Gurcharan Singh Vs State of Punjab and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 11, 1996

Acts Referred: Constitution of India, 1950 â€" Article 14, 142, 16, 226

Citation: (1997) 116 PLR 239

Hon'ble Judges: G.S. Singhvi, J; B. Rai, J

Bench: Division Bench

Advocate: Bhupinder Pal Singh Dhillon, for the Appellant; Jaishree Thakur, DAG, for the Respondent

Final Decision: Dismissed

Judgement

G.S. Singhvi, J.
This is a petition to quash condition No. 1 incorporated in the order Annexure P-1 limiting the appointment of the

petitioner to 89 days.

2. The petitioner was appointed as driver for 89 days by respondent No. 2 vide order Annexure P.1 dated 25.8.1995. This appointment was not

preceded by any selection consistent with the doctrine of equality inasmuch as candidature of other eligible persons were not considered either by

making selection on the basis of requisition sent to the employment exchange or by advertisement of the posts. At the end of 89 days period,

service of the petitioner was discontinued.

3. Plea raised by the petitioner is that he has acquired a legal right to be continued in service on the basis of appointment order Annexure P.I and

the respondents have acted illegally in dispensing with services by relying upon wholly arbitrary, unreasonably and oppressive conditions of

employment.

4. The respondents have defended their action of not continuing the petitioner in service by stating that the appointment given to the petitioner was

purely ad hoc and by way of stop gap arrangement and no right came to vest in him to be continued in service on the basis of such ad hoc

appointment.

5. By placing reliance on the decisions of this Court in Civil Writ Petition No. 3037 of 1994, Dr. Subedar Singh Arya and other v. The State of

Haryana, (decided on 12.5.1994) and Civil Writ Petition No. 6276 of 1994, Veena Rani and Ors. v. State of Haryana, (decided on 6.7.1994).

Learned counsel for the petitioner argued that the respondents have acted illegally and arbitrarily by not continuing the petitioner in service on the

basis of wholly unconscionable condition of employment and, therefore, condition No. 1 should be struck down and a mandamus be issued to the

respondents to continue the petitioner in service. On the other hand, learned Deputy Advocate General argued that even though there is an

apparent conflict between the decisions relied upon by the petitioner as well as the decision in Rajni Bala v. State of Haryana ILR 1996 P&H 18,

on the one hand and the decision of this Court in Harjot Kamal Singh v. State of Punjab 1996 (3) AIJ 639, the writ petition should be dismissed

because the petitioner was appointed as a measure of favouritism and the appointment made without considering the claim of similarly situated

persons, should not be protected by issue of a writ under Article 226.

6. In our opinion, there is no conflict of views in the various decisions relied upon by the learned counsel for the parties. It appears that both the

learned counsel have made their submissions under a complete mistaken impression about the true ratio of various decisions of this Court. In Dr.

Subedar Singh Arya''s case (supra), Veena Rani''s case (supra) and Rajni Bala''s case (supra) this Court had examined the validity of conditions

incorporated in the orders of appointment of the petitioners limiting their appointment to a fixed period with a stipulation that services of the

petitioners could be terminated without any notice and without reasons in the background of the fact that in these cases the petitioners had been

appointed on ad hoc basis after considering the cases of all eligible persons who were sponsored by the employment exchanges. Thus the

comparative merit of eligible persons had been considered before appointing the petitioners and their appointments were consistent with the

doctrine of equality and the principles laid down by the Supreme Court in State of Haryana and others Vs. Piara Singh and others etc. etc., . This

Court took the view that while giving appointments to the petitioners, after due consideration of the competing claims of other eligible persons, the

appointing authority was not entitled to incorporate arbitrary, unreasonable and unconscionable conditions of service by using its dominant position

vis-a-vis the petitioners and such conditions could not be used for terminating their services even though the posts against Which they had been

appointed continued to exist, the Government did not take policy decision to abolish the posts or not to continue the service of existing incumbents

due to economic reasons or on the ground that the work of the petitioners was found to be unsatisfactory. In that background the Court held that

services of the petitioners were not liable to be terminated nor could they be replaced by other ad hoc appointees. In Harjot Kamal Singhs case

