

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4422 of 1998 (O&M)

Date of Decision: 15.09.2017

Mahender Singh and others

...Petitioners

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Abha Rathore, Advocate,
for the petitioners.

Mr. R. K. Doon, AAG, Haryana.

Mr. Padamkant Dwivedi, Advocate,
for respondent no.2.

Amol Rattan Singh, J.(Oral)

By this petition, the eight petitioners herein seek the issuance of a writ of certiorari quashing the impugned orders Annexures P-10 to P-16, by which they were relieved, on completion of training at various hotels run by the respondent Haryana Tourism Corporation. The petitioners were undergoing such training in catering services and as per the impugned orders, they were shown to be Trainee Waiters.

They also seek quashing of the advertisement Annexure P-17, dated 27.03.1999, by which applications for appointment as Waiters had been invited by the respondents, the last date for submission of such application forms being 26.04.1999.

2. As per the petitioners, the Corporation is a Government Company incorporated under the Companies Act, 1956, with the share capital wholly subscribed by the Government.

They are contended to have joined courses in catering services, cooking and for being appointed as receptionists, pursuant to an advertisement issued by the Corporation, with the training thereafter having been imparted at the Haryana Institute of Catering, Panipat and at the Hotel Management and Food Craft Institute, Faridabad.

3. All eight petitioners are stated to have completed a one year diploma course and were thereafter appointed as 'job trainees'/practical trainees for a period of two years, vide the appointment letters issued to each of them, as have been annexed as Annexures P-1 to P-8 with the petition. The said letters are seen to be dated between June and August, 1994. The petitioners accordingly joined as Trainee Waiters, except for petitioner no.7, Manoj Kumar, who joined as an Assistant Cook, all between July and August, 1994.

They were initially paid Rs.800/- as a stipend, increased later to Rs.1000/- and then Rs.1500/- in the case of Waiters, with petitioner no.7 having been paid Rs.850/- initially, but later he too having been paid Rs.1000/- and Rs.1500/- per month.

4. Their grievance is that after completion of their period of training, they were not given any regular appointment letter, nor, during the training period of two years, were they paid regular scales though they worked as full time workers, as contended.

Instead, they were issued the impugned relieving letters; though according to the petitioners, a number of employees working in the

headquarters were given regular appointments within 1 year to 1½ years of their training period, 13 of such employees having been named in paragraph 10 of the writ petition, (though all these employees are seen to be appointed either as Clerks or Peons or Chowkidars).

5. It has been further contended in the petition that though in an identical situation, one Tikka Ram had filed a writ petition, which was dismissed in the year 1992, in view of the fact that the Haryana Tourism Corporation had stated that it had no job available on regular basis, including the post on which those petitioners were working, the same situation did not exist at the time when the petitioners were relieved from service, the respondents having actually issued the impugned advertisement for regular recruitment within one year and about four months from the relieving of the petitioners, they were entitled to appointment on the posts from which they were relieved.

It is, yet further, contended that actually 400 posts of Waiters, Counter Incharges etc. were sanctioned by the Haryana Bureau of Public Enterprises (even though the number of posts advertised vide the impugned advertisement are only 139).

6. Yet further, it is contended that the petitioners are entitled to be appointed on regular posts in view of clause 3 of their appointment letters, which has been reproduced as follows in the writ petition:-

“3. On the completion of the training, it will not be obligatory on the part of the management to offer you any employment nor it will be obligatory on you to accept any employment in the Corporation. You will, however, be considered for appointment on same regular post subject to the availability of post, on the completion of your successful training.”

Thus, the contention is that it having been specifically stated in the appointment letters that the petitioners would be considered for appointment on the same regular post, subject to its availability, they having completed their training and regular posts having actually been advertised for being filled up, they had a prior right to such appointment.

7. Further, it is the stand of the petitioners that the Apprentices Act, 1961, applies to all trainees in the respondent Corporation, vide a standing order issued, which states as follows:-

“3(d) **Apprentice:** An apprentice is a learner who may be given a stipend during the course of his training. The employer will provide different periods of training for different categories of workmen subject to the provisions of the Apprentices Act, 1961.”

Section 7 of the aforesaid Act of 1961 has also been referred to by the petitioners, to contend that a contract of apprentice training is to terminate on the expiry of the period provided in the appointment letter and therefore, they having completed their training and having continued as temporary workers with the Corporation, their services could not be terminated after almost three years and nine months (including the training period), simply on the pretext that their training was complete.

The action of the respondents in terminating their services has also been referred to as an unfair labour practice by the petitioners.

