

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-20165-2016 (O&M)
Date of decision: 10.04.2024

Amit Thakur

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.S. Manhas and
Mr. R.S. Pathania, Advocates for the petitioner

Mr. Swapan Shorey, DAG Punjab

AMAN CHAUDHARY. J. (ORAL)

1. The prayer made in the present petition is for quashing the cut-off date of 01.05.1986 in the policy dated 18.11.1993 fixed for considering the eligibility of the dam oustees as the same is without any basis as also to direct the respondents to provide employment to the petitioner to the post of Sub Divisional Engineer under the said quota, for the land and house acquired.
2. Learned Counsel contends that as per the policy dated 18.11.1993, various rehabilitation packages were introduced for dam oustees, one of which being employment of a member from the affected families. However, the petitioner, despite possessing the required qualifications, was not considered for appointment against the post of Sub-Divisional Engineer, on the premise that his father was not the owner of the land on the cut off-date, i.e, 01.05.1986, fixed for determining the eligibility of dam-oustees.
3. Learned State counsel on the other hand submits that as per list of 769 eligible dam oustees of Punjab State, only one khata of the family existed at

the time and that the father of the petitioner had forfeited his right by consenting in favour of his brother, Anant Ram, whose son was thus given employment, in wake of which the claim of the petitioner does not sustain. Further, it is marred by delay and laches, on the ground of which this Court held in a batch of 107 petitions with the lead case of **Waryam Singh vs. State of Punjab and Others**, CWP-15379-2012, decided on 11.04.2023, Annexure R-2, that there cannot be a vested or legal right claimed in concession, which is subject to the law of limitation as well as the condition laid down in the policy, relevant paras whereof read thus:

“4. After the agreement, two separate rehabilitation policies were issued. One, on 18.11.1993, with respect to the State of Punjab and Jammu & Kashmir and another scheme dated 18.11.1993, for the oustees of State of Himachal Pradesh. One of the main objectives of these policies was to immediately rehabilitate the affected families by providing employment to one member per eligible oustee family as class IV employee in order to overcome the financial hardship. The families who were found eligible for being provided employment as Class-IV employee at that point of time were identified. In Punjab, 769 families were identified, whereas, in Jammu & Kashmir, 767 families were identified, whereas, 493 families were identified in Himachal Pradesh. It is the stand of the respondent that out of the aforesaid, one member of each of the 720 families in the State of Punjab, of 793 families in the then State of Jammu & Kashmir, and of 494 families of Himachal Pradesh have already been given employment.

5. Before appointment, the interviews were held between 1997-98. Initially, CWP-8733-2000 was filed by the residents of the then State of Jammu & Kashmir, which was disposed of by directing the respondent to consider their claim. However, all of the petitioners in the aforesaid writ petition were not issued appointment letters. There was second round of litigation with lead case in CWP-8903-2003, in which the High Court held that one member of the affected family shall be given appointment as and when the ban is lifted. Thereafter, contempt petitions were filed. Again, there was one more round of litigation wherein the Government gave the assurance that efforts will be made to consider everyone's claim. In the fourth round of litigation, CWP-787-2008, titled as "Dharam

Singh and others Vs. State of Punjab and others", decided on 26.11.2009 was filed by those who had been interviewed on two different occasions during 1997-98 but were never appointed. The aforesaid judgment was upheld by the Supreme Court. Thereafter, during the period from 2012 to 2022, various writ petitions have been filed which have come up for final disposal before this court. It is not the case of any of the petitioners that their names figured in the list prepared by the competent authority or they were ever interviewed.

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7. As per the policy decision, the cut off date for identifying the families was 01.05.1986.

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102. Keeping in view the aforesaid facts, the disputed questions of fact are involved, which cannot be decided in the writ petition.

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104. At this stage, it is appropriate to notice that the object of the policy was to provide immediate help to the family of the oustees, which after a passage of more than two and a half decade ceased to exist. It is not the case of the petitioners that their names were included in the original list prepared by the authority during the period of 1997-1998 or that they ever applied under the policy before 2011. It is evident in most of the above-mentioned cases that disputed questions of fact are involved.

105 This matter can be examined from yet another perspective. The employment under the oustee quota is not another regular source of recruitment. It is in the nature of an exception which has been carved out in order to provide relief in special exceptional circumstances. Hence, the exception cannot be permitted to become a general rule. The Court while issuing the writ is expected to maintain a proper balance between the claims of the oustees who have woken up from a deep slumber on the one hand and expectations of the unemployed youth who are in dire need to get civil posts particularly in view of rampant unemployment on the other hand. In such circumstances, in the considered opinion of this Court, it will not be appropriate to have misplaced sympathies with the stale claims of the petitioners. It is obvious that not only the petitioners' claim are stale but they involve the disputed questions of fact which this Court does not find appropriate to decide.

106. Moreover, the Land Acquisition Act, 1894 does not require the acquiring authority or the beneficiary of the acquisition to ensure employment to the oustees or their family members. Hence, the offer of employment is not in lieu of compensation which is equivalent to the market value and the

amount of solatium but in addition thereto. Consequently, such policy is in the nature of a concession offered by the executive to reduce the impact of their dislocation from their place of residence or occupation. The offer of appointment as an oustee is not a vested right but is in the nature of a concession and therefore, it is not absolute but conditional. The policy does not create indefeasible right in the members of the family of the oustee. There cannot be a vested or legal right claimed in concession. Consequently, such concession is based upon the conditions laid down in the policy. Hence, employment is subject to the law of limitation as well as the conditions laid down in the policy..."

4. Learned counsel for the petitioner is unable to controvert the submissions and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

5. In view of the aforesaid, the present petition stands dismissed.

(AMAN CHAUDHARY)
JUDGE

10.04.2024

M.Kamra

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