

Tek Chand Vs. Chief Executive Officer, District Rural Development Agency and anr.

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Court : Punjab and Haryana

Decided On : Jul-31-1997

Reported in : (1997)117PLR583

Judge : G.S. Singhvi and; M.L. Singhal, JJ.

Acts : [Constitution of India](#) - Articles 16 and 226

Appeal No. : Letters Patent Appeal No. 70 of 1988

Appellant : Tek Chand

Respondent : Chief Executive Officer, District Rural Development Agency and anr.

Advocate for Def. : Jaswant Singh, Deputy Adv. General

Advocate for Pet/Ap. : C.B. Goel, Adv.

Disposition : Appeal allowed

Judgement :

G.S. Singhvi, J.

1. Aggrieved by the dismissal of his writ petition only on the ground that he had filed a civil suit on the same cause of action and had withdrawn the same without permission to file a fresh one, the petitioner-appellant has filed this appeal under Clause X of the Letters Patent.

2. The facts which are necessary for the purpose of deciding this appeal are that the appellant was appointed as Peon-cum-Chowkidar in the service of the District Rural Development Agency, Karnal vide order dated 19.11.1979 issued by the Chief Executive Officer. On 31.12.1982 he was confirmed in the service. After about 7 years of his entry in the service, the respondent No.1 terminated the petitioner's service vide his order dated 13.10.1986.

3. The appellant instituted a civil suit in the Court of the Senior Sub Judge Karnal with the prayer that a decree of permanent injunction restraining the defendant/respondent No.1 from dismissing him from service be granted. He however, could not persuade the learned Senior Sub Judge, Karnal to pass an Order of temporary injunction. On 21.10.1986, the petitioner instituted C.W.P. No. 5734 of 1986 and prayed for quashing of the order Annexure P3 issued by the Chief Executive Officer District Rural Development Agency, Karnal terminating his service.

4. In the written statement filed by them, the respondents pleaded that the service of the appellant was terminated because of abolition of the post in view of the instructions issued by the government vide letters dated 13.6.1985 and 13.9.1986. They alleged that the order date 13.10.1986 was issued because the service of the appellant was no longer required. The respondents also objected to the maintainability of the writ petition on the ground that the civil suit filed by the appellant was still pending.

5. In the replication filed by him, the appellant asserted that the termination of his service was not only contrary to Article 311 of the Constitution but was also discriminatory in-as-much as persons junior to him had been retained in service.

6. The respondents also filed a reply to the replication reiterating their stand that the service of the appellant was terminated in pursuance of the Government

instructions. They stated that in order, to give effect to the directions given by the government to cut the expenditure the post of chowkidar held had been abolished necessitating the termination of his service. On the issue of retention of junior persons, the respondents, pleaded that the appellant had been appointed as Chowkidar whereas the persons named in paragraph 11 of the replication had been appointed as Peon and there was no lis between the appellant and those who had been appointed as Peon.

7. The learned Single Judge accepted the objection realised by the respondents to the maintainability of the writ petition on the ground that that suit filed by the appellant was pending on the date of filing of the writ petition.

8. The first contention urged by Shri C.B. Goel, learned counsel for the appellant is that the learned Single Judge has seriously erred in dismissing the writ petition on the ground of pendency of the suit. He argued that the learned Single ignored the fact that the suit and the writ petition filed by petitioner were not based on the same cause of action. The learned counsel pointed out that the suit was filed for grant of a decree of permanent injunction restraining the respondents from dismissing the appellant from service whereas the writ petition was filed for quashing of the order dated 13.10.1986. The learned Deputy Advocate General argued that although in the plaint filed by him the appellant had not specifically prayed for passing of a decree to nullify the order dated 13.10.1986, the averments made therein are clearly indicative of the fact that the appellant was aware of the order dated 13.10.1986.

9. In order to determine whether in the suit and the writ petition filed by the appellant, identical relief had been sought for by him, it will be useful to reproduce the prayers made in the suit and the writ petition. The same are:-

'Prayer in the suit:

It is, therefore, prayed that a, decree for permanent injunction restraining the defendant No.1 from dismissing the plaintiff from his post, as referred to in paras No.1 and 2 of the plaint, may kindly be granted in favour of the plaintiff and against the defendants, with costs.

Any other relief to which the plaintiff is found to be entitled to may also be granted.

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Prayer in the writ petition.

- (a) It is, therefore, respectfully prayed that record of the case may be called for;
- (b) a writ of certiorari quashing the impugned order annexure P-3 passed by respondent No.1, terminating the services of the petitioner be issued;
- (c) any other appropriate writ, order or direction, which this Hon'ble Court may deem fit, quashing the, impugned order annexure P-3 be also issued;
- (d) during the pendency of the writ petition, operation of the impugned order annexure P-3 be stayed;
- (e) condition of issuing advance notices upon the respondents may kindly be dispensed with;
- (f) costs of the writ petition may also kindly be awarded to the petitioner.'

