

(2002) 1 ILR (P&H) 1

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1020 of 1994

Parshotam Lal

APPELLANT

Vs

The Administrator,
Panchayat Samiti and
Another

RESPONDENT

Date of Decision: July 31, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Punjab Panchayat Samities and Zila Parishad Service Rules, 1965 - Rule 11(3), 4

Citation: (2002) 1 ILR (P&H) 1

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: C.M. Chopra, for the Appellant; R.K. Girdhar, for the Respondent

Final Decision: Allowed

Judgement

M.L. Singhal, J.

Parshotam Lal was working on the post of clerk in Panchayat Samiti Nihal Singh Wala. It was a permanent post against which he was working on ad hoc basis. He worked from 25th September, 1984 to 30th September, 1986 on ad hoc basis with intermittent breaks on the said post, though he could be straightway appointed to the post of clerk without punctuating the order of appointment with the words "on ad hoc basis." When it was a permanent post, the order of appointment was punctuated with the words "on ad hoc basis". So as to avoid regularisation.

2. Post, on which he was appointed, was advertised in the Daily Ranjit, dated 16th September, 1985, inviting applications from matriculates having experience in the Panchayat Samities. He applied for the post and was selected by the Administrator, Panchayat Samiti Nihal Singh Wala vide his order endorsement No. 4255-56/DA-I/BC dated 1st October, 1985 in the grade of Rs. 400-600/-. He also submitted medical

certificate (which is required to be submitted for first entry into Government service) from Civil Surgeon, Faridkot. dated 11th October, 1985. Period spent by him from 22nd September, 1984 to 20th September, 1985 in the service of the Panchayat Samiti Nihal Singh Wala was not taken into account for the purpose of regularising and confirming his service in the same post of Clerk. He was entitled to regularisation and confirmation in the same post of Clerk in view of Rule 11(3)(a)(i) & (ii) of the Punjab Panchayat Samities and Zila Parishad Service Rules, 1965 (hereinafter referred to as the Rules, 1965). Zila Parishad, Faridkot, in pursuance of letter endorsement No. 920-52, dated 1st April, 1986, issued a permanent seniority list on 3rd July, 1986 in which 26 Head Clerks/Clerks working in various Panchayat Samities or Zila Parishad, Faridkot, were shown. Parshotam Lal was shown against Serial No. 25 in the said seniority list. Vide order No. 219, dated 30th September, 1986, Executive Officer, Panchayat Samiti Nihal Singh Wala, terminated his services.

3. Parshotam Lal challenged order No. 219, dated 30th September, 1986, passed by the Executive Officer, Panchayat Samiti Nihal Singh Wala, terminating his services being illegal, ultra vires, unconstitutional, discriminatory, against the principles of natural justice and in contravention of circulars/instructions issued by the Government of Punjab from time to time, arbitrary, null and void and that he continues to be in the service of the Panchayat Samiti in his previous position with continuity of service with consequential relief directing the Defendants Zila Parishad, Faridkot, and Panchayat Samiti Nihal Singh Wala to reinstate him with continuity of service and with back wages and other attending benefits and in the alternative to pay him liquidated damages equal to the wages which he would have earned, but for the illegal termination of his services vide order No. 219 dated 30th September, 1986, of Executive Officer, Panchayat Samiti Nihal Singh Wala, alongwith interest at the rate of 2% per month till actual payment. It was alleged in the plaint that he was not given any opportunity to defend himself before the impugned order was passed. No notice or enquiry was conducted as required by the principles of natural justice before the impugned order was passed. Executive Officer, Panchayat Samiti Nihal Singh Wala, had no right or authority to terminate his services as his appointing authority was the Panchayat Samiti under Rule 4 of the Rules, 1965. Vacancy against which he was appointed by the competent authority and by due procedure in accordance with rules was a permanent one and he was working in that post with effect from 25th September, 1984, before his regular appointment on 1st October, 1985. It was not an unanticipated post being occupied by the Plaintiff. As per proviso to Rule 4 of Rules, 1965, a vacancy which could not be anticipated may be filled in by the Zila Parishad or Panchayat Samiti as the case may be for a period of six months or till a candidate is recommended by the Commission or District Committee as the case may be earlier. Appointment of the Plaintiff on temporary basis for six months was unfair labour practice. It ought to have been on probation against the permanent vacancy of Clerk under Rule 11(3)(a)(i) & (ii). On the completion of the period of probation of a person, the appointing authority may, if work and conduct of such a person is satisfactory and his integrity is unquestionable, confirm such person from the date of his appointment if appointed against a permanent vacancy

or confirm such person from the date from which the, permanent vacancy exists, if appointed against a temporary vacancy. He was working on the permanent post of Clerk since 25th September, 1984. As such, he had completed more than two years when his services were terminated. He was entitled to all the privileges and protection available to the confirmed employees. Injustice was done to him for no fault of his due to the non application of rules strictly and due to the illegal conduct of the Defendants. Person Junior to him namely Jassa Singh, who figures at serial No. 26 in the seniority list, is still working in the panchayat samiti, Lambi. When a person junior to him still in the job, no pick and choose could be there.