8. A written statement has been filed on behalf of respondent no.2, i.e. the Tourism Corporation, contending that the petitioners have concealed material facts, as they were taken as trainees in different fields, that there were a number of other trainees, they were on a fixed stipend, and that as per the

terms and conditions given in their appointment letters, Annexures P-1 to P8, it was clearly specified that on completion of the training, it would not be obligatory on the part of the Corporation to offer them any employment.

As regards the creation of 285 posts of different cadres in January 1999, it has been stated that 140 posts were created for the cadre of Waiters, to be appointed by way of direct recruitment, with no specific quota for trainees having been sanctioned.

However, it is also stated that the petitioners and other former Trainee Waiters had been sent separate communications to enable them to apply for the posts in question; hence, they were obviously entitled to compete for the same.

9. As regards the Corporation being a Government Corporation, that fact has been denied saying that the Corporation is a company registered under the Companies Act, 1956, run by its own Board of Directors, with the policies and instructions of the State Government not *ipso-facto* applicable to it, such applicability being dependent upon adoption of the policies by the Board of Directors.

Hence, mere funding by the State Government, and its control over the Corporation through its nominated Directors, was not sufficient, as per respondent no.2, to bring the Corporation within the purview of Article 12 of the Constitution.

10. It has also been stated that the petitioners were relieved at the relevant time as at that point of time no regular posts were available to which they could be appointed and further, the petitioners continued as trainees, wholly willing.

It is specifically denied that the work of full time workers was

taken from them and in fact, they were given training in different complexes of the Corporation, “in different fields and environments”.

Hence, their claim to a regular pay scale is also denied.

11. As regards the applicability of the Apprentices Act, 1961, it has been stated that Section 22 thereof stipulates that it would not be obligatory on the part of the employer to offer any employment to an apprentice who has completed his training, nor would it be obligatory on the part of the apprentice to accept employment under the employer.

On the aforesaid contentions, dismissal of the writ petition has been prayed for.

12. Subsequently, an additional affidavit came to be filed, dated 30.08.2016, with the General Manager (Administration) of the respondent Corporation stating therein that similarly situated trainees had filed various writ petitions before this Court, seeking regular appointment, with one of the said petitions, i.e. CWP no.2921 of 1998, titled as Baljit Singh and others v. State of Haryana and others, having been disposed of with the following directions given by a Division Bench of this Court, on 17.08.1998:-

“The petitioners were admitted by the Haryana Tourism Corporation as Job Trainees vide order dated July 21, 1991. The petitioners claimed that they had completed the requisite training in the year 1993. In spite of that, they have not been absorbed on regular posts. The petitioners pray for the issue of a writ in the nature of mandamus directing the respondents to consider their claim for regularization.

A written statement has been filed on behalf of the respondents. It has been inter alia averred that the petitioners

have no right to claim any regular appointment on the completion of their training. However, at the hearing today, it has been stated by K.K. Gupta, learned counsel for the respondent Corporation that the claim of the petitioners alongwith that of other persons shall be considered against such posts as may be available. Those amongst them who are considered suitable, shall be adjusted. However, the Corporation shall not be able to absorb all the available persons. Such persons for whom the posts are not available or are not considered suitable shall be relieved.

Admittedly, while admitting the petitioners for training, it was stipulated that the management shall not be obliged to offer any employment on successful completion of the training. The petitioners had accepted this condition before they joined the training programme with the Corporation. In this situation, the offer made on behalf of the respondents is absolutely just and fair. Resultantly, the writ petition is disposed off with a direction that the claim of the petitioners shall be considered against the posts that may be available. In case they are found suitable, they may be absorbed. Otherwise action in accordance with law may be taken. The claim shall be considered in order of seniority. The writ petition is accordingly disposed off. No costs.”

13. In the light of the aforesaid directions, with no new posts having been created in the year 1999, and further a direction having been given in LPA no.866 of 1999, it is stated by the respondents that an interview was held on 05.12.1999 for appointment of Waiters, from amongst Trainees only, with the following criteria adopted for their selection and in order to evaluate

seniority and suitability:-

1) For marks obtained in Diploma (Essential qualification) (e.g. for 73% marks a candidate gets 73 marks)	100 marks
2) For any other diploma in the same line.	05 marks
3) For qualified training period 2 year-3 year = 01 marks Upto 4 years = 02 marks Upto 5 years = 03 marks Upto 6 years = 04 marks Upto 7 years and = 05 marks Above	05 marks
4) Interview/Personality Test	10 marks
	120 marks
5) Any Waiter Trainee belonging to general category, who secure 70 or more marks and the Waiter Trainee, belonging to backward class, who secure 60 or more marks and any Waiter Trainee belonging to Scheduled Castes, who secure 50 or more marks may be selected subject to the availability of vacancies in that category, in order of merit.	

