

Anil Kumar Malhotra and Others Vs. V.

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Court : Punjab and Haryana

Decided On : Jan-16-2013

Appellant : Anil Kumar Malhotra and Others

Respondent : V.

Judgement :

C.W.P. No.12099 of 2012 [1]. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH C.W.P. No.12099 of 2012 (O&M) Date of decision: January 16, 2013 Anil Kumar Malhotra and others .. Petitioners v. State of Haryana and others .. Respondents CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL Present: Mr. Yesh Paal Malik, Advocate for the petitioners. Mr. D. D. Gupta, Addl. Advocate General, Haryana. Mr. Arun Nehra, Advocate for respondent No.3. Mr. Mohnish Sharma, Advocate for respondents No.4 to 6. Mr. Ashok Gupta, Advocate for respondent No.7. ... Rajesh Bindal J.

1. Challenge in the present petition has been made to the order dated 7.6.2012, vide which approval was granted by Chief Minister, Haryana to the extension in service of respondent No.7 for one year and order dated 22.6.2012 passed by Uttar Haryana Bijli Vitran Nigam Limited (for short, UHBVNL') as a consequence thereof.

2. Learned counsel for the petitioners submitted that with grant of extension of one year in service to respondent No.7 as Chief Engineer, the promotional aspects of petitioners No.1 and 2 have been adversely affected, hence, they have a cause of

action to approach this court. As far as petitioner No.3 is concerned, it is an association of Engineers in different power corporations in the State and they are looking after the grievances of its members. C.W.P. No.12099 of 2012 [2].

3. Learned counsel further submitted that in terms of Rule 3.26(a) of the Punjab Civil Services Rules (for short, 'the Rules'), there are three requirements before case of any of the employee is considered for extension in service after he attains the age of superannuation, i.e., exceptional circumstances, sanction by the competent authority on public grounds and the reasons to be recorded in writing. He further submitted that the government instructions issued for the purpose of grant of extension in service on the age of superannuation on 15.1.1990 have been violated, as it requires certain procedure to be followed. It was further argued that in fact the order passed by the Chief Minister granting extension in service is otherwise also illegal for the reason that he is not competent. It has even been so admitted in the written statement filed by the State, wherein it is stated that the instructions issued by the government are not applicable to the employees of the Boards and the Corporations. If the provision of Section 3.26(a) of the Rules is considered, it can be the Board of Directors of UHBVNL, which may be competent to grant extension in service but that too can be in exceptional circumstances, which are missing here. He further submitted that even the resolution passed by UHBVNL, which has been produced not along with affidavit dated 8.1.2013 will not cure the inherent defect, as the relevant factors were required to be considered by the competent authority at the time of grant of extension. In support of his arguments, he placed reliance upon *Pancham Chand and others v. State of Himachal Pradesh and others*, 2008(2) RCR (Civil) 680.

4. On the other hand, learned counsel for the State submitted that the competent authority to grant extension in service would be the appointing authority, which is the Board of Directors of UHBVNL. It has its own rules and regulations. As Bhakra Beas Management Board (for short, 'BBMB') recommended the case of respondent No.7 for extension in service considering his specialized knowledge and experience, one year extension in service was granted to him, which is in public interest.

5. Learned counsel for UHBVNL submitted that the present petition deserves to be dismissed as not maintainable. In fact, the petitioners do not have any cause of action to approach this court. Petitioners No.1 and C.W.P. No.12099 of 2012 [3]. 2 are Superintending Engineers working with Haryana Power General Corporation Ltd. and Haryana Vidyut Prasaran Nigam Ltd. (for short, 'HVPNL') respectively, whereas respondent No.7 was serving with UHBVNL. The officers in the aforesaid three establishment do not have common seniority. Even if respondent No.7 had been granted extension in service, no right of petitioners No.1 and 2 were affected as such, as they could not claim that in case extension was not granted to respondent No.7, they could have been promoted as Chief Engineer, as the post would have fallen vacant. It was further submitted that during the pendency of writ petition, petitioner No.1 has been promoted as Chief Engineer in Haryana Power Generation Corporation Ltd., whereas petitioner No.2 will be considered for promotion as Chief Engineer as and when a vacancy will arise in the company, where he is working. Respondent No.7 was granted extension in service for the reason that his case was recommended by BBMB where he had been working on deputation for the last 30 years. It was on account of his qualifications and specialized experience in transmission. Before the case was put up to Hon'ble the Chief Minister, it was recommended by the Managing Director of UHBVNL. He further submitted that in fact the exercise was done considering the past practice. Still when after filing of the present writ petition, the legal issue was examined minutely and it was found that the Board of Directors of UHBVNL is competent to grant extension, a resolution was passed by the Board of Directors on 3.1.2013 granting ex-post facto approval to the extension in service granted to respondent No.7. Though the aforesaid order has been placed on record along with the affidavit dated 8.1.2013, however, the petitioners have not chosen to challenge the same. In the absence thereof, the writ petition deserves to be dismissed as not there is a fresh order passed by the competent authority and if the petitioners are aggrieved of the same, they could challenge it and in the absence of any challenge, the same cannot be set aside.

