

true that another opportunity should be allowed to the respondents directing them to reconsider the matter for making a reference to the Labour Court but in the facts and circumstances of the case, we feel it appropriate to issue directions to the respondents for making a reference of the disputes raised by the petitioners. On account of the acts of commission and omission attributable to the respondents the petitioners have been unnecessarily dragged into the litigation and despite termination of their services with effect from 3rd September, 1992, the dispute raised by them has not been referred to the Labour Court. A command is, therefore, issued to the respondent-authorities for making of references to the Labour Court with respect to the dispute raised by the petitioners regarding termination of their services. The orders for making references to the Labour Court be passed positively within a period of one month from today.

J.S.T.

Before Hon'ble Ashok Bhan & P. K. Jain, JJ.

DHARAM PAL & ANOTHER,—Petitioners.

versus

THE STATE OF HARYANA & OTHERS,—Respondents.

C.W.P. No. 3882 of 1994.

5th September, 1995.

Constitution of India, 1950—Art. 226/227—Regularisation—Annual Confidential Report assessed petitioners to be lazy and below average—Petitioners seeking regularisation of their services in terms of policy framed—Regularisation of services of only those employees who were assessed in overall good category—Petitioners cannot claim good reports during service—Even appeal filed against A.C.R. dismissed—Petitioners case does not fall within parameters fixed by Institutions—Services rightly terminated in terms of letter of appointment.

Held, that the validity of instructions has not been challenged in the writ petition. As per these instructions, the services of only those employees could be regularised who were assessed to be in the overall good category and against whom no disciplinary proceedings were pending. Since the petitioners did not fall in the overall good category, their services could not be regularised as per

the instructions. Since the petitioners' services could not be regularised, the same have been terminated in terms of their letter of appointment and no fault can be found with the same.

(Para 9)

Further held, that the petitioners were not entitled to get their services regularised and the services of the petitioners have rightly been terminated.

(Para 10)

Further held, that the petitioners' services have not been terminated on the ground of any misconduct or by way of punishment. Petitioners were assessed to be 'average' workers and as per instructions the services of only those employees could be regularised who were put in 'overall good category'. Since the petitioners case did not fall within the parameters laid down in the instructions, their services were not regularised and were terminated in terms of their letter of appointment.

(Para 12)

P. S. Patwalia, Advocate, for the Petitioner.

Jaswant Singh, Advocate, for the Respondent.

JUDGMENT

Ashok Bhan, J.

(1) This petition has been filed seeking to quash the impugned order dated 8th February, 1994 Annexure P8 terminating the services of the petitioners and also sought a direction to the respondents to regularise the services of the petitioners in terms of the policy framed by the State of Haryana Annexures P9 and P10.

(2) Petitioner No. 1 was appointed as Cluster Supervisor on *ad hoc* basis on 19th November, 1985 on the recommendation made by the Employment Exchange. Similarly petitioner No. 2 was appointed as Cluster Supervisor on 22nd December, 1988 on the recommendation made by the Employment Exchange. Both these petitioners joined their respective duties on 28th November, 1985 and 25th December, 1988. In their annual confidential reports, petitioners were assessed as 'average' workers. In the annual confidential report of petitioner No. 1 Annexure P3 (in fact annexure P3 consists of three documents i.e. the annual confidential reports for three years) in which it has been recorded that petitioner No. 1 "does not take interest in his work". Annual confidential report of

petitioner No. 2 is Annexure P4 in which it has been mentioned "Lazy in work". Petitioner No. 1 has been assessed to be 'average' worker whereas petitioner No. 2 has been assessed as 'below average'.

(3) The annual confidential reports were communicated to the petitioners against which petitioners filed representations which were dismissed in July and October, 1992 respectively. Petitioner No. 1 applied for regularisation of his services in the year 1992 which was rejected in the same year i.e. on 31st March, 1992. The reason stated for not regularising the services of petitioner No. 1 in the order Annexure P7 is that his services could not be regularised in terms of the policy because his work had been assessed as 'average'. Services of the petitioners were terminated,—vide order Annexure P8 dated 3th February, 1994.

(4) State of Haryana framed Policy Annexure P9 directing therein to regularise the services of those employees who held Class-III posts for a minimum period of two years on 31st December, 1990 by taking out such Class-III posts out of the purview of Subordinate Services Selection Board, Haryana. Relevant Clause (iv) of the Policy Annexure P9 which requires consideration in this petition reads as under :—

(iv) That the work and conduct of such employees shall be over all good category and no disciplinary proceedings are pending against them and...

