

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

109

LPA-1619-2023 (O&M)

Decided on: 08.11.2023

State of Punjab and Others

... Appellants

Versus

Ram Charit Shukal

... Respondent

**CORAM: HON'BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AMAN CHAUDHARY**

Present: Ms.Lavanya Paul, DAG, Punjab

AMAN CHAUDHARY, J.**CM-4125-LPA-2023**

For the reasons enumerated in the application, the same is allowed and delay of 144 days in filing the appeal is hereby condoned, subject to all just exceptions.

Main Appeal

1. Challenge in the present intra-Court appeal, under Clause X of the Letters Patent is to the judgment dated 12.05.2023, vide which, the learned Single Judge allowed the civil writ petition preferred by the respondent.

2. Learned State counsel would submit that an error had crept in the order of learned Single Judge, inasmuch as that the respondent, whose services had been terminated, was on regular establishment, a fact which had been denied in the written statement that he was appointed to the post of peon purely on temporary basis and as per terms and conditions thereof his services could be terminated at any time without any notice or reason. It did not entail any stigma. Moreover the principle of no work, no pay being applicable, the consequential relief could not have been granted to the respondent.

3. Heard and perused.

4. *Lis* before the learned Single Judge was regarding the manner of termination of service of the respondent. Aggrieved State is disputing before us that he was a regular employee, a premise upon which the learned Single Judge allowed his petition and the department was justified to have passed the order against him, be it after a decade of his appointment, it being according to the terms and conditions of his letter of appointment.

5. Considering the contention, which has been strenuously urged by the counsel for the appellant, it is at first imperative to determine the nature of the appointment of the respondent.

6. Moving ahead with the adjudication of the matter, a pertinent reference is deemed essential to the according of sanction issued under the order of Governor of Punjab, dated 14.05.1996, for continuation of the temporary posts including that of a peon, for the Department of Food and Supplies, created in the District Consumer Disputes Redressal Forum, Punjab, the expenditure of which was to be met from the major head account “3456-Civil Supplies-100-other Expenditure-03-Enforcement of Machinery for implementation of the Consumer Protection Act, 1986, Distt. Forums (Non plan)”, as is appended as Annexure A-1 to the present appeal. Likewise, from a perusal of a previous order of Governor of Punjab dated 19.04.1995, produced in Court in terms of the order dated 06.11.2023 passed by this Court, at the inception of the hearing, it is borne out that Non-plan posts including 3 of Peons were sanctioned on temporary basis for the District Forums after abolishing one that was previously sanctioned on 09.11.1993. The above was the genesis of issuance of the notice, Annexure A-2, by the President, District Consumer Disputes Redressal Forum, on 03.11.1995, calling for applications with complete biodata upto 28.11.1995 for filling up two posts of Stenographer, one of Typist (English), one Clerk (LDC), two Peons and

one Sweeper-cum-Chowkidar in the pay scales mentioned therein and those already in government service, should apply through their department. Interviews were to be held on 01.12.1995 at 11 am in the office and candidates appearing in type test were to bring their own typewriters.

7. Apparently, the respondent was initially appointed as a Peon on adhoc basis for 89 days in the pay scale of Rs.750-1350 (with initial start of Rs.770) vide letter dated 14.12.1995. The respondent on having applied and participated in the selection process that ensued, was appointed on 07.03.1996 to the post of a Peon pursuant to a notice having been issued by the competent authority inviting applications from all eligible candidates, thereby complying with the provisions of Articles 14 and 16 of the Constitution of India.

8. As is evincible from the appointment letter, Annexure P-3 received by the respondent herein, appended with the writ petition, he was entitled to a pay scale of Rs.750-1350 (with initial start of Rs.770/-) against a temporary post; seniority was to be fixed as a peon as per Rules of the Punjab Government and a medical was essential to be got conducted to join the government service, a certificate regarding his fitness to be issued by SMO/CMO Patiala was to be furnished within a period of 15 days of his joining, failing which his appointment was to be cancelled. Even a preliminary objection has been taken in the written statement filed to the writ petition by the appellant that service conditions of the respondent were governed by The Punjab State District Consumer Redressal Forums Class-III and Class -IV Regulation, 1999, as per which a statutory alternate remedy of filing an appeal was available to him which was not availed and on that ground the petition was liable to be dismissed at the threshold. The submission as sought to be advanced runs counter to the above.

