

above. It is, of course, desirable that re-settlement should be done as expeditiously as possible. Inaction on the part of the Government to re-settle the tenants will not clothe the owner with a power for restoration of the land."

(6) A resume of facts as have been re-produced above would, thus, show that the tenants had acquired a right for allotment of the land. Therefore, it cannot be said by any stretch of imagination **that they had no locus standi to challenge the orders,—vide which the earlier orders declaring surplus land in the hands of the original land owner was sought to be reviewed on the demise of Tilak Raj the original land owner. In Bhikoba Shankar Dhuman (dead) by Lrs. and others v. Mohan Lal Punch and Tathed and others (3) it has been held that any person who is entitled to grant of land under the provisions of Act may question an order which would have the effect of reducing the extent of total surplus land in any village.**

(7) Finding no merit whatsoever in this petition, we dismiss the same with costs which are quantified at Rs. 1,000.

J.S.T.

Before Hon'ble J. L. Gupta, J.

SHRI RAM PHAL PUNIA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1162 of 1991.

January 7, 1992.

Constitution of India, 1950—Art. 14 and 16—Selection—Appointment—Mandamus—Applications invited for filling 500 posts of Conductors—Subordinate Services Selection Board recommending 1517 candidates to the Department in order of merit—No person lower in merit than petitioners appointed in general category—No particular names of persons lower in merit than petitioners pointed out who secured appointment—Person mentioned considered as belonging to Ex-Serviceman category—Question whether appointment of dependent of ex-serviceman proper-not gone into since petitioners belong to separate category and cannot challenge same—Petitioners, have no right to appointment.

State of Haryana and another v. Rajinder Kumar and others 1990 (2) R.S.J. 744 distinguished.

(3) A.I.R. 1982 S.C. 365.

Held, that a perusal of the above decision itself defeats the assertion made on behalf of the petitioners. It is only when the selection has been made for certain posts, that the selected candidates have a right to be considered for appointment. In this case, only 500 posts had been advertised and admittedly, 1,000 persons have already been appointed. If the State chooses not to relax the standard any further, the petitioners have no legitimate right. Furthermore, if the Board has recommended the names of more than 1,500 persons. All of them cannot be said to have a vested right to be appointed. Another distinguishing feature in the present case is that no *ad hoc* appointment has been made against any of these posts. The Division Bench has made the above quoted observations in the context of selection having been made for certain posts and instead of appointing the selected persons, the posts were filled up on *ad hoc* basis. Such is not the situation here. Accordingly, no useful advantage can be derived from the judgment in 'the State of Haryana and another v. Rajinder Kumar and others' case.

(Para 10)

PRESENT

Sunil Gaur, Advocate, S. N. Singla, Ramesh Hooda, Arun Jain,
Advocates, for the Petitioners.

Jaswant Singh, Advocate, for State of Haryana, *for the Respondent.*

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) This order will dispose of 18 writ petitions, viz. numbers 9257 of 1990, 12360 of 1990, 13160 of 1990, 15135 of 1990, 5642 of 1991, 6603 of 1991, 6813 of 1991, 7005 of 1991, 7428 of 1991, 7429 of 1991, 8547 of 1991, 10057 of 1991, 1162 of 1991, 12913 of 1991, 13745 of 1991, 13759 of 1991, 13897 of 1991 and 16169 of 1991.

(2) The facts as stated in Civil Writ Petition No. 1162 of 1991 may be noticed :—

(3) On receipt of a requisition from the Transport Commissioner, Haryana, the Subordinate Services Selection Board (hereinafter, referred to as the 'Board') issued an advertisement on July 22, 1987. Applications for 500 posts of Conductors in Haryana Roadways were invited. Reservations in accordance with the instructions issued by the Government were made for various categories like Scheduled Castes, Backward Classes and Ex-servicemen.

The petitioners competed. Finally on February 16, 1989, the Board forwarded a list of 1517 candidates to the Transport Department. The names of the petitioners find mention in this list at serial numbers 1347, 1222 and 1337 respectively. Having failed to get appointment inspite of representations, the petitioners have approached this Court for the issuance of appropriate writ, direction or order directing the State Transport Commissioner to appoint them.

(4) A written statement has been filed on behalf of the respondents in which it has been *inter alia* mentioned that on receipt of the recommendation of the Subordinate Services Selection Board, **the names were forwarded to the various General Managers, Haryana Roadways**, for giving them appointments strictly in order of merit. Thus, according to the respondents appointments were made strictly in order of merit. It has been further pointed out that even though initially a requisition has been sent to the Employment Exchange for recommendation of certain names,—*vide* letter dated November 14, 1990 the said requisition was withdrawn. It has been further averred that no person lower than the petitioners in order of merit has been appointed. It has been further averred that as a **result of downward revision of norms, the staff has already become surplus** in the depots of Haryana Roadways and no *ad hoc* appointments have been made through Employment Exchange. It is further stated that further recruitment out of the list of the candidates recommended by the Board has been stopped. The instructions issued by the Chief Secretary to Government, Haryana,—*vide* letter dated February 5, 1990 in which it has been emphasized that no *ad hoc* appointments are to be made, are being enforced by the department.

