

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 863 of 2019 (O&M)

Date of decision: 03.05.2019

Swaran Singh

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present: Mr. Jagdish Manchanda, Advocate, for the appellant.

ARUN PALLI, J.

This is an *intra Court* appeal under Clause-X of the Letters Patent, against an order and judgment dated 11.01.2019, rendered by the learned Single Judge, vide which the writ petition preferred by the appellant, has since been dismissed.

Briefly, the case set out by the appellant has been that he was engaged as driver on daily wages on 01.04.1985, by the Erstwhile Punjab State Electricity Board. Subsequently, in continuation of his appointment he was appointed as work charge driver on 08.08.1986. Subsequently, his services were regularized as driver vide order dated 11.12.2009. The limited grievance and the relief for which the appellant approached this Court, was that his services ought to have been regularized from an earlier date when persons junior to him were regularized, and thus, he be awarded benefits of ante date regularization.

Upon consideration of the matter and the material on record,

the learned Single Judge concluded that in fact the services of the appellant were never regularized pursuant to an order dated 11.12.2009, for, vide said order, he was appointed to the post of a Regular Driver. Further, Clause 2 of the terms and conditions of the said appointment letter clearly showed that appellant was placed on probation for a period of two years, and thus, for all intents and purposes it was a fresh appointment. Therefore, the order dated 11.12.2009, could not be read as an order regularizing the services of the appellant. Further, for, the said order was passed a decade ago, the petition also suffered from an inordinate delay and was accordingly dismissed. That is how, as indicated above, the appellant is before this Court.

In reference to the order dated 11.12.2009, learned counsel for the appellant submits that in fact the claim of the appellant for regularizing his services was recommended by the Supervisor Engineer, TLSC Area, PSEB Patiala, vide communication dated 27.11.2009, and it was pursuant thereto his services were regularized, and thus, the order dated 11.12.2009, could not be said to be a letter of appointment, vide which the appellant was appointed afresh. And since his services were regularized on 11.12.2009, the service rendered by him as work charge was required to be counted as qualifying service with all service benefits arising therefrom.

We have heard learned counsel for the appellant and perused the records.

Ex facie, the claim of the appellant is predicated upon construction of the order dated 11.12.2009, vide which, as he claims, his

services were regularized. Whereas, a bare reading of the order dated 11.12.2009, the relevant clauses whereof are being cited herein-after, reveals that the same is nothing but an order of appointment vide which the appellant was appointed as Regular Driver and kept on probation for a period of two years, subject to certain terms and conditions set out therein:

“Subject: Appointment letter for the post of regular driver.

1. As per letter of Secretary E.N.G. 2. P.S.E.B. Patiala Memo No.24745/25620/ENG 2/ Lose 1 Dated 03.03.06 your name has been approved for the post of regular driver by Supervisor Engineer/Area PSEB Patiala letter No.26081 dated 27.11.2009. Through this letter the below mentioned terms are being mentioned. You shall be paid pay scale of 6400+20200+2400 Special Pay 300 Rupee. Except this you shall also get allowances wages time to time.

2. It is to be understood clearly that you shall be on probation for two years. During this period your service can be terminated by the board without any notice or assigning any reason. After successful completion of probation period, your appointment shall be deemed as temporary until your confirmation on permanent post. After this your service can be terminated by giving one month notice of salary of that period.

x x x x x

3. The above appointment is being sent to you on the basis for the verification of below mentioned:

- a) You shall provide your original certificates.**
- b) You are not dismissed employee of govt./board or punished for moral turpitude.**
- c) You have not living more than one souse.**
- d) Your age must not be less than 18 years at the**

time joining services of board.

e) You shall produce age certificate, which is prime for joining services, from the medical officer of district where you have been appointed at your own expenses.

f) You have to understand clearly that you shall be deem as fresh appointment in board for all purposes.”

X X X X

Thus, by no stretch of imagination the order cited above could be read or construed as order regularizing the services of the appellant. Rather, for all intents and purposes he was offered afresh appointment to the post of a Regular Driver. Likewise, even vide communication dated 27.11.2009 (Annexure P-3), his name was approved by the Supervisor Engineer for the post of Regular Driver and not for regularizing his service. Once that was so, his claim that he be awarded deemed date of regularization as driver from the date services of his juniors were regularized is misconceived. Of course, if the appellant indeed required the respondents to regularize his services, considering the service he had rendered as work charge Driver, he could always, either lodge a protest, rather than accepting employment, in terms of the order dated 11.12.2009, or resort to remedies as admissible in law to seek regularization from an earlier date. However, the fact remains that having accepted the appointment as regular driver on 11.12.2009, he continued to serve and filed this petition after over 10 years. Thus, even otherwise the writ petition suffered from gross, inordinate and unexplained delay of over a decade.

Not just that, the record shows that the appellant had even filed a declaratory suit assailing the action of the respondents in not regularizing his services on the post of Regular Driver from the date of his appointment as work charge driver i.e. 08.08.1986, with all consequential benefits. However, vide judgment and decree dated 23.07.2007, the said suit was dismissed by the trial Court and even the appeal preferred against the said decree was dismissed by the first Appellate Court on 11.08.2009. What further needs to be noticed is that order of appointment of the appellant to the post of Regular Driver was passed on 11.12.2009, subsequent to the decree dated 23.07.2007/11.08.2009, which had since attained finality, thus, to seek benefit of work charge service he sought to camouflage his claim and term the order of his appointment as order regularizing his services. Obviously, otherwise in the face of the decree dated 23.07.2007/11.08.2009, the writ petition filed by him would not have been maintainable. Be that as it may, as demonstrated hereinbefore, for, the appellant was appointed afresh to the post of Regular Driver on 11.12.2009, his claim for ante date benefits of regularization from the date persons junior to him were regularized, lacks conviction and cannot be countenanced.

In the wake of the above, we are dissuaded to interfere with the impugned order and judgment. The appeal being devoid of merit and is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

03.05.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No