

(119)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.2190 of 2017 (O&M)
in CWP No.4546 of 2015
Date of decision: 17.01.2018

Surender Kumar Saini and others

..... Appellants

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. S.S. Shekhawat, Advocate for the appellants.

B.S. Walia, J.,

[1] Challenge in this intra court appeal is to order dated 09.10.2017 passed by the learned Writ Court dismissing the writ petition praying for quashing of order dated 29.09.2014 (Annexure P-17) passed by the Chief Secretary, Haryana declining the prayer of the appellants-petitioners for adjustment on the posts in the pay scale of ₹ 5500 – 9000 or one step below.

[2] Appellants-petitioners were retrenched in the year 2002 from the Haryana Small Scale Industries and Export Corporation Limited (hereinafter referred to as 'the Corporation'). Their claim before the Writ Court was for grant of pay scale i.e. ₹ 5000 – 7850 as was being drawn by them at the time of their retrenchment. On retrenchment in the year 2002, the appellants-petitioners were appointed as Clerks in different departments under the Haryana Government vide appointment letters (Annexures P-7 and P-18) in the year 2006 in the pay scale of ₹ 3050 – 4590.

[3] Grievance of the appellants-petitioners before the learned Writ Court was that having worked on higher pay-scale i.e. ₹ 5000 – 7850 at the time of their retrenchment, they ought to have been adjusted against posts carrying the same pay scale or one step lower. Reliance was placed on the policy for adjustment of retrenched employees i.e. (Annexure P-5) dated 21.06.2006 as also on the decision by a learned Single Bench of this Court in CWP No.455 of 2011 in case titled as Vijaya Kaul vs State of Haryana and others (Annexure P-13) as also decision of LPA No.899 of 2012 upholding the decision of the learned Single Judge.

[4] The appellants-petitioners who had been adjusted in different departments in the year 2006 pursuant to their retrenchment in 2002, invoked the jurisdiction of this Court by way of CWP No. 8051 of 2013 which was disposed of vide order dated 08.07.2014 with a direction to the Chief Secretary, Government of Haryana to consider and decide the representation of the appellants-petitioners. Pursuant thereto, representation filed by the appellants-petitioners was decided by the Chief Secretary vide order dated 29.09.2014 (Annexure P-17) by observing that as the appellants-petitioners had accepted in the year 2006, without protest, the alternative posts as per policy of the Government, they were not entitled to seek appointment against any specific post of their choice especially since adjustment of the appellants-petitioners was a onetime measure and it was not open to them to challenge the same at that stage as held by the Division Bench in its judgment dated 04.02.2014 in LPA No.570 of 2012 titled as Jai Narain Kaushik and others v. State of Haryana and another. Besides, the claim of the appellants-petitioners was time barred as they had invoked the jurisdiction of the Court after seven years of their adjustment.

[5] Jai Narain Kaushik's case (Supra) and other connected cases involved adjustment of retrenched employees from different Corporations. The Division Bench noticed that the adjustment of employees in said cases had been made subject to their filing affidavits that their adjustment would be considered as fresh appointment and that they would not claim benefit of past service or the period they remained out of service as a result of retrenchment. After having accepted the condition, they could not turn around and impugn the condition. The Division Bench further held that the challenge to the condition as sought to be made, was belated, the condition ought to have been challenged before accepting the offer made by the Government. Besides, all retrenched employees who had been adjusted had received retrenchment compensation and were not asked to return the retrenchment compensation, consequentially, the condition laid down by the Government appeared to be justified as there was a break in their service ranging from two to four years i.e. the period for which they were out of service.

[6] The appellants-petitioners were retrenched in the year 2002 and were adjusted on alternative posts in the year 2006. However, the jurisdiction of this Court was invoked only in the year 2013 i.e. after a gap of seven years and that too only after the decision in Vijaya Kaul's case (supra).

[7] Grievance of the appellants-petitioners before the learned Writ Court was that all of them were graduates at the time of their retrenchment as also at the time of their appointment to the new posts, therefore, they ought to have been appointed to the 62 posts of Inspectors, Co-operative Societies as were admittedly vacant. Besides, they had learnt that 793 posts

in the pay scale of ₹ 5000 – 7850/5450 – 8000 were available at the time when they were appointed by way of adjustment in the year 2006 (Annexure P-20). They further prayed for adjustment on the basis of seniority in age in terms of Clause 7 (iv) of the notification dated 21.06.2006.