(supra) the Court was not concerned with a situation similar to the one obtaining in Dr. Subedar Singh Arya''s case (supra), Veena Rani''s case

(supra) and Rajni Bala''s case (supra). Petitioner in that case was appointed on ad hoc basis for a period of 89 days as Ayurvedic Medical Officer

without any selection whatsoever. The petitioner challenged the threatened termination of his service. He placed reliance on the decision in Rajni

Bala''s case (supra) and in Gordhan Singh Gulia v. State of Haryana 1996 (1) AIJ 226. The respondents relied on a decision dated 22.5.1996

rendered in Civil Writ Petition No. 7361 of 1996, Kiran Bala v. State of Punjab, sad the judgments of the Supreme Court in State of Uttar

Pradesh and Another Vs. Kaushal Kishore Shukla, and State of Punjab and others Vs. Surinder Kumar and others, . While dismissing the writ

petition of Harjot Kamal Singh, the Division Bench expressed its reservations about the observations made in Gordhan Singh Gulia''s case (supra),

Rajni Bala''s case (supra) and Kaushal Kishore Shukla''s case (supra),

7. It appears to us that attention of the Division Bench which decided Harjot Kamal Singh''s case was not drawn to the clear difference in the

nature of appointment of the petitioners in Rajni Bala''s case and Gordhan Singh Gulia''s case. Apparently due to this the Division Bench expressed

its reservation regarding the observations made in Gordhan Singh Gulia''s case and Rajni Bala''s case. However, we have no doubt in our mind that

their no conflict between the two sets of decisions and a careful reading of them lead to the following conclusions: -

(i) A person who has been appointed on ad hoc or temporary basis without any selection does not acquire any right whatsoever to hold the post

or to be continued in service and his service can be terminated without any notice. The Court will not protect the appointment of such ad hoc

appointee because that would amount to perpetuation of illegality committed by the appointing authority in making backdoor appointment.

(ii) However, where a person is appointed on ad hoc or temporary basis after due consideration of the competing claims of other similarly situated

persons, the employer is not vested with an absolute right to terminate the service of the person on the basis of arbitrary, irrational and

unconscionable conditions of employment incorporated in the letter of appointment and if the Court finds that termination of service is not

supported by reasons or the action taken by the employer is otherwise arbitrary, the same will be liable to interference by the Court.

(iii) Service of an ad hoc appointee falling in category (ii) above cannot be terminated till the availability of regularly selected persons except where

the Government decides not to continue the post or the work or performance of such ad hoc appointee is found to be unsatisfactory or where it

becomes necessary to terminate the service of ad hoc appointee as a measure of disciplinary action.

8. In this context, we may also take notice of the decision dated 29.1.1996 rendered in Civil Writ Petition No. 14464 of 1995, Rohtas Singh v.

State of Haryana and Ors., Civil Writ Petition No. 14464 of 1995 in which this Court referred to the decisions rendered in State of Punjab v.

Surinder Kumar (supra) and State of U.P. v. Kaushal Kishore Shukla (supra) and large number of other decisions and observed:-

In State of Punjab v. Surinder Kumar 1992 (1) S.C.T. 538, their Lordships of the Supreme Court were considering an appeal filed by the State

of Punjab against an order of the High Court. The High Court had allowed a writ petition filed by a "part-time" employee and directed that he shall

be continued in service till the joining of a candidate selected by the Subordinate Services Selection Board. The Supreme Court noticed that similar

petitions filed by other persons had been dismissed by the High Court. Their Lordships observed that the High Court did not deal with any of the

points raised on behalf of the State in its reply and allowed the writ petition by a cryptic and unreasoned order. Their Lordships held that:

"The High Court are not possessed with the power akin to the power of the Supreme Court under Article 142 and the High Court cannot decide

the cases without giving reasons."

It is, therefore, clear that in Surinder Kumar"s case (supra) the order passed by the High Court was reversed by the Supreme Court mainly on the

ground that the High Court had not given any reason for allowing the writ petition and it had ignored the fact that other similar petitions had been

dismissed and that the petitioner-Surinder Kumar was merely a part-time employee.

