

IN THE HIGH COURT OF PUNJAB & HARYANA
214 AT CHANDIGARH

CWP-12697-2018 (O&M)

Date of Decision:16.02.2024

Rajesh

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Mohnish Sharma, Advocate for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

Mr. Nitin Kaushal, Advocate and
Mr. Sahil, Advocate for respondents No.2 to 5.

JASGURPREET SINGH PURI J.(Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for setting aside the impugned office order dated 21.2.2018 (Annexure P-18) passed by respondent No.2 with a further prayer for issuance of directions to respondents for joining the present petitioner on the post of Peon in pursuance of the appointment letter dated 30.01.2014 in Uttar Haryana Bijli Vitran Nigam Limited with all consequential benefits.
2. The brief facts of the present case are that the State of Haryana acquired some land for setting up of thermal plant at Village Khedar (Hisar) and also took a decision to grant benefit to the oustees pertaining to the land which was acquired and a policy decision was taken at the level of the State of Haryana and consequently a notification was issued in this regard by the Financial Commissioner and Principal Secretary to

Government of Haryana, Power Department dated 05.7.2007. Although this notification has not been attached with the present petition but during the course of arguments, a copy of the same has been supplied by learned counsel for the petitioner and is hereby taken on record as Mark 'X'. The reason and the rationale for 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 and also earlier announcements were made in this regard. The aforesaid policy was pertaining to thermal plant of village Khedar which was thereafter re-named as Rajiv Gandhi Thermal Power Plant, Khedar. Thereafter, there was another thermal plant to be constructed regarding which again the land was to be acquired at Village Jharli, District Jhajjar and some announcements were made from the year 2007 onwards for the purpose of granting employment to the oustees. Thereafter, again a decision vide Annexure P-1 was taken by the State at the highest level for grant of employment to one member of 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 has already been followed in the case of Rajiv Gandhi Thermal Power Plant land oustees. In this way the parameters and decision taken by the aforesaid Rajiv Gandhi Thermal Power Plant was to be implemented qua the Jhajjar power plant as well.

2. The land of the petitioner was acquired for setting up of the aforesaid Jhajjar Power Plant and 09 acres of land of the petitioner was acquired and as per the policy any family having more than two acres of

land, one person from the said family has to be adjusted and State Government had been adjusting and granting employment to oustees of both the Rajiv Gandhi Thermal Power Plant and also the Jhajjar Power Plant. In pursuance of the aforesaid policy (Annexure P-1), the petitioner was issued appointment letter to the post of Peon as per his qualification vide Annexure P-2 dated 30.1.2014 since his land was acquired and he was entitled to the employment.

3. As per learned counsel for the parties no other member of the family of the petitioner was given any employment and the petitioner was the only person who was offered appointment in pursuance of the aforesaid policy. In para 7 of the aforesaid appointment letter, it was so stated that in case the petitioner is ready to accept the offer of appointment then he should report in the office of SE/OP Circle, UHBVN, Yamuna Nagar, on any working day within 15 days after receipt of the aforesaid letter alongwith some documents. The petitioner is resident of Jhajjar and he was directed to report at Yamuna Nagar. On receipt of the aforesaid appointment letter the petitioner wrote a letter vide Annexure P-4 dated 10.02.2014 to the Superintending Engineer (OP) UHBVN, Yamuna Nagar, Haryana, seeking extension of time period for joining by giving reasons that his mother is suffering from serious heart/cardiac disease and she is at her village in District Jhajjar and his father has already expired and it is not possible for him to leave her alone and also attached various medical certificates of his mother. An additional request was also made vide Annexure P-4 dated 10.2.2014 for allotting him posting as a Peon in District Jhajjar so that he can take care of his mother in her bad health apart from making request for

extension of time. The medical certificates of the mother of the petitioner have been appended in the writ petition as Annexure P-5. The respondents have not disputed the medical certificates or medical condition of the mother of the petitioner in their reply. As per the petitioner he did not receive any response from the Yamuna Nagar Office regarding his request for extension of time and he kept on waiting for the same. However, after some time he wrote a letter to the Chief Engineer (OP), UHBVN, Rohtak, vide Annexure P-7 by reiterating that he could join as a Peon in the office of Superintending Engineer (OP) UHBVN, Yamuna Nagar, because there was nobody to take care of his mother and his father has already expired and he was not able to join the duties purely because of his mother's illness since she is a patient of chronic heart disease and there is nobody to take care of her. In this regard an additional request was also made for the appointment of the son of the petitioner instead of him as he is an illiterate person but his son is matric pass and since he was not able to join on time because of the aforesaid situation and his son is also ready to join the department instead of him then it may be considered sympathetically. Thereafter, the respondent-Nigam considered the aforesaid representation of the petitioner and asked for certain documents vide Annexure P-10 dated 29.05.2017 which is a letter written by the Chairman-cum-Managing Director to the Chief Engineer. Thereafter, the Superintendent Engineer (OP) Circle, UHBVN, Jhajjar, also wrote a letter to the Chief Engineer, UHBVN, Rohtak, vide Annexure P-11 wherein it has been so stated that the documents have been sent and also it was stated in the letter that the petitioner did not inform about the illness of his mother for extending the