9. The incorporation of an exploitory condition in the appointment letter, particularly in wake of the backdrop aforesaid of the service to be

terminable at any time without assigning any reason or non-issuance of notice has to be deprecated. Reference can be made to a Division Bench judgment of this Court in **Polu Ram vs. State of Haryana**, 1998 SCC OnLine P&H 1778, wherein it has been observed and held that, “In our opinion, the objection of the learned Advocate General to the maintainability of the writ petitions on the ground that the petitioners have accepted the terms of engagement without any protest is clearly misconceived. The petitioners do not have any say in the matters relating to enactment of the rules, creation of the posts or mode of selection. All these matters lie in the exclusive domain of the government/employer. They are not in a position to make a bargain with the government regarding the conditions of employment. They are not in a position to dictate the terms to the government. If they make an attempt to enter into a bargain with the government about the terms and conditions of employment/engagement and insist on incorporation of those conditions which are more favourable to them, the appointing authority can refuse to appoint/engage them. Therefore, acceptance of the conditions incorporated in the orders of appointment/letters or engagement cannot be made a ground to deny hearing to the petitioners in support of their plea that the respondents have acted arbitrarily in appointing them with wholly unreasonable and oppressive conditions of employment.” The State being in a domineering position, the respondent-employee had no option but to accept such a condition. The terms of appointment letter being arbitrary and oppressive cannot operate as an estoppel and cannot be made a ground to deny the claim, as held in **Rajni Bala vs. State of Haryana**, 1995 SCC OnLine P&H 787. Apart from the legal infirmities in the impugned order of termination, the same is also in violation of principles of natural justice which are an integral to Article 14 of the Constitution of India and any order passed without complying with the same is *void ab initio*. [See **Krishan Lal vs. State of J & K**, (1994) 4 SCC 422]

10. Concededly, it is not the case set up by the appellant that the service rendered by the respondent to the Institution was not satisfactory or that post against which he was appointed was abolished or that others who may have been appointed alongwith him, be it on different posts but pursuant to the same notice inviting applications were meted with the same fate of an abrupt cessation of their service rendered over a decade.

11. We would hasten to add that the pleaded case of the appellant is not that the appointment was not made by the competent authority or proper procedure was not followed. The State being custodian of record regarding the appointment, thus in writ jurisdiction, it was imperative on the Department to have substantiated its stand by producing documentary evidence, which in the instant case it failed to. In this context, **Bharat Singh & Ors vs. State of Haryana & Ors**, AIR 1988 SC 2181, can be referred to, wherein it was held by Hon'ble the Supreme Court that there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. The State cannot be permitted to blow hot and cold in the same breath.

12. As a matter of fact, initially posts were sanctioned on 19.04.1995 and there is nothing on record to show that there was no need to man these posts which connotes the nature of the posts to be regular and their continuation without any break for a decade in no way can be construed to be by way of a stop gap arrangement or non-regular. In **State of Haryana vs. Piara Singh**, (1992) 4 SCC 118, Hon'ble the Supreme Court observed that an employee who is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. The authorities ought to adopt a positive approach

coupled with an empathy for the person. Security of tenure is necessary for an employee to give his best to the job.

13. The learned Single Judge has rightly placed reliance on the judgment of Hon'ble The Supreme Court in **The Manager, Government Branch Press and another vs. D.B.Belliappa** (1979) 1 SCC 477, relating to termination of services of a temporary government servant wherein the argument was found to be misconceived that on basis of a voluntarily entered contract of service on the terms of employment offered to him, it was liable to be terminated at the will and pleasure of the appointing authority without reason and notice, as he willingly accepted the same and thus could complain against the impugned action taken in accordance with those mutually agreed terms. It was held that the termination was made arbitrarily and not on the ground of unsuitability or any other reason.

14. It is deplorable for the State to have adopted a policy of use and throw of a class-IV employee having been retained for more than a decade by showing him the door, which reflects arbitrariness on its part.

15. For the next limb of submission that the respondent has been granted pay for the period he did not perform work, a reference to **State of Kerala & Ors. vs. E.K. Bhaskaran Pillai**, (2007) 6 SCC 524, would be apt, wherein Hon'ble the Supreme Court observed that the principle of "no work no pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and it was held that, "...We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the

person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

16. On due consideration of the matter, there is found no illegality or perversity in the judgment passed by the learned Single Judge, which may have called for any intervention. However, to balance equities, the respondent is held entitled to 50% of the wages for the period he remained out of service, to that extent, the judgment of the learned Single judge stands modified.

17. Ordered accordingly.

18. Since the main case has been decided, CM-4126-LPA-2023 stands disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

08.11.2023
gsv/mkk

Whether speaking / reasoned: YES / NO
Whether Reportable: YES / NO