

225
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3557-2021(O&M)
Date of decision: 02.05.2024

Mohit Kumar

...Petitioner

VERSUS

Haryana Power General Corporation Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Suresh Ahlawat, Advocate, for the petitioner.

Mr. R.S. Longia, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned letter dated 11.09.2020 (Annexure P-4) passed by respondent No.2.

2. The brief facts of the present case are that the State of Haryana had acquired some land for setting up of a Thermal Power Plant at Village Khedar (Hisar) and the State also took a decision to grant benefit to the oustees pertaining to the land which was so acquired and thereafter, a policy decision was taken at the highest level of the State of Haryana and consequently, a notification was also issued in this regard by the Financial Commissioner and

Principal Secretary to the Government of Haryana, Department of Power dated 05.07.2007. The reason and rationale behind providing employment to a family member of the oustees whose land of more than 2 acres was acquired was to accommodate them as a policy decision taken by the State Government at the highest level for the purpose of providing them employment and also earlier announcements were made in this regard. The aforesaid policy was pertaining to thermal power plant at Village Khedar which was thereafter re-named as Rajiv Gandhi Thermal Power Plant, Khedar. Thereafter, there was one another thermal power plant to be constructed regarding which again the land was to be acquired at Village Jharli, District Jhajjar and for that acquisition also, some announcements were made from the year 2007 onwards for the purpose of granting employment to the oustees of the land. Thereafter, again a decision was taken vide Annexure P-1 by the State at the highest level for granting of employment to one member of the family of the oustees whose land of more than two acres was acquired and vide para No.8 of the same, it has been so stated that suitable appointment to the land oustees be provided as per the State policies which have already been followed in the case of Rajiv Gandhi Thermal Power Plant land oustees. In this way, the parameters and decision taken for the purpose of the aforesaid Rajiv Gandhi Thermal Power Plant was also to be implemented qua the Jhajjar Power Plant as well.

2. The land of the father of the petitioner namely, Anil Kumar was acquired for the purpose of setting up of a thermal power plant at Jharli, District Jhajjar and his five acres of land was acquired for this purpose which is not in dispute in the present case and as per the policy any family having more than two acres of land, one person from the said family had to be adjusted and

State Government had been adjusting and granting employment to oustees of both the Rajiv Gandhi Thermal Power Plant and also of the Jhajjar Power Plant.

3. The son of the petitioner was minor at the time when the acquisition was made and also policy was made since his date of birth is stated to be 15.08.1997. In Clause 29(ii) of Annexure P-1, it has been so specifically provided that the employment to the underage i.e. below 18 years age, applicants will be provided as per their qualifications after they attain the age of 18 years. The aforesaid provision is reproduced as under:-

*“The employment to the underage i.e. below 18 years age, applicants will be provided as per their qualifications **after they attain the age of 18 years.**”*

(emphasis supplied)

4. In pursuance of the aforesaid policy of the State Government which was approved at the highest level and was also duly implemented by the State of Haryana, the father of the petitioner vide Annexure P-2 dated 10.06.2013 made an application to the Deputy Commissioner-cum-Nodal Officer, Land Oustees Committee, Jhajjar by stating that more than five acres of land for NTPC Thermal Power Plant, Jharli has been acquired belonging to him and on behalf of his family, his son namely, Mohit Kumar who is the present petitioner is nominated for employment but his date of birth is 15.08.1997 which is less than 18 years and now he is the student of 10+1 (Non-Medical) and a request was made that after completion of education of his son, his name be recommended for employment. The aforesaid Annexure P-2 dated 10.06.2013 is also reproduced as under:-

To

The Deputy Commissioner-cum-Nodal Officer,

Land Oustees Committee

Jhajjar.

Subject:- To provide the employment in lieu of land acquired in NTPC Power Plant Jharli.

Sir,

Due respect, it is submitted that more than five acre land has been acquired in the NTPC Power Plant Jharli in my name. According to announcement dated 7.10.2007 of Haryana Govt. that employment will be given to one member of such families whose more than 2 acre land has been acquired in the power plant.

That on behalf of our family, my son Mohit Kumar is nominated for employment but his date of birth is 15.8.1997 which is less than 18 years and now he is the student of 10+1 (Non-Medical) So, it is humble request to you that after completion of education of my son, recommend his name for employment and send it to govt. according to his education qualification. This provision is also applied in the Power Plant Khedar (Hisar).