10. On a bare reading of the prayer clauses reproduced above, it becomes clear that in the suit filed by him, the appellant did not seek quashment of the order dated 13.10.1986. This aspect has been completely ignored by the learned Single Judge. Rather, he proceeded on the assumption that the suit and the writ petition filed by the appellant were for grant of identical relief. Since that is factually incorrect, we hold that the dismissal of the writ petition is unsustainable and the order passed by the learned Single Judge is liable to be set aside.

11. Ordinarily, we would have remanded the case to the learned Single Judge for decision on merits but keeping in view the joint prayer made by the learned counsel for that the case be decided on merits at this very stage and also in view of the fact that the matter has become almost 11 years old, we have considered it appropriate to decide the writ petition on merits.

12. One of the grounds on which the appellant has challenged the legality of the order dated 13.10.1986 is that the persons junior to him have been retained in service. He has pleaded that the respondents have acted in violation of the rule of 'last come first go'. The respondents have contested the appellant's plea by urging that the appellant was appointed as Chowkidar whereas the persons junior to him who were retained in service, had been appointed as peon. Having carefully perused the pleadings and the order by which the appellant was appointed, we find substance in the appellant's claim that the respondents have acted in violation of the rule of 'last come first go'. A look at the order Annexure P-1 shows that the appellant was appointed as Peon-cum-Chowkidar in the pay scale of Rs. 70.85. The order Annexure P-2 shows that the appellant was confirmed as Peon in the service of the District Rural Development Agency, Karnal. S/Shri Kaman Singh, Balbir Singh, Devi Lal and Maha Singh were appointed as Peon after the petitioner's appointment. Admittedly, the posts of Peon, Peon-cum-chowkidar and Chowkidar form part for Class IV cadre. All such posts carry identical pay scale. It has not been shown to us that these posts are treated as separate cadres or their seniority is determined separately. Thus, there is no escape from the conclusion that the persons junior to the appellant had been retained by the employer while terminating his services and in this manner, the rule of 'last come first go' has been violated. The respondents have neither pleaded nor have they proved that the service of the petitioner was terminated due to unsatisfactory performance or bad conduct. In fact they have tried to justify the impugned order solely on the ground that the government had directed the Agency to effect economy and it was decided to abolish the post of Chowkidar. Since the petitioner was not appointed as a Chowkidar but as Peon-cum-Chowkidar and was , confirmed as Peon, the respondent could not have ignore his seniority among class IV employees. We therefore hold that the termination of the appellants' service is vitiated due to violation of Articles 14 and 16 of the Constitution.

13. Articles 14 and 16 of the Constitution embody the doctrine of equality. While Article 14 is genus. Article 16 is one of the species of the doctrine of equality. It is attracted in the matters relating to the employment to public services. The rule of 'last come first go' is one of the facts of the doctrine of equality. This rule requires that the employer shall not terminate the service of a senior person while retaining

a junior person belonging to the same cadre. A departure from this rule can be made in a case where the service of the senior employee is terminated due to unsatisfactory performance or conduct. In *Government Branch Press v. D.B. Belliappa*, AIR 1979 SC 429, the above referred rule was applied by the Supreme Court in the case of termination of the services of a temporary employee. While affirming the order passed by the High Court, their Lordships observed:-

'if the services of the temporary government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory or for a like reason which marks him off a class apart from other temporary servants who had been retained in service, there is no question of applicability of Article 16. Conversely if the services of a temporary government servant are terminated arbitrarily and not on the ground of his unsuitability unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his Service, the appointing authority was purporting to act in accordance with the terms of employment.

Similar principle has been applied in the case of reversion in *State of U.P. v. Sughar Singh*, 1974(1) SLR 435.

14. At the cost of repetition we may observe that in the present case, the service of the appellant was not terminated due to unsatisfactory performance or conduct or for any like reason. Therefore, by applying the ratio of *Belliappa's* case and *Sughar Singh's* case, we hold that the order dated 13.10.1986 is arbitrary and discriminatory and is, therefore, violative of Articles 14 & 16 of the Constitution of India.

15. In the result, we allow the appeal and direct the respondents to reinstate the appellant in service immediately and give him all services benefits except full back wages.

16. Although the appellant has suffered due to unlawful termination of service, an order of payment of full back wages will place unbearable burden on the budget of

the respondent-District Rural Development Authority. Moreover, the appellant must have survived by taking up some employment or work. Therefore, we deem it just and proper to direct that he shall be paid 25% of the back wages. This the respondents shall do within a period of three months.

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