(v) xxx xxx xxx

Similarly State of Haryana issued another notification dated 1st June, 1993 specifying that the services of those Class-III *ad hoc* employees who held the post for a minimum period of two years as on 31st March, 1993 be regularised by taking out such posts out of the purview of the Subordinate Services Selection Board, Haryana. Clause (iv) of the instructions Annexure P10 is the same as in the notification Annexure P9.

(5) Petitioners have claimed regularisation of their services and to set aside the order of termination Annexure P8 on the ground that they had been wrongly assessed as 'average' workers on the basis of their performance; that petitioners were in fact good workers and they should have been assessed as overall good category. This argument is raised on the premises that the job of the petitioners was to execute a mini dairy scheme at village level. The details of the

scheme are that the petitioners were first to select persons either belonging to the General category having minimum qualification of Matriculation or persons belonging to the Backward Class/Scheduled Castes having minimum qualification of Middle Standard and to train these persons for 21 days as to how to start a mini dairy. After the completion of training petitioners were to fill in the necessary forms and particulars for the purpose of recommending to a Nationalised Bank for sanctioning a loan to the trained unemployed youth. In case the loan was sanctioned by the Banks then it was the duty of the petitioners to help these persons in buying the buffalos and also to look after the animal in case of any disease and finally also to send an account statement from time to time; that the petitioners had imparted necessary training to the unemployed youth and the cases of these unemployed youth were recommended to the Nationalised Banks for sanctioning of loan; that the Nationalised Banks did not grant the loans as per recommendations made by the petitioners because of which the petitioners could not meet the targets fixed by the respondents. Petitioners were rated to slow for no fault of their's as it was not in the hands of the petitioners to get the loans sanctioned from the Banks. Petitioners had discharged their duties for training sufficient number of persons but they could not ensure to get the loans sanctioned from the banks; that the petitioners could not be assessed as 'average' workers and made to suffer for no fault of their's.

(6) Notice of motion was issued in response to which written statement has been filed. With the consent of counsel for both the parties, this petition is being disposed of at the motion stage.

(7) In the written statement filed, stand taken by the respondents is that petitioners were not taking interest in their job and the same was recorded in their annual confidential reports ; that the petitioners did not improve their work in spite of the fact that they were asked to improve their work ; that petitioners failed to achieve and complete the targets fixed by the department : that the appeals filed by the petitioners against the recording of adverse remarks in the annual confidential reports in Annexures P3 and P4 were dismissed in the year 1992 ; that as per instructions issued by the Department the services of those employees could be regularised who were assessed to be of overall good category. Since the petitioners were assessed to be 'average' they did not fall within the ambit and scope of the instructions issued by the State of Haryana

and as such their services could not be regularised, the same were terminated as per terms and conditions of their letter of appointment.

(8) Counsel for the parties have been heard at length.

(9) The validity of instructions Annexures P9 and P10 has not been challenged in the writ petition. As per these instructions, the services of only those employees could be regularised who were assessed to be in the overall good category and against whom no disciplinary proceedings were pending. Since the petitioners did not fall in the overall good category, their services could not be regularised as per the instructions. Since the petitioners' services could not be regularised, the same have been terminated in terms of their letter of appointment and no fault can be found with the same. Apart from this, these instructions came up for consideration before the Division Bench of this Court in *Pawan Kumar v. State of Haryana and another* (3), wherein it was held as under :—

“From the above it is clear that initial appointment of the petitioner was a purely *ad hoc* appointment and continuance of the petitioner in service depended on his satisfactory work and conduct and approval by the Subordinate Services Selection Board. Ordinarily for the purpose of regular appointment, the petitioner was required to be selected by the Subordinate Services Selection Board. However, in the light of the policy decisions taken by the Government of Haryana, which is reflected in Annexures P-8 and P-10, he acquired eligibility to be considered for regularisation in service being an *ad hoc* appointee, who had completed two years' service as on 31st December, 1990 as also on 31st March, 1993. However, regularisation of the service of the petitioner was dependent on fulfilment of the conditions enumerated in Annexures P-8 and P-10, one of which has been reproduced above, namely, that the employee shall be of overall good category and no disciplinary proceedings are pending against him. If the petitioner could possibly be categorised as a person who falls in the category of “over all good”. He would have certainly become entitled to be regularised in service. However, what we find from the record is for the year