Thanking you,

Dated:- 10.6.2013

*Applicant
Anil Kumar son of Sh. Parbhu
Vill. Khanpur-Khurd
Tehsil-Matanhale
Distt. Jhajjar"*

5. This letter was written by the father of the petitioner on 10.06.2013 when the petitioner was about 16 years of age. Thereafter, the process for granting employment to various oustees and their family members started and large number of employments were given to the family members of those persons whose lands were acquired for the purpose of setting up of a thermal power plant at Jharli, District Jhajjar. Since the petitioner was a minor, he could not have been considered for appointment at any place under the oustees policy but his aforesaid representation remained as such. The Deputy Commissioner was the Nodal Officer in this regard and he was to send the list

of those who had applied to the concerned organizations where the employment was to be given. However, there were some persons who were put in the category of uninterested persons and the petitioner was also put in that category. Thereafter, again a second round was taken up by the State for giving a further opportunity to apply but as per stand taken by the respondents, the petitioner did not apply and therefore, he was not considered. The State Government thereafter took a policy decision that there had to be an end to further processing because it cannot be an open ended policy and consequently, a cut off date of 10.05.2018 was fixed and it was decided that any application filed after the aforesaid date will not be considered. However, the petitioner had filed an application vide Annexure P-3 to the Deputy Commissioner, Jhajjar on 25.08.2020 in the form prescribed which is at page No.31 of the paper-book for the aforesaid employment. The Deputy Commissioner forwarded the aforesaid application to the Managing Director, HPGCL who is the respondent in the present case. However since the aforesaid application was of the year 2020 i.e. 24.07.2020, the case of the petitioner was not further considered in view of the cut off date as aforesaid which was fixed by a decision of the State Government and in this way, the petitioner was not granted any employment under the policy. An order was also passed vide Annexure P-4 dated 11.09.2020 by way of which the claim of the petitioner was rejected by the respondent-Corporation on the ground that his application was after the cut off date. The petitioner has challenged the impugned order (Annexure P-4) and has also sought a direction that he be granted employment in terms of the aforesaid policy and in the facts and circumstances of the present case.

4. Learned counsel appearing on behalf of the petitioner submitted that the action of the respondents was not only perverse but also insensitive in nature. He submitted that the basic rationale and spirit behind the framing of the policy was to provide employment and rehabilitation to the families who were uprooted because of the acquisition of land for the purpose of setting up of a Thermal Power Plant. He submitted that there was a specific provision in the policy in clause 29(ii) as reproduced above that when the employment is to be given to an underage i.e. a minor below the age of 18 years, then the applicant will be provided as per his qualifications after he attains the age of 18 years and in the present case, the petitioner had attained the age of 18 years on 15.08.2015. However, when the applications were invited in pursuance of the aforesaid policy and the process was initiated, the father of the petitioner had applied for the same, although by stating that at that point of time his son i.e. the present petitioner was a minor and his case be considered after he attains majority. He submitted that thereafter various processes may have been taken up by the Government including fixing of a cut off date but the petitioner was never informed through a separate letter in this regard and even otherwise also, the rights of the petitioner crystallized in his favour at the time when his father made an application vide Annexure P-3, although in the year 2013 well in time to the Deputy Commissioner who was the Nodal Officer. He further submitted that rather considering the objective and spirit of the policy it was incumbent upon the respondents to have offered appointment to the petitioner after he attained the age of 18 years instead of going into the formalities and technicalities. He submitted that it is a case where more than five acres of land of his family was acquired for setting up of a thermal power plant and the

Government has also framed a policy for granting employment and the petitioner is an unemployed person. He submitted that the petitioner after attaining the age of 18 years has not got employment anywhere and he is still unemployed person and the aforesaid policy being a beneficial policy for the welfare of family members of oustees, the petitioner cannot be non-suited only because of the technical objections taken by the respondents that some munadi was conducted and the petitioner never responded to the same and that after the cut off date, the application was filed.

5. On the other hand, learned counsel appearing on behalf of the respondents while referring to the reply filed by the respondents submitted that it is a case where although the policy was a beneficial and welfare policy because the spirit behind the policy was to provide employment to the Oustees whose land of more than 2 acres was required and rationale and objective of the policy is not in dispute. However, he submitted that a regular process was taken up but it was only because of the unwillingness of the petitioner and his father that they were not granted the employment. He submitted that once the Government had taken a decision that a cut off date has been fixed, then any application which was received after the cut off date would not have been considered by the respondents because the respondent is only an instrumentality of the State and any decision taken by the State will be binding upon the respondents.