(5) On behalf of the petitioners, two hold contention has been raised. Firstly, it has been contended that the petitioners having been selected and the vacancies—being actually available, they have a right to be appointed. Reliance is being placed on the decision of Division Bench of this Court in *The State of Haryana and another v. Rajinder Kumar and others* (1), to contend that the persons selected have a right to be appointed if the vacancies are available. Secondly, it has been contended that one Mr. Sumer Singh, who is below the petitioners in all these writ petitions having been appointed, the petitioners have a right to be given appointment

(1) 1990 (2) R.S.J. 744.

as Conductors and the action of the respondents in not appointing them is violative of Articles 14 and 16 of the Constitution of India. Emphasis has been laid on the fact that inspite of the specific averments in various writ petitions, no written statement has been filed on behalf of the respondents (Board as-well-as the Department) to justify the appointment of Mr. Sumer Singh before making an offer to the petitioners.

(6) It is undoubtedly correct that the names of the petitioners appeared in the merit list of 1517 candidates forwarded by the Board to the Department. Admittedly, all the petitioners belong to General category. No particular names of any person junior to them in this category have been pointed out to show that any one below the petitioners in the merit list has been given appointment. So far as Mr. Sumer Singh is concerned, inspite of the fact that no written-statement has been filed, the learned counsel has produced before me the original list received from the Subordinate Services Selection Board to show that the appointment has been given to Mr. Sumer Singh against one of the posts reserved for ex-serviceman. In the list the name of Mr. Sumer Singh appears at Sr. No. 1400. His Roll No. is shown to be 19940. Against the column relating to 'category', the words 'D/ESM' appear. From this, Mr. Jaswant Singh, Advocate, contends that Mr. Sumer Singh is a dependant of an ex-serviceman. He has been appointed only against one of the posts reserved for ex-serviceman. Accordingly, the learned counsel contends that the petitioners can have no valid reasons to challenge his appointment.

(7) A perusal of the advertisement, Annexure P-1, shows that 85 posts have been reserved for ex-serviceman and not for dependants of ex-serviceman. It is not understood as to how the dependants of ex-servicemen have been appointed against the posts reserved for ex-servicemen. Even if there are instructions providing for certain reservations in favour of the dependants of ex-servicemen, unless such reservations have been made while advertising the posts, it is extremely doubtful if the department could have made appointments from amongst the dependants of ex-serviceman against the posts reserved for ex-serviceman. Be that as it may, so far as the petitioners are concerned, they admittedly belong to the General Category and it has not been shown that any one below any of the petitioners has been appointed as a Conductor. In this situation, the petitioners cannot be held to have been treated unequally and discriminated against in violation of Articles 14 and 16 of the Constitution of India.

(8) Reliance has been placed on the following observations in case *State of Haryana and another v. Rajinder Kumar and others* (Supra) :—

“But if posts are available and the selection has been made for those posts and even fresh advertisement is issued for the same very posts and some persons are appointed against those posts on *ad hoc* basis to man those posts, then in such circumstances the State Government must give legal justification for not appointing the candidates who have been duly selected. The learned Single Judge while repelling this point of the State Government had rightly relied on the Supreme Court case reported as *Neelima Shangla v. State of Haryana*, 1986(3) S.L.R. 389, wherein it has been held that the State cannot deny appointment to a candidate who has been selected by a competent Authority without any legal justification. The Court can go into the legal justification which may be putforth by the State.”

(9) It has been contended that if the posts are available and the selection has been made for those posts, the State Government must give legal justification for not appointing the candidates who have been duly selected.

(10) A perusal of the above decision itself defeats the assertion made on behalf of the petitioners. It is only when the selection has been made for certain posts, that the selection candidates have a right to be considered for appointment. In this case, only 500 posts had been advertised and admittedly, 1000 persons have already **been appointed. If the State chose not to relax the standard any further, the petitioners have no legitimate right. Furthermore, if the Board has recommended the names of more than 1,500 persons, all of them cannot be said to have a vested right to be appointed.** Another distinguishing feature in the present case is that no *ad hoc* appointment has been made against any of these posts. The Division Bench has made the above quoted observations in the context of selection having been made for certain posts and instead of appointing the selected persons, the posts were filled up on *ad hoc* basis. **Such is not the situation here. Accordingly, no useful advantage can be derived from the judgment in Rajinder Kumar's case (supra).**

(11) Accordingly, I find no merit in these writ petitions. These are accordingly dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.

(12) Before parting with the judgment, it would be appropriate to point out that the Department has treated these cases most **casually**. **In spite of the availability of sufficient time no written statement** has been filed to the various writ petitions which are pending in this Court. Specific averments made in the petitions have not been answered. The Authorities concerned shall do well to be more careful in future.

(13) In Civil Writ Petition No. 13160 of 1990, the two petitioners belong to the category of Backward Classes. So far as these petitioners are concerned, none below them in order of merit has been appointed. Accordingly, in view of the above, there is no merit in this petition. It is accordingly dismissed.

(14) In Civil Writ Petitions No. 6813, 7005, 7428, 7429 and 12913 of 1991, the petitioners belonged to one or the other of the reserved categories, but no one below them in order of merit has been appointed. Accordingly, there is no merit in these petitions and as such, the same are also dismissed.

R.H.R.

Before : Hon'ble A. L. Bahri & V. K. Bali, JJ.

THE PUNJAB DIARY DEVELOPMENT CORPORATION LIMITED,
—*Petitioner.*

versus

THE PRESIDING OFFICER, LABOUR COURT, AMRITSAR AND
ANOTHER,—*Respondents.*

Civil Writ Petition No. 3110 of 1992

March 16, 1992.

Constitution of India, 1950—Art. 226/227—Employee held guilty in two enquiries—On appeal Appellate authority ordering de novo enquiry—Latest enquiry exonerating employee—Dismissal of said employee on the basis of earlier enquiry reports—Such termination illegal.