

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15092 of 2005 (O&M)

Smt. Sunita Dutta and others

... Petitioners

Versus

Haryana State Social Welfare
Board and others

... Respondents

Reserved on:- 09.08.2018

Pronounced on: 11.09.2018

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

Present: Mr. V.B. Aggarwal, Advocate,
for the petitioners.

Mr. Manjeet Singh, Advocate,
for respondent No.1.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioners had spent about 22 to 25 years working as Bal Sevikas in the Demonstration Project (for short "Project") run by the Haryana State Social Welfare Board, Chandigarh in a scheme floated by the Central Social Welfare Board, New Delhi when the Project was closed rendering them surplus employees. They assail their termination orders upon closure and secondly, claim adjustment in a main stream department of the Government by absorption.

2. The financial aid to the Project was provided by the Ministry of Human Resources Development, Government of India, New Delhi. The Central Social Welfare Board is incorporated as a company registered under the Companies Act, 1956. The administrative, functional and financial

control of the Haryana Board lies with the Central Social Welfare Board.

3. Respondent No.1 in its reply has raised objection as to maintainability of the petition asserting that neither the Project nor the Central Board or the State unit is a “State” within the meaning of Article 12 of the Constitution of India. The entity has not been created by a Statute or under a Statute. The HRD Ministry had decided to close down the Project and to this end had issued letter dated December 31, 2004 to the Project managers after a prior decision was taken in the meeting of the Committee of Secretaries held on April 28, 2004 deciding that the Department of Women & Child Development had to phase out three programmes, namely, Border Area Project, Welfare Extension Project and the Demonstration Project, the last of which we are concerned with in this petition.

4. Accordingly, the Central Board was directed to abolish the Project. Since the financial aid was being provided by the Ministry of HRD, therefore, the Central Board was bound to follow the orders dated December 31, 2004 and therefore the State Board and the three Projects. In compliance of the order, the Central Board, by letter dated June 02, 2005 ordered the Haryana State Social Welfare Board to close down the Project in view of the orders passed by the competent authority in the Central Government. The Central Board by another letter dated September 27, 2005, again wrote to the Haryana State Social Welfare Board that the Project was functioning as a scheme of the Central Board and it cannot be treated as a permanent establishment. In short, the Project was closed down. This led to the passing of the impugned orders of termination of the 18 petitioning Bal Sevikas.

5. The respondent No.1, however, admits in the written statement

that the petitioners are entitled to Contributory Provident Fund, Leave Encashment and Gratuity. Nevertheless, they are not entitled to pension and other pensionary benefits. The post held by the petitioners was not a pensionable job. The Punjab Civil Services Rules as applicable to Haryana are not applicable to the petitioners. The department admits that the services of the petitioners were regularized by order but they clarify that their services were regularized for the purposes of Project alone and no right can be claimed by them when the Project itself has been closed down. The petitioners are not and nor were government employees. They have not the protection of Article 311 of Constitution of India. The prayer of the petitioners that they be absorbed in the different departments of the Government cannot be answered by the Haryana State Social Welfare Advisory Board. This power is vested in the State Government. It is argued that the Board is not part and parcel of State Government machinery. Absorption after declaration of surplus or on closure of Project is subject to public policy. There is no such decision of the State Government to absorb the petitioning Bal Sevikas in any other department of the Government.

6. The only issue which can be reviewed judicially is whether the closure was bona fide act with a drying up of funding by the Ministry of Human Resources Development, Government of India. No right accrues to the petitioners justifying setting aside the orders of termination on closure. The Haryana State Social Welfare Advisory Board had only supervisory control of the Project which was earlier financed by the Central Board through the HRD Ministry in the Central Government. It is averred in the written statement that the termination orders were passed in terms of the

appointment letters and one month's prior notice was served on each petitioner on August 31, 2005 as per terms and conditions stipulated and accepted by them. The relevant condition stipulated in the appointment letter regarding mode of termination is reproduced as under:-

“The appointment may be terminated at any time by one month's notice on either side without assigning any reason. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him/her of a sum equivalent to the pay and allowances for the period of notice or the expired portion thereof.”