6. Further while referring to the reply, he submitted that at that time in the year 2013 when the process was undertaken, then there were total 293 eligible land oustees whose name were forwarded by the Deputy Commissioner, Jhajjar vide Annexure R-2 dated 02.08.2013. Out of these 293

oustees, 212 had submitted their applications for the purpose of employment to one member of their family, whereas 81 land oustees showed their unwillingness to get employment or were not residing in those villages as it was so specifically stated by the Deputy Commissioner and the list was freezed. Once the list was freezed then no person could be considered beyond the final number of 293 as sufficient opportunities were provided to all the land oustees of different villages. Thereafter approval was granted for the employment of the aforesaid 212 land oustees who had given their willingness in their application forms. They were given employment on 03.03.2014. Out of 212 land oustees, 5 were underage who were given assurance letter as per provision of the policy.

7. While referring to the reply, he further submitted that since the object and purpose of such policy was a liberalized one with a view to provide additional benefit apart from the compensation given against the acquisition of their land, even thereafter 30 land oustees out of those 81 from the list of 293 land oustees who were initially not interested to seek employment with the approval of the Council of Ministers were provided jobs but they were already included in the aforesaid list of 293 persons i.e. the original list supplied by the Deputy Commissioner. Thereafter, a letter was sent to the Deputy Commissioner, Jhajjar in compliance to the directions of the Principal Secretary (Power) to give one final notice of 21 days for remaining 51 land oustees who were initially not interested to submit application forms and a munadi was also conducted in this regard. A public announcement was made and the name of the present petitioner which is stated to be at serial No.35 was received out of the list of remaining 51 oustees for whom again an announcement was made.

Thereafter finally a total 24 applications out of remaining 51 eligible land oustees were received within the time limit prescribed by the office of the Deputy Commissioner, Jhajjar. Out of these 24 applicants, 15 were found to be eligible for employment.

8. While further referring to the reply, he submitted that so far as the present petitioner is concerned, he was in the list of initial 81 land oustees who were initially not interested for employment regarding which a letter from SDO (Civil) has been attached as Annexure R-8 wherein his father has shown to be not interested. He submitted that it is not a case that the petitioner and his father have not been offered the employment but it is a case where they have expressed their unwillingness and that is the reason as to why they have not been granted employment and Annexure P-3 which is the application form is of the year 2020 which is beyond the cut off date of 2018 and therefore, the impugned order has been rightly passed by which the claim of the petitioner has been denied.

9. I have heard learned counsels for the parties.

10. In pursuance of the aforesaid policy, the father of the petitioner had applied to the Deputy Commissioner-cum-Nodal Officer for grant of employment to the petitioner who was minor at that point of time and was about 16 years of age. The aforesaid Annexure P-2 is dated 10.06.2013. The date of birth of the petitioner is 15.08.1997 as so incorporated in the letter. Undoubtedly, when the process started the name of the petitioner figured in the list of 81 persons which were shown to be uninterested persons. Therefore, it becomes clear that the father of the petitioner had applied vide Annexure P-2 to the Deputy Commissioner and that was the reason as to why the Deputy

Commissioner had incorporated his name in the list of 81 persons who were so stated to be uninterested persons. A letter of the SDO (Civil) Annexure R-8 has been attached with the reply. A perusal of the letter and also a vernacular of the same would show that this letter is 'undated letter'. Heavy reliance has been placed by the learned counsel for the respondents on the aforesaid letter by stating that the father of the petitioner had expressed unwillingness. The aforesaid letter appears to be cyclostyled letter wherein it is so stated that 'I am not interested' and signatures of the father of the petitioner finds mention on the same. Since the aforesaid letter is undated letter, it appears that the same was a letter which the SDO (Civil) had sent for keeping the name of the petitioner in the uninterested persons which happened in the year 2013.