time period for joining. The inter-departmental communication kept on going and even a letter was written by the Administrative Officer for the Chief Engineer, Rohtak to the Superintending Engineer/OP Circle, UHBVN, Yamuna Nagar vide Annexure P-12 on 28.6.2017 thereafter vide letter Annexure P-13 dated 11.07.2017 the Superintending Engineer of Yamuna Nagar intimated the Chief Engineer (OP) UHBVN, Rohtak, that as per the record, the petitioner has not joined the Circle and no request is received from the petitioner for extension of time for his joining. The aforesaid letter was forwarded by the Office of Chief Engineer to the Superintending Engineer vide Annexure P-14. Thereafter again the petitioner made a detailed representation to the Managing Director, UHBVNL, Panchkula, vide Annexure P-15 and stated that till date no decision has been taken in this regard and he should be offered the post of Peon. Thereafter the petitioner filed a writ petition bearing No.CWP-27486 of 2017 before this Court and the same was disposed of with a direction to the competent authority to take a decision on the representation of the petitioner dated 08.08.2017 (Annexure P-15). Thereafter, in pursuance of the aforesaid order passed by this Court the impugned order (Annexure P-18) has been passed whereby the request of the petitioner has been declined and thereafter the present writ petition has been filed.

4. Learned counsel appearing on behalf of the petitioner submitted that it is a case where the State Government at the highest level took a conscious decision for grant of employment to one member of the family who had more than 2 acres of land and was displaced because of the setting up of thermal plant in pursuance of the policy as Mark 'X' and

Annexure P-1 and the petitioner was the only person in the family who was offered appointment to the post of Peon according to his qualification but he was living in his village at District Jhajjar with his old age ailing mother who was an acute cardiac patient and had rather undergone bypass surgery and his father had already expired much earlier and there was no other person available in the house to take care of his mother and he was given posting at Yamuna Nagar and he made a request to the Superintending Engineer Yamuna Nagar vide Annexure P-4 for extension of time for joining to which there was no response and the petitioner had no choice but not to join within a period of 15 days which was provided and rather he considered his duty to take care of his mother first. He further submitted that repeatedly he had been approaching the respondents and had been requesting them to again consider him for any other place of appointment and even his son can be appointed because his case is squarely covered by the policy of the State Government. He further submitted that rather the claim of the petitioner was much more fortified and strong than any other person because the criteria for granting an appointment to a member of the family from whom more than 02 acres of land was acquired for the purpose of setting up of thermal plant and one person was to be adjusted whereas 09 acres of petitioner's land was acquired and the respondents-State Government had been insensitive towards the petitioner and because of the insensitiveness he has not been considered for appointment which goes against the spirit of the policy itself. He further stated that even today he is ready to get the employment and in view of the aforesaid facts and circumstances directions may be issued to the respondents to grant

appointment to the petitioner in pursuance of the aforesaid policy.

5. On the other hand, learned counsel appearing on behalf of the respondents-Nigam has submitted that the respondent-Nigam has fully implemented the policy of the State Government at Annexure P-1 and in pursuance of the aforesaid policy appointment was offered to the petitioner (Annexure P-2). The petitioner was supposed to report for duty at district Yamuna Nagar within a period of 15 days but he failed to do so. While referring to the reply filed by the respondents-Nigam he submitted that it has been specifically confirmed from Superintending Engineer, Yamunanagar that the letter which the learned counsel for the petitioner is relying upon, stating that he sought extension of time for joining because of the ailment of his mother, was never received by the office at Yamunanagar and when no such request was received then after the expiry of the time of 15 days, the petitioner could not have been appointed because he himself did not join on duty as per the terms and conditions of the appointment letter. He submitted that now after a period of about 10 years, no such employment can be given to the petitioner in this regard since he does not have any legal right surviving once he chose not to join at the particular place where he was appointed.