However, clause 5 of the aforesaid criteria was directed to be removed by an order of this Court dated 20.03.2007, passed in CWP no.6993 of 2002.

14. Thus, on the basis of the criteria of marks given in clauses 1 to 4, it is stated that petitioners Sohan Singh, Bhim Singh, Mahabir Singh, Jan Mohd. and Padam Singh (petitioners no.3, 4, 5, 6 and 8) were given appointment letters, with petitioner no.1 Mahender Singh not having appeared for the interview on 05.12.1999.

Petitioners no.2 and 7, i.e. Murli Dhar and Manoj Kumar, are stated to have not qualified, they having obtained 62.5 and 64.1 marks respectively, out of 120.

15. Thus, even though 5 out of the 8 petitioners are shown to be

appointed in the year 2007, Ms.Abha Rathore, learned counsel for the petitioners submits that as a matter of fact, the petitioners are entitled to be allowed to continue in service from the dates that they were relieved, in terms of the judgment of a Full Bench of this Court in Virender Singh v. Haryana Tourism Corporation Ltd. 2005 (2) SCT 837.

Learned counsel pointed to the fact that the petitioner before the Full Bench was also identically placed as the present petitioners, he having first undergone training for the post of a Counter Incharge for a period of five and half months and thereafter having worked as a Trainee Waiter for 9 years.

Thus, the petitioner in that case had contended that though he had worked for a such long time as a Trainee Waiter, he was not given appointment either as a Counter Incharge or as a Waiter.

There being a difference of opinion expressed by the Division Bench before whom the aforesaid writ petition came up for hearing, the petitioner in that case having relied upon an earlier Division Bench judgment in CWP no.16772 of 1999, the matter was referred to a Full Bench, wherein a stand was taken by the petitioner that his services had been terminated vide an order dated 17.05.2001, with no retrenchment compensation having been paid to him in accordance with the provisions of Section 25-F of the Industrial Disputes Act, 1947.

The dismissal of *Tikka Rams'* case (supra) on account of non-availability of vacancies, was also brought to the knowledge of the Full Bench.

The response of the Haryana Tourism Corporation in that case also, was to the effect that the services of the petitioner in that case were never terminated and he was relieved from training as per the terms and conditions

of his appointment letter and hence, he had no right to be appointed to the post of a Waiter, on which he had been shown to be a trainee for a long time.

16. Noticing the pleadings and the arguments before it, the Full Bench formulated the question that arose before it, as to whether the petitioner therein was a trainee having been appointed under the Apprentices Act, 1961, and therefore whether the provisions of the Industrial Disputes Act, 1947, would apply or not to his case.

The ancillary question that was found to be requiring adjudication upon, was whether the petitioner in that case was a workman as defined in Section 2(s) of the Act of 1947 and if so, would the order impugned in that case be sustainable, the provisions of Section 25-F of the Industrial Disputes Act, 1947, not having been complied with.

17. After considering the entire matter, their lordships firstly held that he was not appointed under the Act of 1961, but even if it were to be presumed so, the Act of 1947 would apply to him. It was held as follows:-

“Assuming, however, that the petitioner was appointed under the Act of 1961, his continuous employment, even after the specified period of training, mentioned in his letter of appointment, would entail cessation of his being an apprentice. Apprentice means a person who is undergoing apprenticeship training. The moment apprenticeship training comes to an end and that too successfully and when there is no order of extension of period of training, not novation in terms of Section 5 a person cannot be styled as apprentice. Apprenticeship training by virtue of Section 2(aaa) means a course of

training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. It is no doubt true that by virtue of the provisions of Section 18 of the Act of 1961, apprentices are trainees and not workers and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. But the petitioner in our considered view, cannot be called as an apprentice after his training period came to an end as he was asked to continue till further orders and when significantly, in the said order as well, no specified period was mentioned.”

(Emphasis applied in the present judgment).

It was further held that the petitioner in that case not having been appointed under the provisions of the Act of 1961, he would therefore be deemed to be a workman within the meaning of Section 2(s) of the Act of 1947, and even if it was to be presumed that he was appointed under the Apprentices Act, he had ceased being an apprentice both on the dint of the condition of his appointment, as also by virtue of Section 7 of the aforesaid Act of 1961 (reference paragraph 27 of the judgment of the Full Bench).

18. Consequently, the order relieving the petitioner in that case was held to be in violation of Section 25-F of the Industrial Disputes Act and was therefore annulled, with a direction issued to the respondent Corporation that he be taken back in service on the post that was working on and be paid all back wages from the date that he was relieved from the said post, till such

time that the payment was made to him.