1983-84, the petitioner has been classified as below average. For the years 1985-86 and 1986-87 he has been classified as below average. For the year 1989-90, adverse marks have been made in his annual confidential report to the effect that "his achievement of target is low". For the year 1990-91 he has described as "irresponsible in discharging duty". For regularisation of the service of an *ad hoc* appointee, who had completed two years' service as on 31st December, 1990, his confidential reports upto the year 1989-90 could have been made available to the competent authority. Similarly in respect of an *ad hoc* appointee who had completed two years' service as on 31st March, 1993, confidential reports upto the year 1992-93 could have been available before the competent authority. With reference to notification dated 28th February, 1991, the petitioner had earned three "below average" confidential reports and adverse remarks in another confidential reports (years 1989-90). With reference to notification dated 1st June, 1993 he earned yet another report with adverse remarks (year 1990-91). It can thus be said that for major part of the service rendered by him, the petitioner has earned adverse reports. In the face of these adverse entries, it cannot but be said that the petitioner has made a tall claim by asserting that he has earned good reports during his service career and on the basis of such reports he has acquired a legal as well as constitutional right to be regularised in service. In our considered opinion, the respondents have not committed any illegality nor have they acted arbitrarily in not ordering regularisation of the services of the petitioner. The competent departmental authority had a right and we would say a duty of taking into consideration the over all record of the petitioner while considering his case for regularisation. If by taking note of the adverse reports in the record of the petitioner, the competent authority has arrived at a *bona fide* decision not to regularise the service of the petitioner, it is not possible to find any fault with the decision of the competent authority. We are further of the view that when the respondents did not find the petitioner suitable for regularisation of service, they had every legal justification to dispense with his service in the light of the adverse annual confidential reports, which the petitioner had earned consistently."

(10) We respectfully agree with the view expressed in *Pawan Kumar's case* (supra) and hold that the petitioners were not entitled to get their services regularised and the services of the petitioners have rightly been terminated.

(11) Mr. P. S. Patwalia, counsel appearing for the petitioners laid a lot of emphasis on the fact that the work of the petitioners was assessed to be 'average' only because they had failed to meet the targets fixed by the respondents ; that it was not within the reach of the petitioners to get the loan sanctioned from the Nationalised Banks and they were only to impart education to the unemployed youth regarding a mini dairy which they had done to the best of their ability. In this writ petition we are not called upon to decide about the recording of the annual confidential reports. In fact the petitioners had not disclosed the fact regarding the dismissal of their appeals filed against the annual confidential reports. The order passed by the appellate Court has not been attached with the writ petition and the same has not been challenged. It is the respondents who have brought out the fact regarding the dismissal of the appeal against the recording of annual confidential reports Annexures P3 and P4. Petitioners were put in the category of 'average' worker on the basis of their work performance. In the defect's column it is written that petitioners took less interest in their work or they were lazy. At this stage we cannot keep into the minds of the assessing authority to conclude that petitioners were given the reports 'average/below average' only because they had failed to meet out the targets fixed by the respondents. No doubt in the written statement filed by the respondents, it has been alleged that the petitioners had failed to meet out the targets but the written statement filed does not reflect the mind of the assessing authority which had recorded the annual confidential reports because the assessing authority may be different from the one who is filing the written statement. Since the petitioners case did not fall within the parameters fixed by the Instructions Annexures P9 and P10 their services have rightly not been regularised and orderd to be terminated in terms of their letter of appointment.

(12) Counsel appearing for the petitioners relying upon a judgement of the Supreme Court in *Jarnail Singh and others v. State of Punjab and others* (4), contended that services of the petitioners

could not be terminated on the basis of adverse remarks in service record of the petitioners without holding an enquiry and by passing the order of termination which was by way of punishment. We do not find any substance in this submission. In *Jarnail Singh's case* (supra) the allegations against the petitioners were that they had embezzled funds and there were serious allegations of misconduct against them. Under these circumstances, it was held by their Lordships of the Supreme Court that the order terminating the services was by way of punishment which could not be passed without holding a regular enquiry. In the present case, petitioners' services have not been terminated on the ground of any misconduct or by way of punishment. Petitioners were assessed to be 'average' workers and as per instructions the services of only these employees could be regularised who were put in 'overall good category'. Since the petitioners case did not fall within the paramaters laid down in the instructions Annexures P9 and P10, their services were not regularised and were terminated in terms of their letter of appointment.

(13) For the reasons, recorded above, we find no infirmity in the impugned orders and dismiss this writ petition with no order as to costs.

J.S.T.

Before Hon'ble Ashok Bhan, J.

ANJU SHARMA,—Petitioner.

versus

KRISHAN KUMAR & OTHERS,—Respondents.

Civil Revision No. 2310 of 1985 (O&M).

18th October, 1995.

East Punjab Urban Rent Restriction Act, 1949—Order 23 Rule (3) C.P.C.—Not applicable to proceedings under the Act—Earlier petitions on same cause of action filed—Not decided on merits—Dismissal of earlier petitions not to debar landlord from filing fresh eviction petitions on same cause of action.

Held, that in Ram Dass v. Smt. Sukhdev Kaur and another, 1981 P.L.R. 440 a Division Bench of this Court held that the provisions