6. I have heard learned counsel for the parties.

7. A perusal of the policy-Mark 'X' and Annexure P-1 would show that the rationale behind the framing of the policy both for Rajiv Gandhi Thermal Power Plant and Jhajjar Power Plant, was that the oustees whose land was acquired for setting up of the aforesaid thermal plants were to be accommodated by providing employment to the families of those people

whose more than 02 acres of the land was acquired. In the present case the land of the petitioner acquired was 09 acres which is much more than the aforesaid 02 acres. The respondent-State implemented the policy for the petitioner and they offered an appointment to the petitioner vide Annexure P-2 but he was required to be posted at Yamunanagar but he being resident of District Jhajjar, made a request vide Annexure P-4 by writing a letter to the Superintending Engineer, (OP), UHBVN, Yamuna Nagar, that his mother is an acute cardiac patient and he cannot leave his mother and therefore either extension of time for joining may be extended or posting be given to him at District Jhajjar. The aforesaid letter issued by the petitioner now has been disputed by the respondents in their reply by stating that the Superintending Engineer of Yamunanagar did not receive the aforesaid letter. However, after about 03 years of time there are number of other deliberations which were done vide Annexure P-7 onwards wherein repeatedly inter-departmental communications took place between various officers on the basis of which repeated requests were made by the petitioner that earlier he could not join and he wrote a letter to the Superintending Engineer, UHBVN, Yamunanagar, stating that because of his ailing mother he could not join and now he should be considered at least. The time gap between the offer of appointment and start of aforesaid communications was only three years. However, vide Annexure P-18 the petitioner filed a writ petition bearing No.CWP-27486 of 2017 before this Court and the same was disposed of with a direction to the competent authority to take a decision on the representation of the petitioner dated 08.08.2017 (Annexure P-15). Thereafter, vide impugned

order dated 21.02.2018 (Annexure P-18), the claim of the petitioner was rejected. A perusal of the policy Mark 'X' and Annexure P-1 would show that the spirit behind the policy was to adjust and to grant employment to those persons whose land measuring more than 02 acres had been acquired. The land of the petitioner was measuring 09 acres and it is undisputed that no other family member of the petitioner got employment.

8. The medical certificates which have been attached by the petitioner regarding his mother have not been disputed by counsel for respondents-Nigam. Therefore it is a case where at the time when the petitioner received the appointment letter (Annexure P-2) he was staying with his mother in his native village at Jhajjar and he sought extension of time. Even if assumingly the same was not received by the office of Superintending Engineer, Yamunanagar, no efforts were made by the respondents-Nigam to re-connect with the petitioner. The spirit and rationale of the policy was to grant employment being a socio-economic oriented policy and even if the letter was not received by the Yamuna Nagar Office, it was the duty of the respondents-Nigam to have again approached either the petitioner or any other family member so as to implement the policy behind which there was a very sacrosanct spirit and rationale, but, it appears that nobody from the office of the respondents-Nigam or State Government tried to understand the situation as to why the person who has been granted employment in lieu of acquisition of his land measuring 09 acres did not join in time and that too on the post of peon. Duty was cast upon respondents to implement the policy whole-heartedly and not to scuttle rights of eligible oustees on hyper-technicalities.

9. In this way, it appears that the respondents-Nigam have failed to implement the aforesaid policy qua the petitioner because it is not expected from welfare State to be hyper-technical in those matters where the policy is a beneficial policy towards its own citizens. Be that as it may, the petitioner again raised the issue in the year 2017 and repeated inter-department communications took place between various officers till the level of CMD which ultimately culminated into rejection order/impugned order at Annexure P-18.

10. A perusal of the policy would also show that it does not suggest at any place that an emergent employment is to be made but it was a long term policy and rather the contents of the aforesaid policy (Mark 'X') would show that even time has been given to those persons who are to attain the qualifications etc. by getting any training etc.. In other words it was a comprehensive policy for rehabilitation of the oustees whose land have been acquired but the spirit and rationale of the policy was never that immediately employment is to be given and it could have been even a long term policy. Assumingly, there was a gap after the offer of employment in the year 2014 but still it was revived in the year 2017 after a gap of 03 years and therefore this Court is of the view that gap of 03 years was not that large gap on the basis of which the petitioner could be non-suited on this ground alone.

11. Considering the aforesaid totality of facts and circumstances of the present case, this Court is of the view that it is a fit case to exercise its powers under Article 226 of the Constitution of India because the rights of the petitioner affecting livelihood have been infringed and the aforesaid

employment which was to be given to the petitioner in pursuance of the policy of the Government affected his right to life under Article 21 of the Constitution of India.

12. In view of the aforesaid facts and circumstances, the present petition is allowed. Order dated 21.02.2018 Annexure P-18 is hereby set aside. The respondents-Nigam are directed to offer appointment to the petitioner on the post of Peon within a period of three months from today.

(JASGURPREET SINGH PURI)

JUDGE

16.02.2024

shweta

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No