In Dr. MM. Gupta v. Post Graduate Institute of Medical Educ. and Research (supra), this Court was called upon to interpret the regulations

framed u/s 32 of the Post Graduate Institute of Medical Education and Research, Chandigarh, Act, 1966. The regulations empowered the Director

to make appointment on ad hoc basis for a period not exceeding one year. The contention of the petitioner was that once he had been given a

temporary appointment, a right had come to vest in him to hold the post even after expiry of one year. A Division Bench of this Court held that in

face of the statutory provisions contained in the regulations, the Director"s power was limited to a period of one year and in any case, the Director

was not bound to extend the period. The Court also rejected the contention that the existence of post conferred a right upon the petitioner. The

Division Bench placed reliance on the order in State of Punjab v. Surinder Kumar (supra) and held that in view of the judgment in Surinder

Kumar''s case, the petitioner was not entitled to contend that he had a right to continue in service.

In Sunil Kumar v. State of Haryana, CWP No. 8977 of 1994, this Court held that the termination of ad hoc employee is inherent in the nature of

service because an a d hoc appointee does not have any right to the post. The Court also held that even if some junior has been retained while

terminating the service of a senior, it would not make much difference in view of the law laid down in State of U.P. v. KKSukla 1991 (1) S.C.T.

760.

In Rajni Bala v. State of Haryana (supra), this Court had examined the legality of the condition incorporated in the order of appointment authorising

the appointing authority to terminate the service at any time without any reason or notice and also providing for automatic terminatiorrof service.

After reviewing the case law including the Full Bench judgment in Sant Ram Behl''s case (supra) and the judgment of the Supreme Court in

KKSukla''s case (supra), the Division Bench held that such conditions are unconstitutional being violative of Articles 14 and 16 of the Constitution

of India. The proposition of law laid down in Rajni Bala''s case does not in any manner run contrary to the judgment of the Supreme Court in

Surinder Kumar''s case (supra) or the judgments of the two Division Benches in Dr. MM. Gupta''s case (supra) and Sunil Kumar''s case (supra).

As already noticed earlier, in Surinder Kumar''s case, the order passed by this court had ignored the fact that the petitions filed by similarly situated

part-time employee had been dismissed earlier and also that no reasons were given by the High Court for accepting the writ petition and their

Lordships held:-

that the High Court was not possessed with the power akin to the one possessed by the Supreme Court under Article 142 of the Constitution of

India.

In Dr. MM. Gupta''s case (supra), the Division Bench held:-

''that in the face of the provisions contained in the regulations, the Director of the P.G.I. could not make temporary appointment beyond a period

of one year.''

Therefore, the ratio of that judgment is that the continuance of a temporary appointee beyond one year would be contrary to the statutory

provisions and the Court could not issue a writ to direct the appointing authority to act in violation of law. We may add that some of the

observations made in Dr. M.M. Gupta''s case suggesting that the employer has an absolute an unbridled right to terminate the service of an

employee at any time without any reason or justification must be read as confined to the facts of that case and the judgment of the Supreme Court

in Surinder Kumar''s case (supra) cannot be read as laying down the aforesaid proposition. If we were to read the judgment in Dr. M.M. Gupta''s

case as laying down the aforementioned proposition in that wider form, then the judgment would be rendered contrary to the observations made

by the Supreme Court in E.P. Royappa''s (supra) and in various other judgments to which reference has been made hereinabove. Similarly, the

observations made in Sunil Kumar''s case (supra) suggesting that the service of a senior employee can also be terminated while retaining juniors

without there being any special reason for terminating the service of the senior will have to be read as confined to that case. It appears that the

attention of the Division Bench which decided Sunil Kumar''s case was not drawn to an earlier judgment of three-Judges Bench of the Supreme

Court in The Manager, Government Branch Press and Another Vs. D.B. Belliappa, . That was a case involving termination of a temporary

employee and one of the arguments raised before the Supreme Court was that the termination of service of the temporary employee, which has

been brought about in accordance with the terms and conditions of employment cannot be challenged on the ground of violation of Articles 14 and

16 of the Constitution of India.