7. The Central Board while directing the Haryana Board to close down the Project gave specific reasons for closure, such as, duplicity of the activities and paucity of funds. It is settled proposition of law that in the eventuality of closure of Project for justified reasons, the employees working in the Project will not get any vested right to continue. Therefore, no fault can be found with the closure of the Project and consequent dispensation of the services of the employees. The appointment of the petitioners was made in the Project only. The respondent No.1 relies on M.D., UP Land Dev. Corpn. and another v. Amar Singh and others, 2003 (3) RSJ 210 to contend that when the Project comes to closing down, the employees who are working in the Project will not get any vested right to continue. Once the Project comes to an end, the services of employees also come to an automatic end. If the closure is bona fide and genuine and not mere pretence of closure, then the motive behind the closure has to be seen whether it was an effective one. See Kalinga Tubes Ltd vs Their Workmen, AIR 1969 SC 90.

8. The respondent No.1 further submit that in the year 2001-02 the Accountant General, Haryana had conducted an audit inspection of the projects being run by the Board. The audit party had pointed out that expenditure incurred on the projects amounting to ₹487.121 lakh was not fruitful in the sense that the State Government had released the aforesaid amount for payment for disbursing pay and allowances to the staff but no input grant was released till the date of audit. It was mentioned that no funds for implementing the schemes were bring provided by the State Government. Therefore, no expenditure could be incurred on the schemes. In view of this also, there was no justification in continuing with the projects where the input is a huge amount but the output is nil. It may be noticed that some of the petitioners are well past employable age. Some would still have been had the Project not closed down. Their dates of birth on joining as Bal Sevikas is mentioned in para.2 of the petition.

9. Learned counsel for the petitioners in support of the claim draws the attention of this Court to paras.3 & 4 of the termination orders, contending that they contains stigmatic words which detracts from simpliciter closure and read as under:-

“3 *It has also transpired during inspection that the employees are not rendering their services an a proper and fair manner. Action has also been taken against them from time to time in this regard.*

4. *The proper benefit is not accruing to the people and the expenditure being incurred is wastage as balsevikas working under this project are getting salaries sitting in their homes. Moreover, it has been observed that these centres run by the Board have reduced in significance to such an extent that the Public benefit derived from the same is not commensurate with funds spent.”*

10. From here it is argued that the allegations have been made without issuing show cause notice or holding departmental inquiry in each case and, therefore, the orders are stigmatic and punitive in nature since based on failure of performance of duties. In the written statement, it has been explained that services of the petitioners have not been dispensed with on account of the allegations of not performing their duties to the satisfaction of the Project implementors, rather the entire project has been closed down on the directions of the Central Social Welfare Board, New Delhi. The question whether the services rendered by the petitioners were satisfactory or not, the fact still remains and stares at the face that the Project in which they worked was closed down rendering the petitioners surplus. If the petitioners insist in the amended petition that they were 'workmen' within the meaning of term in the Industrial Disputes Act, 1947, then law requires only closure compensation to be paid to them. Right to reinstatement would not exist. It is also not that the posts have been abolished, rather the Project has been closed down and they cannot claim an alternative job on closure of the Project as a matter of right.

11. The cases relied upon by the petitioners as below are distinguishable on facts. In none of them was a similar situation under consideration. These judgments are:-

1. Subhash Bansal and others v. Income Tax Officer Ward-6, Patiala and others, 2008 (4) S.C.T. 40;
2. S.K. Dua v. State of Haryana & Anr, 2008 (1) SCC(L&S) 563;
3. Allahabad Bank & Anr v. All India Allahabad Bank Retired Emps. Assn., 2010(2) SCC 44;
4. State of H.P. v. Lashkari Ram, 2008(1) RSJ 70

12. Per contra, respondent No.1 relies on the decision of the Supreme

Court in The Managing Director Haryana Seeds Development Corpn. Ltd. v. The Presiding Officer and another etc., 1997 (4) SLR 719. Closure of an industry would not attract the provisions of Section 25-F of the Industrial Disputes Act and more specifically in the case of *Amar Singh* (Supra) on the issue of Project employees and their rights.

13. In view of the above, I find no justification in accepting this petition. The writ petition is dismissed. However a direction is issued to the respondents, that in case any amount is found due or owing to the petitioners as far as CPF, leave encashment and gratuity are concerned, the same be paid to them since it is the admitted position in para.10 of the reply on merits. If unpaid, these amounts be calculated and disbursed to the petitioners with 6% interest per annum within a period of three months from the date of accrual. The petitioners may submit their claims, if any, before the department which will be processed within the above time frame.

11.09.2018
manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No