6. Learned counsel for BBMB submitted that it had recommended the case of respondent No.7 for extension in service considering his experience in the area of transmission of power. In fact, BBMB had been C.W.P. No.12099 of 2012 [4].

requesting different power corporations in the State of Haryana for sending the names of persons qualified and expert in transmission, but none was sent. Petitioners No.1 and 2 are not eligible for the purpose. Apparently, the file had gone to the Chief Minister for the reason that in the request made by respondent No.1, it was mentioned that his case be recommended to the Government of Haryana for extension.

7. Learned counsel for respondent No.7 submitted that the only foundation laid down in the writ petition is that petitioners No.1 and 2 have been affected in their service career on account of extension having been granted to respondent No.7, whereas there is none as petitioners No.1 and 2 and respondent No.7 are working in three different establishments having their independent seniority. In fact, petitioner No.1 has already been promoted as Chief Engineer, whereas petitioner No.2 is being considered. The case of respondent No.7 was recommended for extension in service as there was none available with BBMB at this position for taking care of the important function of transmission of power. Despite request, even the different power corporations also did not recommend any name.

8. Heard learned counsel for the parties and perused the paper book.

9. Before proceeding to deal with the case of the petitioners on merits, it would be appropriate to deal with the issue regarding maintainability of the writ petition. There are three petitioners in the writ petition, namely, Anil Kumar Malhotra, Chander Kumar Sahajwani, and Haryana Power Engineers Association. Petitioner No.1 is Superintending Engineer in Haryana Power Generation Corporation Limited (for short, 'HPGCL'), whereas petitioner No.2 is Superintending Engineer in HVPNL and petitioner No.3 is the association of Power Engineers. Respondent No.7 was working with UHBVNL. It is not in dispute that after erstwhile Haryana State Electricity Board was bifurcated and four different companies were formed, namely, HPGCL; HVPNL, UHBVNL and Dakshin Haryana Bijli Vitran Nigam Limited (for short, 'DHBVNL'). All the employees working therein have their independent seniority. Even if respondent No.7 had been granted extension in service, the chances of promotion of C.W.P. No.12099 of 2012 [5]. petitioners No.1 and 2 will not be adversely affected as they have to be considered for

promotion as Chief Engineer against any vacancy which may be available in their own establishment. It has also come on record that in fact during the pendency of the writ petition, petitioner No.1 has already been promoted as Chief Engineer in his own Corporation, whereas case of petitioner No.2 is being considered, hence to state that petitioners No.1 and 2 have been adversely affected with the order granting extension in service to respondent No.7 is totally misconceived. Therefore, it cannot be said that they have any cause of action to approach this court.

10. As far as petitioner No.3 is concerned, it is an association of Engineers, which is stated to have been formed by Engineers working in all different power corporations in the State. It is raising a general cause of all the member Engineers with no relief to an individual. In this manner, it will take the colour of public interest litigation. It has been held by Hon'ble the Supreme Court in *Girjesh Shrivastava and others v. State of M. P. and others*, (2010) 10 SCC 70. that in service matters, public interest litigation is not maintainable. Still further, though initially the order granting extension in service to respondent No.7 was passed by UHBVNL in pursuance to the order passed by the State Government, which has been challenged in the writ petition raising various grounds, however, the fact remains that subsequent thereto, the Board of Directors of UHBVNL, being competent, has passed a resolution on 3.1.2013 granting ex-post facto approval to the extension in service granted to respondent No.7 from 1.7.2012 to 30.6.2013. The aforesaid resolution was placed on record along with affidavit dated 8.1.2013, however, the petitioners thought it appropriate not to challenge the same.

11. For the reasons mentioned above, the writ petition is dismissed. (Rajesh Bindal) Judge January 16, 2013 mk

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