9. While dealing with the two Judges bench decision in State of U.P. v. K.K. Sukla (supra) reference was made to, an earlier judgment of the

larger Bench of the Supreme Court in the The Manager, Government Branch Press and Another Vs. D.B. Belliappa, and it was observed:-

The judgment of the two Judges Bench in K.K. Sukla''s case can be reconciled with the judgment of a larger Bench in D.B. Belliappa''s case only

if it is read in the context of the facts of that particular case. It is worth-noticing that K.K. Sukla had been appointed on 18-2-1977. His service

came to an end on 31-8-1977 by afflux of time. He was reappointed on 28-2-1978. Thereafter extensions were given to him from time to time.

The last extension was to expire on 28-2-1981. During this period he earned adverse entries in the character roll for the year 1977-78 showing

that his work was poor. His representation against these remarks was rejected. In a preliminary enquiry held against K.K. Sukla and R.P. Pandey,

it was found that they had unauthorisedly collected audit fee. Thereafter, K.K. Sukla was transferred to Allahabad but he did not join. In that

background, the termination of his service was upheld by the Supreme Court even though junior persons were retained. Therefore, the ratio of the

judgment of K.K. Sukla is that the employer can terminate the service a of person while retaining junior person in case the work and performance

of a senior person is found to be unsatisfactory. That is also permissible when rule of "last come first go" is to be applied. We, therefore, hold that

the observations made in Sunil Kumar"s case (supra) are not based on the correct reading of the judgment of the Supreme Court in KKSukla"s

case and being in conflict with the judgment of the Supreme Court in D.B. Belliappa"s case, the same cannot be regarded as laying down correct

law.

10. We may also refer to a recent decision dated July 24, 1996 in Civil Writ petition No. 9298 of 1996, Bharat Bhushan and Ors. v. State of

Punjab and Anr., in which this Court had considered a case similar to that of Hafjot Kamal Singh"s case and it was held:-

In the absence of selection of any sort, the petitioners cannot claim any legal or constitutional right to hold the posts or to continue in service as a

matter of right nor can they seek a writ of mandamus for extension of their service. They are also not entitled to complain that by giving them 89

days appointment, the respondents have acted arbitrarily. The background and manner in which the petitioners were given 89 days appointment

leave no manner of doubt that the petitioners were given purely fortuitous appointment to meet with an emergent situation created due to floods in

Faridkot District. In fact, the learned Advocate General was at loss to explain as to why services of the petitioners were extended after the

emergent situation was over. We, therefore, do not find any legal justification to issue a general direction that all those persons who had been

appointed for 89 days on the basis of lists sent by the then Health Minister and the present Chief Minister should be allowed to continue in service

till regularly selected candidates join duty.

After referring to the judgment in Rajni Bala"s case, the Court observed: -

From the above quoted observations made in Rajni Bala"s case, it is crystal clear that the Court has no where held that in every case of ad hoc

appointment, the employee has a legal or constitutional right to be continued in service. What the Court has held is that where ad hoc appointment

is given after considering the claim of other eligible persons and some process of selection is adopted by the employer, the appointment cannot be

restricted to a particular period even though . the post may be regular. We may add that the proposition laid down in Rajni Bala"s case has no

application in case where ad hoc or temporary appointment is made-without adopting any mode of selection for giving opportunity to all similarly

situated persons to compete for appointment.

11. In view of the principles of law laid down in the decisions referred to hereinabove, it must be held that the petitioner, who was appointed on a

purely adhoc basis as a stop gap arrangement and whose appointment can not but be termed as purely fortuitous, did not acquire any right to be

continued in service and the respondents cannot be faulted for having terminated the service of the petitioner after the expiry of his second stint of

89 days appointment.

12. We are also of the opinion that issue of writ in favour of the petitioner would amount to perpetuation of the illegality committed by the

respondent No. 2 at the time of appointment of the petitioner as driver and there is no rationale or justification to exercise writ jurisdiction for

saving such appointment.

13. For the reasons mentioned above, the writ petition is dismissed.