases is disturbing in grappling for relief which can or cannot be legitimately granted within the four corners of the law. The contention raised by the petitioners sadly has no fixed address where relief can be posted.

8. As a result of what this Court's experience is in deciding old cases with the tools available, as of now in the present climate to try and forge relief, these petitions sadly have to be dismissed as the petitioners have not acquired in my considered view an actionable right or claim to the degree of a binding decree issued by court, even when there was present some measure of exploitation of human resources by the lending hands of the petitioners and their ensuing heartburn. The petitions are accordingly disallowed.

9. I can only lament that State should not be seen treating manpower as fodder or grist for the mill. Human exploitation must carry with it a price but maybe not at the expense of recruitment to public posts which are public property and required to be filled by the constitutional scheme of appointments as explained in *Secretary, State of Karnataka v. Umadevi*, (2006) 4 SCC 1 (CB). But still, exploitation of human labour is unethical. The State should not use and throw manpower and bid it goodbye. This is for State Government to ruminate.

(RAJIV NARAIN RAINA)
JUDGE

1.09.2016
monika

Sr. No.	Case No.	Parties Name
1	CWP-15204-2000 (O&M)	OM PRAKASH AND ORS. V/S STATE OF HARYANA & ORS.
2	CWP-2896-1999 (O&M)	JOGINDER SINGH V/S .M.C.HANSI & ORS.
3	CWP-2897-1999 (O&M)	SURENDER KUMAR & ORS. V/S M.C. MEHAM & ORS.
4	CWP-2898-1999 (O&M)	SURESH KUMAR V/S M.C. HANSI & ORS.

Sr. No.	Case No.	Parties Name
5	CWP-655-1999 (O&M)	SUBHASH CHANDER & ORS. V/S M.C SIRSA & ORS.
6	CWP-1890-1999 (O&M)	JOGINDER SINGH & ANR. V/S M.C. HANSI & ORS.
7	CWP-4680-1999 (O&M)	RAM MEHAR & ANR. V/S M.C.HANSI & ORS.
8	CWP-4679-1999 (O&M)	RAJ KUMAR & ANR. V/S M.C. HANSI & ORS.
9	CWP-5021-1999 (O&M)	SHYAM SUNDER & ANR. V/S STATE OF HARYANA & ORS.
10	CWP-11721-1999	BALBIR AND ANR. V/S STAE OF HARYANA & ORS
11	CWP-14668-1999 (O&M)	BALBIR SINGH & ANR V/S STATE OF HARYANA & ORS
12	CWP-17314-1999 (O&M)	SATBIR SINGH V/S THE STATE OF HARYANA & ORS
13	CWP-13297-2000 (O&M)	DES RAJ & ORS. V/S STATE OF HARYANA & ORS.
14	CWP-7643-2004 (O&M)	NAFE SINGH & ORS. V/S STATE OF HARYANA & ORS.
15	RSA-2247-2002 (O&M)	RAJ KUMAR V/S STATE OF HARYANA & ANR.

(RAJIV NARAIN RAINA)
JUDGE

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Whether speaking/reasonedYes

Whether reportableYes