



CWP-8034-2001

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

CWP-8034-2001

Date of decision: 13.05.2024

RAJ MASIH AND ORS.

...PETITIONERS

VERSUS

**PUNJAB STATE ELECTRICITY BOARD
THROUGH ITS SECRETARY AND ORS.**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: None for the petitioner.

Mr. Luvinder Sofat, Advocate for respondent Nos.1 to 4.

NAMIT KUMAR, J. (ORAL)

1. The instant petition has been filed by the petitioners claiming the following reliefs:-

"a) A writ in the nature of certiorari quashing the order No.8756/C-II dated 27.11.2000 passed by respondent No.2 vide which the post of Gauge Readers have been abolished with malafide intention without any legal justification and further the order dated 24.04.2001 passed by respondent No.3 vide which the petitioners have been posted against the posts of Chowkidars.

b) A writ in the nature of mandamus for issuance of directions to the respondents to restore the post of Gauge Readers abolished vide impugned order (Annexure P-3) and their status and for further issuance of directions to the respondents to pay the revised scale of the post of Gauge Reader as prescribed in the office order dated 18.06.2000 (Annexure P-2) from the due date by fixing their un-revised salary in the scale of Rs.950-1800 and further directions to pay the arrears alongwith the interest @ 18% per annum.



2. None has put in appearance on behalf of the petitioners.
3. Learned counsel for respondent Nos.1 to 4 has referred the averments made in para 9 and 10 of the reply, which reads as under:-

" That the contents of these para are admitted to the extent that the board has rationalized the staffing pattern of Anandpur Sahib Hydel Project and Mukerian Hydel Project vide office order no. 8756/C-II dated 27.11.2000. On the recommendation of the committee constituted by the board, the board has decided to create 81 new posts of various categories and ordered to abolish 498 posts of various categories in both the projects vide office order no. 8756 dated 27.11.2000. The abolished posts includes 12 posts of Gauge Readers. The petitioners were declared surplus vide office order no.5 dated 30.01.2001. However, the keeping in view the length of the service of the petitioners, they were adjusted against the posts of Chowkidars till further order i.e. against the existing vacant post in the same pay scale and protecting their pay. The petitioners have accepted the posts."

4. It is the stand of the respondent-Corporation that the Board has rationalized the staffing pattern of Anandpur Sahib Hydel Project and Mukerian Hydel Project vide office order dated 27.11.2000 and on the recommendations of the Committee constituted by the board, it was decided by the board to create 81 new posts of various categories and ordered to abolish 498 posts of various categories in both the projects vide office order dated 27.11.2000 and the said abolished posts includes 12 posts of Gauge Readers and the petitioners were declared surplus vide order dated 30.01.2001. However, keeping in view the



posts of Chowkidars till further orders i.e. against existing vacant post in the same pay scale and by protecting their pay, which were duly accepted by the petitioners.

5. I have heard learned counsel for the respondents and perused the record.

6. Having heard the learned counsels for the parties, the matter was admitted on 11.10.2002. In **“P.U. Joshi and others Versus Accountant General, Ahmedabad and others”**, 2003(1) SCT 435, the Hon’ble Supreme Court, has held as under:-

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10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments



or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

7. To the similar effect is the judgment of the Hon'ble Supreme Court in **“Official Liquidator Versus Dayanand and others”, 2008(10) SCC 1**, wherein it has been held as under:-

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41. *The creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and lay down the qualification etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be*



exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by malafides.

42. *In State of Haryana vs. Navneet Verma [2008 (2) SCC 65], a Division Bench of two-Judges referred to M. Ramanatha Pillai vs. State of Kerala [1973 (2) SCC 650], Kedar Nath Bahi vs. State of Punjab[1974 (3) SCC 21], State of Haryana vs. Des Raj Sangar 1976 (2) SCC 844], Dr. N.C. Singhal vs. Union of India[1980 (3) SCC 29) and Avas Vikas Sanghathan vs. Engineers Association[2006 (4) SCC 132) and culled out the following principles :*

"(a) the power to create or abolish a post rests with the Government;

(b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

(c) creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration;

(d) creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public;

(e) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual;

(f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted."



43. *In Secretary, State of Karnataka vs. Uma Devi (supra), the Constitution Bench adverted its attention to financial implications of creation of extra posts and held that the Courts should not pass orders which impose unwarranted burden on the State and its instrumentalities by directing creation of particular number of posts for absorption of employees appointed on ad hoc or temporary basis or as daily wagers.*

44. *In Divisional Manager, Aravali Golf Club and another vs. Chander Hass and another[(2008) 1 SCC 683] also, a two-Judges Bench considered the issue relating to creation of post and held :-*

"15. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside.

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8. In **“Ramesh Kumar and others Versus Azad Singh Clerk and**

others”, 2015(4) SCT 218, a Division Bench of this Court, has held as under:-

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The creation of posts or cadres, merger or segregation of cadres, determination of conditions of service, including rule of seniority fall within the domain of competent authority with a very little scope of judicial review save in a case of hostile discrimination etc. The Courts cannot take on themselves the duty to draw a road map as to how such powers must be exercised by the executive."

9. Learned counsel for respondent Nos.1 to 4 submits that all the petitioners have since been retired from service on attaining their age of superannuation on the following dates:-

Serial No.	Name of the petitioner	Date of retirement
1.	Raj Masih	28.02.2007
2.	Ram Parkash	31.03.2013
3.	Ashwani Kumar	31.07.2012
4.	Charanjit Singh	31.10.2015
5.	Ranjit Singh	30.06.2013
6.	Arjun Dass	30.11.2010
7.	Raj Kumar	20.06.2009
8.	Kanshi Ram	31.01.2017

10. In view of the above, nothing further survives in the present writ petition and the same is disposed of, accordingly.

13.05.2024
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(NAMIT KUMAR)
JUDGE