4. Defendants contested the suit of the Plaintiff urging that the Plaintiff was appointed as Clerk for six months with effect from 1st October, 1985 purely on temporary basis by the Administrator, Panchayat Samiti Nihal Singh Wala. As his appointment was for more than three months, the production of medical fitness certificate was necessary under the Panchayat Samiti Services Rules. He was not a permanent employee of the samiti. He was relieved from employment on 30th September, 1986. During 25th September, 1984 to 30th September, 1986, he was working in the samiti for some intervals of times, sometimes on 89 days basis and sometimes on ad hoc basis. In the said seniority list, the names of the regular employees are given at serial No. 1 to 22, whereas the names of the temporary employees are given at serial No. 23 to 26 to show the strenght of the employees in the district as neither date of birth, nor date of appointment nor date of regularisation of services in respect of the said temporary employees was given in the list, he was relieved on 30th September, 1986 as his term of appointment expired on 30th September, 1986 He was relieved of services on the expiry of his appointment as per direction of the Administrator, Panchayat Samiti Nihal Singh Wala on 30th September, 1986. His appointment was purely temporary for six months. After break of one day it was extended for another six months ending on 30th September, 1986.

5. On the pleadings of the parties, the following issues were framed:

1. Whether the order No. 219 dated 30th September, 1986 is illegal, ultravires, unconstitutional on the grounds mentioned in para No. 8 of the plaint. If so its effect ?
OPP

2. Whether the Plaintiff has no locus standi to file the present suit ?OPD

3. Whether the suit is bad for mis joinder of the parties ?OPD

4. Whether the suit as framed is not maintainable ?OPD

5. Relief.

6. Vide order dated list January, 1991 of Sub Judge 1st Class, Moga, Plaintiffs suit was decreed to the effect that the impugned order No. 219 dated 30th September, 1986 terminating his services was illegal and void and that he is entitled to be reinstated

forthwith with continuity of service and he was entitled to all the benefits as if this order had never been passed in view of his finding that as he had already completed more than two years of service with only notional breaks of not more than one or two days at a time, he was entitled to be regularised as Clerk in view of the law laid down in *Piara Singh and Ors. v. State of Haryana and Ors.* 1988 (4) SLR 739 which is that on completion of one year of service, an ad hoc employee becomes entitled to regularisation and there could be no adhocism after one year of service and when he had continued for more than one year on ad hoc basis, adhocism would come to an end and he would be treated as regular employee notwithstanding the intermitent breaks in his service. It was found that the termination of his services was violative of Articles 14 and 16 of the Constitution of India.

7. Defendants (Panchayat Samiti Nihal Singh Wala/Executive Officer, Panchayat Samiti Nihal Singh Wala) went in appeal which was allowed by the Additional District Judge, Faridkot,--vide order dated 22nd October, 1993.

8. Not satisfied with the judgment/decreed of the Additional District Judge, Faridkot, dated 22nd October, 1993, Parshotam Lal has come up in appeal to this Court.

9. Naib Singh, Superintendent, Panchayat Samiti Nihal Singh Wala (PW-1) stated that as per service book of the Plaintiff, he joined as Clerk in Panchayat Samiti Nihal Singh Wala on 25th September, 1984. As per service book, there were breaks in his service. He was not in service on 22nd December, 1984, 23rd December, 1984, 23rd March, 1985, 24th March, 1985, 22nd June, 1985, 23rd June, 1985 and 1st April, 1986. He stated that he was not regular and permanent employee of the Panchayat Samiti Nihal Singh Wala. He was appointed as Clerk on 89 days basis four times i.e. on 25th September, 1984, then on 24th December, 1984, thereafter on 25th March, 1985 and again on 24th June, 1985 on the completion of 89 days. On 24th June, 1985, he was relieved. He was again appointed on ad hoc basis and on temporary basis for six months and there after he continued in service till 30th September, 1986. In other words, he was ad hoc employee. His appointment was extended from time to time with notional breaks of one or two days. He continued in service from 25th September, 1984 upto 30th September, 1986. It was on 30th September, 1986 that his services were terminated. In the order terminating his services No. 219 dated 30th September, 1986, only this much is mentioned and nothing more that he is relieved of his services as the period for which he was appointed has since expired. Parshotam Lal (Plaintiff) stated that he was appointed by the Administrator, Panchayat Samiti Nihal Singh Wala with effect from 25th September, 1984,-- vide order Ex. P-1. He was initially appointed for a period of 89 days. His appointment continued till 20th September, 1985 from time to time with notional breaks of one or two days vide orders Ex. P-2 and Ex. P-3. This post was advertised in the Daily Ranjit dated 16th September, 1985. He applied for the post in pursuance of this advertisement and was selected by the Administrator, Panchayat Samiti Nihal Singh Wala,--vide order Ex.P-4, he was appointed as Clerk in Panchayat Samiti Nihal singh Wala by the Administrator, Panchayat Samiti Nihal Singh Wala. He submitted medical certificate after his selection.

