

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.17152 of 2013 (O&M)

Date of Decision: 17.10.2018

Som Das and others

... Petitioners

Versus

The Karnal Cooperative Sugar Mills Ltd., Karnal

... Respondents

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

Present: Mr.J.S.Maanipur, Advocate for the petitioners

Mr.P.K.Mutneja, Advocate for the respondent

RAJIV NARAIN RAINA, J.

1. The Board of Directors of respondent Karnal Cooperative Sugar Mills Ltd., Karnal (for short “the respondent-Mills”) in the meeting held on 3rd June, 2009 decided agenda item No.16 to fill up the back-log in Scheduled Castes and Backward Class Category posts of Cane Kamdar/Runner (Seasonal) in the pay scale of ₹ 2900-75-3275-EB-85-4550 (Semi-Skilled). To give effect to that decision, the petitioners who were serving on daily wages were appointed/promoted to the post by order dated 6th July, 2009 (Annex. P-1).

2. A few facts from the history of the case are necessary to narrate. Raj Pal Singh and others approached this Court by filing writ petition in 1993 which was disposed of with a direction that the claim of the petitioners for appointment to the post of Cane Kamdar be considered due to increase in number of vacancies from 25 to 36. Obtaining no relief, they again approached this Court by filing CWP No.11156 of 2003 which was dismissed. However, a direction was

issued to the respondents to fill up the posts of Cane Kamdar on the basis of seniority subject to the policy of reservation as applicable. Aggrieved by the order, Raj Pal Singh etc. approached the Supreme Court, but the SLP was dismissed. They again approached this Court by filing CWP No.9858 of 2009 on the ground that seniority was ignored while considering the respondents for appointment. Respondents No. 4 to 7 in CWP No.9858 of 2009 are the present petitioners belonging to the Reserved Category whereas Raj Pal Singh etc. belonged to the General Category. On 8th July, 2009 i.e. two days after the appointment/promotion order dated 6th July, 2009 was passed in favour of the present petitioners, this Court while issuing notice of motion for 8th September, 2009 in CWP No.9858 of 2009 granted ad interim stay order that in the meantime 5 vacant posts of Cane Kamdars be not filled up till the next date of hearing.

3. As a result of the stay order, the order dated 6th July, 2009 (Annex. P-1) was not given effect to and the appointments/promotions were withheld by the respondent-Mills in deference to the stay order. That writ petition was dismissed on 14th February, 2011. While dismissing the writ petition, this Court noticed submission of the counsel for the petitioners that one of the petitioners was from General Category and some were from reserved category, but there was no averment in this regard contained in the writ petition. This Court also observed that the dismissal of the earlier writ petition filed by Raj Pal Singh etc. had attained finality before the Supreme Court. Thus appointments, if any, would have to be made keeping in view the reservation policy. This Court held that since none of the petitioners has been able to show that they belong to

reserved category, the appointment of the private respondents (the present petitioners) would not call for any interference. However, liberty was granted to the petitioners therein who were from reserved category to file a fresh petition challenging the appointment of any junior candidate similarly situated. Such writ petition was not filed.

4. With the dismissal of the aforesaid writ petition, the interim order came to an end resulting in revival of the order of appointment/promotion dated 6th July, 2009 (Annex. P-1). In the wake of the litigation ending in dismissal, the respondent-Mills issued order dated 16th February, 2011 (Annex. P-3) appointing the present petitioners to the post of Cane Kamdar/Runner (Seasonal). Their services were placed on probation for a period of one year which could be extended by the competent authority. They were confirmed vide order dated 16th February, 2013 (Annex. P-4). They claimed salary and other benefits from the date of promotion. When their claim was not addressed, they served a legal notice demanding salary and other consequential benefits from 6th July, 2009 till the actual date of joining i.e. 15th February, 2011 which was withheld due to the interim order dated 8th July, 2009 passed by this Court.

5. The claim of the petitioners has been declined vide reply dated 5th July, 2013 (Annex. P-6) to the legal notice, on the ground that the petitioners did not work for the period and they are not entitled to salary.

6. Aggrieved, the petitioners have approached this Court against the declining of their claim on the ground that they were deprived of salary pursuant to the interim order directing 5 vacant posts of Cane Kamdars not to be filled till next date of hearing. That

stay order continued till dismissal of the writ petition. Therefore, they were not at fault and could not be denied salary as they were willing to join duty, but they were not allowed to by the respondent-Mills in compliance with the interim order. They urge that the interim order has merged with the final order and has become non-existent. This would lead to the revival of the order and they would have to be put back to the position as if the interim orders were not passed. Thus, when the aforesaid writ petition was finally dismissed, the interim order given effect for the intervening period has to relate back to the date of issuance of the order for giving effect to from 6th July, 2009.