11. There are two stages in which the names were to be considered. The initial stage was of the year 2013 and the second stage was of the year 2017 when the remaining were to be considered. In the first stage, the father of the petitioner applied but the petitioner was minor and in pursuance of clause 29(ii) as reproduced above, the policy itself so stated that in case of minors, they can apply after they attain the age of majority. The petitioner attained the age of majority in the year 2015 i.e. 15.08.2015 and much before that, vide Annexure P-2 dated 10.06.2013, an application was made to the Deputy Commissioner and the Deputy Commissioner so incorporated the name of the petitioner in the list of 81 persons but he was minor. A stand which has been taken by the respondents that the petitioner and his father were uninterested has to be rejected because of a simple reason that the petitioner was a minor at that point of time and there was no question of the petitioner being uninterested. Had it been a case that either the petitioner or his father had conveyed to them

that they are not interested, the situation would have been different. But here is a case where Annexure R-8 appears to be a cyclostyled letter and the nomenclature which has been used 'uninterested' appears to have applied to everybody including those who did not attain the age majority. Therefore, it cannot be said that at that point of time in the year 2013, the petitioner was uninterested because it was impossible for him to have got employment because he was not major and was only of the age of 16 years.

12. The second stage came in the year 2017 when the matter was reconsidered for those who although were in the list of 81 persons but they were not granted employment. It is a stand of the respondents that a decision was taken to conduct a munadi and 21 days were given but the petitioner and his father did not respond to the same. This Court is of a considered view that such kind of procedure adopted for giving 21 days by effecting munadi and then without receiving any response, a decision is taken on the basis of presumption that a person is not interested is not sustainable. When a policy has been made by the State of Haryana wherein the spirit and rationale of the policy was to grant employment being a socio-economic oriented policy for the welfare of its people, it was duty of the respondents to have again approached either the petitioner or any other family member so as to implement the policy behind which there was sacrosanct spirit and rationale but there is nothing on the record to show that any letter was conveyed to the petitioner or his family but it was only on the basis of munadi of 21 days that now a stand has been taken that cut off date is over and therefore, the petitioner is not entitled. This Court is of a considered view that in pursuance of the aforesaid policy a duty was cast upon the respondents or the State to have approached the petitioner or

his father to ascertain as to whether they wanted employment or not because the spirit and rationale of the policy was to rehabilitate. The reasoning and procedure adopted by respondents would attain no significance in view of the fact that it is not a case that the petitioner or his father or his family members never applied for the employment but vide Annexure P-2 way back in the year 2013 that at the initial stages, he had applied but because the petitioner was a minor, he could not have been considered for employment. Therefore, this Court is of the view that a right was crystallized in favour of the petitioner at the time when his father made an application to the Deputy Commissioner-cum-Nodal Officer in the year 2013 and an application was made vide Annexure P-2 and therefore the entire onus shifted upon the respondents and also upon the State of Haryana to have followed up with the petitioner as to whether after attaining the age of majority, he is interested or not. The plea taken by the respondents in the reply that the petitioner or his family were not interested cannot be sustained and is outrightly rejected because the State being a welfare State and the policy being a beneficial policy, the entire onus was on State which cannot be shifted to the petitioner who was the beneficiary.

13. Learned counsel for the respondents at the time of arguments has also advanced an argument that it is not clear as to whether Annexure P-2 was given by the father of the petitioner or not. However, a perusal of para No.4 of the writ petition wherein he has so specifically stated that Annexure P-2 was given to the Deputy Commissioner and the corresponding reply filed by the respondents would show that there is no specific denial of Annexure P-2 and rather it has been so stated by the respondent which is HPGCL that for that Deputy Commissioner is to answer. However, the Deputy Commissioner is

respondent No.3 in the present case but no reply has been filed by the Deputy Commissioner in the present case. Therefore, it can be safely inferred that the aforesaid Annexure P-2 was given to the Deputy Commissioner and it is an authenticated and valid document. Even otherwise also in pursuance of Annexure P-2 which was of the year 2013, the name of petitioner was kept in 81 candidates who were shown to be uninterested. Therefore, the plea of the learned counsel for the respondents is unfounded and against the record.

14. Considering the aforesaid facts and circumstances of the present case, this Court is the view that it is a fit case to exercise its jurisdiction and powers under Article 226 of the Constitution of India because the right of the petitioner is affecting his livelihood which has been infringed and the aforesaid employment which was to be given to the petitioner in pursuance of the policy of the Government has also affected his right to life under Article 21 of the Constitution of India.

15. In view of the aforesaid facts and circumstances, the present petition is allowed. Impugned order dated 11.09.2020 (Annexure P-4) is hereby set aside. Respondent No.1 is directed to offer appointment to the petitioner on the relevant post according to his qualifications within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

02.05.2024
rakesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No