Period of service rendered by him from 25th September, 1984 to 20th September, 1985 was not taken into account for the regularisation of his service. Seniority list of clerks Ex. P-5 was issued by Secretary, Zila Parishad, Faridkot. In that seniority list, he figures at serial No. 25, while Jassa Singh figures at serial No. 26, who is still working in Panchayat Samiti, Lambi, District Faridkot. After his services were terminated, Miss Binder Kaur was appointed in his place. It is thus clear that the Plaintiff's service as clerk in Panchayat Samiti Nihal Singh Wala for the period 25th September, 1984 to 30th September, 1986 was continuous. There were, of course, notional breaks of one or two days which have to be ignored. After the expiry of two years, he could claim to be regularised when his work and conduct had all along been satisfactory. Order Ex. P-4 shows that on selection, he was appointed as clerk in Panchayat Samiti Nihal Singh Wala. In order Ex. P-4 it is stated that his appointment shall be for a period of six months with effect from 1st October, 1985 and this appointment is purely temporary. Assuming that the Plaintiff was an ad hoc appointee, he could not be replaced by another ad hoc employee namely Miss Binder Kaur. He could be replaced only by a regular incumbent selected at regular selection. In the advertisement, post had been advertised for those candidates who were matriculates and who had experience of working in the office of Panchayat Samiti. Advertisement had been issued by the Administrator, Panchayat Samiti, Nihal Singh Wala. It appeared in the issue of Daily Ranjit dated 16th September, 1985. It was in pursuance of this advertisement that the Plaintiff applied for the post of clerk and was selected. In the advertisement, the post was described as temporary. That means, the Plaintiff was appointed against a temporary vacancy. He would continue till the temporary vacancy lasted. He could be called upon to quit if during the period of probation, his work and conduct had been found to be unsatisfactory. It would be a travesty of justice to say that ad hoc service is no service in the eye of law and the service of ad hoc employee can be terminated at any time. He may have been ad hoc employee earlier, but when he was selected in pursuance of advertisement that appeared in the issue of Daily Ranjit dated 16th September, 1985, it would be a misnomer to say that he was still ad hoc appointee. He was selected against a temporary vacancy which he was liable to vacate on the abolition of the vacancy. In this case, there is no evidence that the post against which he was appointed had ceased to exist. In the seniority list, one Jassa Singh figures as clerk in Panchayat Samiti, Lambi. Ex. P-5 is composite seniority list of all the Head clerks and clerks working in the various panchayat samities of erstwhile district Faridkot. Plaintiff has categorically stated that after terminating his services, one Binder Kaur was appointed. Defendants have not refuted this fact. They have not cross-examined him to show that the post, he was holding, had been abolished and nobody of the name of Binder Kaur was appointed in his place. Jassa Singh was appointed initially in Panchayat Samiti, Lambi and thereafter he was transferred to Panchayat Samiti, Malout. He figures in the composite seniority list of Head clerks/clerks of Zila Parishad, Faridkot at serial No. 26, while Parshotam Lal figures at serial No. 25. That means that Jassa Singh was junior to him in the composite seniority of Head Clerks/Clerks of the panchayat samities of erstwhile district Faridkot. In my opinion, the services of the Plaintiff should not have been terminated when the post he was holding had not been abolished and when in his place,

one Binder Kaur was appointed.

10. For the reasons given above, this appeal succeeds and is allowed. Judgment and decree of learned Additional District Judge, Faridkot, Dated 22nd October, 1993 are set aside and those passed by the Sub Judge 1st Class, Moga dated 11th January, 1991 are restored. It may be mentioned here that this decree is not intended to effect anyone including Jassa Singh, Binder Kaur who joined in the panchayat samitis of erstwhile district Faridkot. If there is no post available in Panchayat Samiti Nihal Singh Wala for accommodation Parshotam Lal, he shall be accommodated by Zila Parishad, Moga in any panchayat samiti under its jurisdiction. He shall be entitled to 50% of the back wages. He shall be entitled to continuity of service. No. costs.