7. The question which falls for consideration of this Court is as to what are the consequences of the stay order which stands automatically vacated with the dismissal of the writ petition on merits, without there being any special order passed by the Court as to what becomes of the period of the ad interim stay.

8. I have heard learned counsel for the parties and have gone through the paper-book with their assistance.

9. In answer to the question posed resort may be had to past precedents for guidance on the effect of the stay order merging with the dismissal of the case on the rights of those who could not enjoy the benefit granted by the employer to them till such time it lasted. In the case of *Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board*, (1997) 5 SCC 772, the Supreme Court observed as under:-

“It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it

is the duty of the court in such a case to put the parties in the same position they would have been but for the interim order of the court.”

10. In *South Eastern Coalfields Ltd. v. State of M.P.*, AIR 2003 SC 4482, the Supreme Court observed as under:-

“27...There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced.....”

11. In *Karnataka Rare Earth & Anr. vs. Senior Geologist, Department of Mines & Geology & Anr.*, (2004) 2 SCC 783, the Supreme Court expounded the law in the following terms:-

“...When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost.”

12. In *Amarjeet Singh & Others vs. Devi Ratan & others*, AIR 2010 SC 3676, the Supreme Court held as under:-

“15. No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one, becomes applicable in such a

case. In such a fact situation the Court is under an obligation to undo the wrong done to a party by the act of the Court.....”

13. The decision in *Amarjeet Singh*, (supra) has been followed in a number of decisions such as in *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, AIR 2012 SC 2010. See *inter alia* also *Kanwar Singh Saini v. High Court of Delhi*, (2012) 4 SCC 307; *Indian Council for Enviro-Legal Action v. Union of India*, (2011) 8 SCC 161; *State of Rajasthan v. J.K. Synthetics Ltd.*, (2011) 12 SCC 518; *Kalabharati Advertising v. Hemani Vimalnath Narichania*, AIR 2010 SC 3745.

14. In view of the legal position as explained by their lordships of the Supreme Court, the promotion order did not get wiped out by virtue of the stay order. The stay order did not reverse the legal position or rights coming from the promotion order merely because the administrative decision was stayed with a direction not to fill up 5 vacant posts till the next date of hearing which order was allowed to continue till the final disposal of the writ petition. All this would mean is that the promotion order could not be given effect to during the proceedings. Upon culmination of proceedings by a final decision, the effect of the stay order is to be undone. The final decision of the court in which the petitioners were respondents is to be applied for the entire period of dispute irrespective of the fact that certain rights and liabilities may have been eclipsed by the stay order albeit temporarily. Thus, the parties have to be delegated to the position which there would have had the stay order not been passed. This is subject only to contrary direction in the final order while there is none. It is in these premises that learned counsel for the petitioners

Mr. Maanipur contends that the principle of “No Work, No Pay” cannot be applied in this case in the face of the promotion order conveyed to the petitioners but which could not be given effect to because of the interim stay directing the Mills not to fill 5 posts. The petitioners have not withheld their labour and they were deprived of discharging their duties only on account of the stay order obtained by Raj Pal Singh etc. whose cases were ultimately. The order to promote the daily wage petitioners as Cane Kamdars has not been withdrawn, rescinded or varied by the competent authority in the respondent-Mills and what naturally followed in 2011 was based on it. Entitlement to salary on the post would not flow, unless person assumes charge of the same is not an argument worth its weight in gold. In the circumstances of this case, the normal rule of “No Work, No Pay” would be inapplicable. A person would be entitled to restoration of all the benefits to which he was kept away unjustly because justice was not on the side of Raj Pal Singh etc., who had obtained the stay order. This principle was evolved by the Supreme Court in *Union of India etc. vs. K.V. Jankiraman etc.* 1991 AIR 2010, though passed in case of disciplinary proceedings, but the principle on analogy would apply to the present case and to other branches of service law. The right to salary where employee, although was willing to work, but was kept away from work for no fault of his would enure. This is not a case where the petitioners remained away from the work willingly and intentionally and for their own fault.