[8] The writ petition filed by the appellants-petitioners was dismissed by the learned Writ Court on the ground that the adjustment of the appellants-petitioners was made in accordance with notification dated 21.06.2006, that they were not eligible for appointment to the post of Co-operative Inspectors as they did not fulfil the eligibility qualifications stipulated in respect thereto, that the petitioners had approached this Court after a long delay i.e. seven years after they had accepted the post on which they were appointed by way of adjustment and that too, only after the decision in Vijaya Kaul's case (supra).

[9] Intra-court appeal has been filed inter alia on the ground that a collective representation had been made by the appellants-petitioners on 23.10.2006 followed by several others to respondent No.1 to resolve their grievance but to no avail, therefore, in the circumstances, the appellants-petitioners invoked the jurisdiction of this Court by way of CWP No.8051 of 2013 which was disposed of vide order dated 08.07.2014 by the learned Writ Court in pursuance of which the claim of the petitioners was rejected vide order dated 29.09.2014 by the Chief Secretary, therefore there was no delay. The decision of the learned Writ Court was in derogation of the decision in Vijaya Kaul's case (supra) as upheld by a Division Bench, besides, the decision in LPA No.570 of 2012 had been erroneously applied. Adjustment made was in derogation of Clause 7 (iv) of the Notification dated 21.06.2006

which required eligible persons to be considered for adjustment on the basis of seniority of age etc.

[10] We have considered the submissions made by learned counsel for the appellants but regret our inability to accept the same.

[11] Undoubtedly, the appellants were retrenched in the year 2002. Pursuant to policy Annexure P5 dated 21.06.2006, the appellants-petitioners were adjusted in different departments under the Government of Haryana in the year 2006. Policy (Annexure P5) dated 21.06.2006 nowhere stipulates that the retrenched employees would be appointed in the same scale or one scale lower than the ones they had been working in. The only right of the appellants-petitioners in terms of the policy (Annexure P5) was to be appointed on an equivalent post or one step lower. The petitioners maintained a stoic silence for seven years and invoked the jurisdiction of this Court only by way of CWP No.8051 of 2013 i.e. seven years after the accrual of the cause of action after their adjustment in the year 2006. The appellants-petitioners apart from delay of seven years in approaching the Court invoked the jurisdiction of this Court by way of CWP No. 8051 of 2013 only pursuant to the decision in Vijaya Kaul's case (supra). All the appellants-petitioners were appointed to Group 'C' posts i.e. the same category of posts in which they had been working in the Corporation at the time of their retrenchment. They accepted the terms and conditions of appointment at the time of their adjustment which was offered to them as per the policy of the Government and it was not the choice of the appellants-petitioners to seek appointment against a specific post of their choice. The adjustment of the retrenched employees being a onetime measure which had ended with the adjustment of the retrenched employees, it was not open to

the appellants-petitioners to challenge the same and that too at a belated stage. If the terms and conditions of adjustment were not acceptable to the appellants-petitioners, the same ought to have been challenged at the time the offer was made and not after lapse of number of years. The plea that they ought to have been appointed against 62 posts of Inspectors of Co-operative Societies as were stated to have been admittedly vacant at the time of their adjustment is also of no avail since admittedly the appellants-petitioners did not fulfil the eligibility conditions stipulated for appointment to the said posts.

[12] Likewise even the plea that the adjustment was not in accordance with Clause 7 (iv) of the notification dated 21.06.2006 (Annexure P5) i.e. “eligible persons shall be considered for adjustment on the basis of seniority of age”, is of no avail since it was highly belated. The appellants-petitioners were appointed on the lower post as per availability of vacancies.

[13] For the reasons as are recorded above, we are of the considered view that no case whatsoever is made out for interfering with the well-reasoned order dated 09.10.2017 passed by the learned Writ Court.

[14] Accordingly, finding no merit in the appeal, the same is dismissed in limine.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

17.01.2018
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| 1. Whether speaking/reasoned: | Yes/No. |
| 2. Whether reportable : | Yes/No |