The contention of the Corporation to the effect that the petitioner had been appointed for a fixed period and therefore the provisions of Section 2 (oo) (bb) would be applicable, was also rejected by the Full Bench, holding that after 07.06.1993 the petitioner could not be held to have been appointed on any fixed duration, till he was relieved on 17.05.2001.

19. In response to the aforesaid contention of Ms. Abha Rathore, learned counsel for the respondents in the present petition, Mr. R. K. Doon, AAG, Haryana, and Mr. Padamkant Dwivedi, appearing for the respondent State and Corporation respectively, have submitted that firstly no regularization of services can be directed by this Court in view of the ratio of the judgment of the Supreme Court in **Secretary, State of Karnataka v. Uma Devi (2006) 4 SCC 1** and secondly, even the judgment of the Full Bench has been distinguished in similar circumstances by a judgment of a co-ordinate Bench of this Court, (learned Single Judge), dated 08.04.2011, passed in Mohinder Singh and another v. Haryana Tourism Corporation Ltd. (CWP no.7358 of 2010) and three connected cases.

In the aforesaid petition, while duly noticing the judgment of the Full Bench in *Virender Singhs'* case (supra), his Lordship referred to paragraph 53 in *Uma Devis'* case, to hold that the petitioners in the petitions before him, could not be ordered to be regularised and consequently, the petitions were dismissed.

20. Having considered the aforesaid arguments, firstly, of course, it is to be noticed again that out of 8 petitioners 5 have already been re-appointed in service in the year 2007. Hence, in their case the question of regular appointment *per se* does not arise and as regards their regular

appointment from a previous date, this Court would not interfere to hold that they are entitled to any such regular appointment in view of the ratio laid down in *Uma Devis'* case (supra).

However, as regards the petitioners' claim for reinstatement in service from the date that they were relieved, they being identically placed as the petitioner before the Full Bench in *Virender Singhs'* case, in my opinion, they are entitled to the said relief, the ratio of that judgment being obviously binding on this Bench.

21. A perusal of the appointment letters issued to the petitioners (Annexures P-1 to P-8), shows that they were taken on training for a period of two years, commencing on dates between 02.06.1994 to 03.08.1994, with most of the petitioners having been appointed on 26.07.1994.

They were appointed as trainees specifically for a period of two years as stated in clause 1 of the appointment letters, with the training being extendable for a period of 4 months thereafter, if not completed satisfactorily at the end of two years from the date of joining.

Undoubtedly, it was not obligatory on the part of the respondent Corporation to offer employment to the petitioners, as per clause 3 of the appointment letter, just as it was not obligatory on the part of the petitioners to accept any such offer of employment. Thus, if there were no post available to which they could have been appointed at the time of completion of their training, the respondents could not be held liable to give regular employment from those dates.

22. Yet, firstly, it has not been shown from any document placed on record by the respondents, that the petitioners' training was ever actually extended on account of unsatisfactory performance, after the two year period

got over (between June to August, 1996), but even if by some stretch of imagination it is to be presumed that their training was extended for six months, at best such period of six months would have also ended between December 1996 and February 1997.

The petitioners not having been relieved at even the end of two and half years, and having continued as Trainee Waiters till November 1997, when they were relieved vide the impugned orders, then it has to be inferred by this Court, without doubt, that they actually successfully completed their training at the end of two years itself, with no extension letter given to them due to unsatisfactory completion and after the end of two years, they were actually no longer apprentices, even if they are deemed to have been appointed under the terms of the Apprentices Act, 1961.

Therefore, as was held by the Full Bench in *Virender Singhs'* case (supra), thereafter, the petitioners continued to be workmen with the respondent Corporation in terms of Section 2(s) of the Industrial Disputes Act, 1947.

Hence, they could not have been relieved from work without compliance of Section 25-F of the aforesaid Act.

23. Therefore, this petition is partly allowed, to the extent of the petitioners being reinstated in service, w.e.f. the date that they were relieved, with continuity of service and 25% back wages, there being a violation of Section 25-F of the Industrial Disputes Act, 1947.

As regards the prayer for regularization, petitioners Sohan Singh, Bhim Singh, Mahabir Singh, Jan Mohd. and Padam Singh already having been appointed to regular posts in the year 2007, with the other three not having been so appointed for the reasons already given, and the specific contention of

the respondents being that the posts to which the petitioners could have been appointed having been sanctioned only in January 1999, i.e. about one year and two months after the petitioners were relieved, no further direction can be given.

The other directions given hereinabove, be carried out within a period of 3 months from the date of receipt of a certified copy of this order.

No order as to costs.

September 15, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No