15. Mr.Mutneja, learned counsel appearing for the respondent-Mills argues that the hands of the Mills were tied and the appointment could be made only after the disposal of the writ

petition. This argument cannot be faulted. He submits that when the benefit was not granted by the respondent-Mills with the dismissal of Raj Pal Singh's case, the petitioners moved a representation dated 16th February, 2011 (Annex. R-1) and this representation was accepted and regular appointment as Cane Kamdar/Runners (Seasonal) could be made only on 19th February, 2011 (Annex. R-2). This, he says, is in the nature of a fresh appointment/promotion since the period of probation of two years was prescribed which the petitioners successfully completed only on 16th February, 2013. In the circumstances, the petitioners cannot claim salary in the pay scale prior to the actual joining as Cane Kamdar/Runners (Seasonal). During the period of 2009-2011, the petitioners worked on daily wage basis for which they were paid. Their probation period was extended for one year w.e.f. 16th February, 2012 vide order (Annex. R-3). Vide order dated 16th February, 2013 (Annex. R-4), the petitioners' work and conduct were found satisfactory and their probation period was allowed to be completed. The petitioners accepted their joining as on 16th February, 2011 and they have not worked on the said post prior to 16th February, 2011. They did not even joined prior to this date. Therefore, they should be estopped from claiming salary for the period from back date as they have no right to claim salary for the period. Still further, it is argued that the petition suffers from delay and laches and also on the ground of estoppel. The petitioners were allowed to join after the dismissal of the aforesaid writ petition on 14th February, 2011 while the present petition has been filed on 6th August, 2013 after a lapse of 2 1/2 years of their appointment/promotion. Salary cannot be claimed at this belated

stage once they have accepted their joining as on 16th February, 2011 without protest and have been paid their salary and allowances they are entitled to upon joining and thereafter. They are estopped by their own act and conduct from claiming anything more for the period prior to joining.

16. I have considered the contentions of Mr.Mutneja, but find no substance in any of them. It was not within the control of the petitioners due to continuance of the interim order till it merged with the final decision. Their appointment/promotion order was not stayed and continued to operate. The stay order was not to fill up 5 posts. This is the distinction between the two situations. The time spent in the proceedings was beyond the control much less of the respondent-Mills also as they could do nothing except to wait for the outcome of the writ petition. The order dated 19th February, 2011 (Annex. R-2) was passed by the Managing Director appointing the petitioners as also one other employee as Cane Kamdar/Runners (Seasonal). The aforesaid employees were directed to perform their duty as already assigned to them for the season 2010-2011. Learned counsel for the respondent-Mills tries to support the reasoning given in the reply to the legal notice as legal and justified. The reason given in the reply to the counsel for the petitioners is that his clients are not entitled to appointment and salary and other consequential benefits. The petitioners were seasonal daily wage workers who worked on daily wage basis, when the season of sugar cane crop was completed, then the petitioners took their salary as daily wages as per season and were released from the job. The respondent-Mills admits that the petitioners were promoted/appointed as Cane Kamdar on 6th July,

2009 and two days thereafter i.e. 8th July, 2009, the stay order was passed. The order could be given effect to only after the disposal of the writ petition.

17. To my mind, the reply to the legal notice addresses far less than was expected to serve the ends of justice. No one has doubted the existence of promotion order and Mr. Mutneja, learned counsel fairly concedes during hearing that the order of appointment/promotion was communicated to the petitioners as per the endorsement at the foot of the order dated 6th July, 2009. If it was communicated, then it would be assumed that the petitioners were at least deemed appointed/promoted w.e.f. 6th July, 2009. In these circumstances, it would be highly inequitable and unjust to deny them the rights flowing from 6th July, 2009 till 15th February, 2011. It is a duty of the court to put the petitioners back and restore to them their past. The petitioners' appointment in 2011 can neither be treated as a fresh appointment/promotion nor is there any order treating them as fresh entrants.

18. I have also gone through the two judgments relied upon by Mr. Mutneja in *Sanat Kumar Dwivedi vs. Dhar Jila Sahakari Bhoomi Vikas*, (2001) 9 SCC 402 and *Punjab State Electricity Board and others vs. Kuldip Singh*, (2005) 13 SCC 362 (para 7).

19. The facts in *Sanat Kumar Dwivedi case*, (supra) are altogether distinguishable. The appellant therein was reinstated in service with a condition that he will not get any back wages. He accepted such reinstatement without back wages by his joining report. The Supreme Court held that by his own conduct, the appellant has accepted the correctness of the order of reinstatement without back

wages. Under these circumstances, subsequent dispute raised by him regarding back wages was held not maintainable. The short order passed by the Supreme Court is of no help to the respondents-Mills. There was no interim order passed by the court of law in that case.

20. In *Kuldip Singh, supra*, there was a restraint order of injunction against the appellant-Board from reverting Sumesh Bansal. Kuldeep Singh was a Junior Engineer in the service of the Board. The next post of promotion from the post of Junior Engineer was Assistant Engineer. He was entitled to be promoted as Assistant Engineer in 1989, but such promotion was refused to him only on the ground that he had not taken the departmental examination. He cleared the departmental examination successfully in 1990. Thereafter, he had been continuously submitting representations to the Board for promotion as an Assistant Engineer. In 1990 one Sumesh Bansal was appointed as an Assistant Engineer on a temporary basis and his appointment was made subject to the rights of a candidate who may be appointed in the regular course. The Board did not, however, revert Sumesh Bansal nor did they promote Kuldip Singh as they should have to the post of Assistant Engineer. In 1994, Sumesh Bansal filed a suit in which he asked for an injunction restraining the Board from reverting him to the post of Junior Engineer. Kuldip Singh was a party to the suit. An interim injunction was granted in the suit in favour of Sumesh Bansal. The upshot of this interim order was that the post of Assistant Engineer which should have been given to Kuldip Singh was occupied by the Sumesh Bansal. In all the proceedings filed by Sumesh Bansal, the Board had consistently taken the stand that the post against which Sumesh Bansal was temporarily appointed was

reserved for a Scheduled Caste candidate which Kuldeep Singh was. Sumesh Bansal's suit was ultimately dismissed in 2000. But by then, he was confirmed on the post of Junior Engineer. It was then Kuldeep Singh filed writ in the High Court. This Court disposed of the writ petition by directing the Board to decide the dispute raised by Kuldeep Singh on merits. The Board passed an order in 2002 promoting Kuldeep Singh w.e.f. 14.12.2001 instead of 20.3.1990 being the date when Kuldeep Singh had passed the departmental examination and had become eligible. The second writ petition was filed by Kuldeep Singh before the High Court claiming notional promotion w.e.f. 20.3.1990 and also for payment of all back wages and consequential benefits together with interest at 18% from the date from which back wages were due until actual payment. The writ petition was allowed and Kuldeep Singh was held entitled to promotion w.e.f. 20.3.1990 when he became eligible for promotion. The Board contended before the High Court that Kuldeep Singh was not entitled to notional promotion or back wages for any period prior to 2001 as the number of posts had been reduced by way of an amendment of the rules. The submission was found to be unacceptable. The reduction of the posts certainly did not pertain to the post to which Kuldeep Singh was entitled to be appointed having regard to the fact that it was an admitted position that Sumesh Bansal was continuing to hold that post. The Supreme Court held that the High Court correctly rejected the question of reduction of post in the circumstances of the case. The High Court directed the creation of a supernumerary post for Kuldeep Singh since Sumesh Bansal had been continuing in service for a long period of time and permitted that all arrears of salary should be paid to Kuldeep

Singh together with 9% interest within two months of the date of the order. The same stand was taken by the Board before the Supreme Court. Notice in the appeal was limited by the Supreme Court only to the question of arrears of pay. In this background, the Supreme Court held as follows:-

“7.As far as the question of arrears of pay is concerned, except for the period during which there was an interim order of injunction operating in Sumesh Bansal’s suit restraining the appellant from reverting Sumesh Bansal, we see no reason to interfere with the decision of the High Court. Therefore, the respondent will be entitled to arrears of pay with effect from 20.3.1990 upto the date of interim order in the suit which is 19.5.1994 and again from 21.10.2000 (when Sumesh Bansal’s suit was dismissed) upto 4.10.2002 after which date admittedly the respondent has been paid his wages at the pay scale applicable to an Assistant Engineer.”

21. To continue, it was argued that the period of stay had been excluded from the consideration as far as Kuldeep Singh is concerned. The High Court had directed creation of supernumerary post since Sumesh Bansal had been continuing in service for a long period of time and permitted that all arrears of salary should be paid to Kuldeep Singh together with 9% interest per annum. The Supreme Court found no ground to interfere with the decision of the High Court. In this case what was avoided was duplicity of paying twice for the same job and that position does not arise in this case. Therefore, the decision is distinguishable on facts.

22. In view of the foregoing discussion, the claims of the petitioners are held to be valid and justified. The period of stay order cannot work to the disadvantage of the petitioners for no fault of theirs. They have never denied or withheld discharging duties under the promotion order. The promotion/appointment order deserves to be given effect in letter and spirit.

23. As a result of the foregoing discussion, this petition is allowed. The reasoning in the impugned reply dated 5th July, 2013 (Annex. P-6) is quashed so also the consequential orders negative to the interest of the petitioners. The petitioners are held entitled to pay and allowances for the period “6.7.2009 to 15.2.2011”. The arrears of difference of daily wages already paid to them and the pay in the pay scale of the promotional post for the aforesaid period be calculated and paid to the petitioners within three months from the date of receipt of a certified copy of this order. Interest on principal sum of money is denied due to operation of stay order. No costs.

24. Judgment was reserved on 10th October, 2018 and is pronounced today on 17th October 2018.

(RAJIV NARAIN RAINA)
JUDGE

17.10.2018
MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes