
What stands out, in this behalf, is the further fact that not one of the recipients of any such alleged bribe has been named in the petition. In this situation there can be no escape from the conclusion that this allegation constitutes no cause of action for the respondent to answer."

(57) In my considered view, the averments made in the election petition in the instant case fall further short of the mention regarding the person in whose presence the respondent No. 1 paid the amount to the persons named in the respective paragraphs in the villages concerned and the names of the persons, who actually received the bribe and promised to vote in favour of the respondent No. 1. The allegations in the instant case are, thus, much more lacking in full and better particulars than the facts in the case of Mani Ram (*supra*).

(58) In view of the foregoing discussion, I am of the considered opinion that the averments made regarding the offer of bribe by the returned candidate/respondent No. 1 and its acceptance by the voters from the respective villages, with a promise to cast their votes in favour of the respondent No. 1, are lacking in complete particulars and thus the petition lacks in concise statement of material facts and particulars. It is well settled that if the election petition lacks in averring even a single material fact regarding the corrupt practice, the defect goes to the root of the election petition and the same is liable to be dismissed.

(59) Resultantly, it is held that there can be no manner of doubt that the election petition discloses no cause of action and it must on that ground be dismissed. The preliminary issues are accordingly decided in favour of the respondent No. 1 and consequently the petition is dismissed as it discloses no cause of action.

S.C.K.

Before V.K. Bali & B. Rai, JJ

MALKIAT SINGH,—*Petitioner*

versus

P.S.E.B. & OTHERS,—*Respondents*

CWP No. 16989 of 1998

21st January, 1999

Constitution of India, 1950—Art. 226—PSEB policy instructions dated 8th July, 1994—Policy decision of Board to provide a job upto

Class III post from amongst persons whose land had been acquired for the Board and who possessed qualifications prescribed for recruitment to various posts—Petitioner a Homoeopathic Physician applying for employment—Petitioner selected and put on waiting list on assurance that a Homoeopathic Dispensary is likely to be opened and a post of Homoeopathic Physician created—Post created on 1st July, 1998 to be filled by direct recruitment—Petitioner filing petition to enforce his vested right—Meanwhile Board also changing policy to offer employment to only such candidates whose total acquired land is two acres or more—Petitioner whose land was less than two acres cannot be deprived of consideration for employment retrospectively—Direction issued to offer employment to the petitioner by relaxing age.

Held that rights of the petitioner were to be governed from the policy that came to be issued pursuant to acquisition of the land wherein land of the petitioner was also acquired.

(Para 5)

Further held, that the change brought about in the policy could not affect the petitioner. Even otherwise, this Court is of the view that a vested right of a person cannot be taken away by a subsequent change brought about. In any case, such a right cannot be taken away by retrospective change.

(Para 7)

Further held, that change in the policy cannot come to the disadvantage of the petitioner. Insofar as relaxation in age is concerned, it is admitted position that number of persons who were selected pursuant to policy were overage but were given the benefit of relaxation in age. Obviously, if the effort of the respondent is to deny to the petitioner the job that he seeks in the present case on the ground that he is overage, action of the respondents cannot but be termed as discriminatory.

(Para 7)

Surya Kant, Advocate for the petitioner

H.S. Lalli, Advocate for the Respondents 1 to 3.

JUDGMENT

V.K. BALI, J (Oral)

(1) Malkiat Singh herein complains of having lost on both ends. He lost the entire land that he possessed way back in the year 1993.

Pursuant to the policy of the respondent-PSEB as reflected in its policy dated 8th July, 1994, he was to be provided with a job. As mentioned above, petitioner complains of having lost both the land and the job on which he was selected pursuant to the policy mentioned above.

(2) Facts that constrained the petitioner to knock the doors of this Court need a necessary mention. During the year 1993 Punjab State Electricity Board (hereinafter to be referred to as the Board) acquired 987 acres of land belonging to villages Lehra Mohabbat, Lehra Sondha, Lehra Dhulkote and Patti Karam Chand Maharaj of Rampura Tehsil in district Bathinda for setting up of 2 x 210 MM Power Project at Lehra Mohabbat. From the land referred to above, petitioner was owner in possession of land measuring 10 Kanals 18 Marlas. It is the positive case of the petitioner and it has not been denied that the aforesaid land was his entire holding and he was dependent upon this. On 18th July, 1994, the Board in its meeting made a conscious decision to offer appointment to at least one member of those families whose land was acquired for the aforesaid purpose. In the same meeting a Committee was constituted comprising of Director (Personnel), Deputy Secretary (Estt.) and Deputy Secretary (Personnel) to invite applications from the affected families and to examine them so that at least one member of the affected families can be employed on priority basis in the Board depending upon the qualifications he possessed. On 21st July, 1994 modalities were also laid down for inviting applications. It is the case of the petitioner that it was stipulated in the said guidelines that if all the members of such affected families could not be adjusted in the existing vacancies in Guru Hargobind Thermal Plant at Lehra Mohabbat, they could be adjusted in other disciplines against the existing vacant posts and even after creation of suitable posts depending upon the eligibility of a candidate. Pursuant to order Annexure P 1, and guidelines Annexure P 2, the Committee collected applications from the members of the family whose land was acquired for the aforesaid purpose. The petitioner submitted an application for the post of Homoeopathic Doctor/Physician in the Board as he had the qualifications of D.H.M.S. and was also registered as Homoeopathic Practitioner in the Register maintained by the Homoeopathic System of Medicine, Punjab. Inasmuch as the petitioner was eligible for appointment as Homoeopathic Doctor on the basis of the qualifications possessed by him, his case was considered and he was assigned File No. 122-A in category-A of the village Lehra Mohabbat for the purpose of appointment as Homoeopathic Physician. On 7th May, 1997 (Annexure P-6) petitioner received a memo from respondent No. 3 for production of some documents as also to attend the office on 15th May, 1997. Petitioner along with other applicant appeared on the date fixed

and produced the requisite documents needed by respondent No. 3. Respondent No. 3 on 26th November, 1997,—*vide* memo of even date recommended names of 277 persons including the petitioner for appointment. It is further the case of the petitioner that out of 277 candidates recommended by respondent No. 3, only 205 candidates including the petitioner were finally selected by the respondent-Board and their selection list was prepared. Immediately thereafter, 173 out of 205 selected persons were offered appointment on different posts depending upon the qualifications possessed by them. The petitioner was assured that a Homoeopathic Dispensary was likely to be opened at Lehra Mohabbat and for that purpose a post of Homoeopathic Physician shall be created. One post of Homoeopathic Physician was actually created on 1st July, 1998 (Annexure P-7) to set up the Homoeopathic Dispensary at Lehra Mohabbat. On the creation of the post aforesaid, respondent No. 3 on 20th July, 1998 sent fresh recommendations to the Director/Personnel thereby recommending appointment of the petitioner against the abovesaid newly created post. While the petitioner was awaiting his appointment as Homoeopathic Physician, he was shocked to know the contents of memo dated 17th September, 1998 whereby respondent-Board sent requisition to the employment exchange to fill up vacancy of Homoeopathic Physician by way of direct recruitment. Thus, constrained the petitioner contacted the Head Office of the respondent-Board and found that though in the list of priority appointments, he is the only eligible qualified and selected candidate for the post of Homoeopathic Physician, yet his claim for appointment was not accepted on the basis of some decision claimed to have been taken by the Board on 2nd June, 1998 whereby it was restricted the benefit of priority appointment would be given to only those members of the families whose total acquired land was two acres or more. It is the case of the petitioner that inasmuch the land owned by him which was acquired was little less than two acres, his appointment despite selection had been withheld. It is in these circumstances that the present petition has been filed for the relief that the petitioner should be given the appointment of Homoeopathic Physician.

(3) Pursuant to the notice issued by this Court, respondent-Board entered defence and opposed the case of the petitioner. The cause of the petitioner has been opposed primarily on the ground that by the time post of Homoeopathic Physician/Doctor became available, the policy of the Board had since been changed. *Vide* change brought about as referred to above the eligibility for providing a job was that the concerned person should have at least two acres of land. In other words the land acquired of the person must be at least two acres. It

is further the case of the respondent-Board that the application of the petitioner was scrutinised and it was found that the petitioner was overage. It may be mentioned here that the maximum age for the post under contention is 30 years and the petitioner at that time was 36 years of age.

(4) Mr. Surya Kant, learned Counsel representing the petitioner vehemently contends that there were number of candidates out of 173 who were actually appointed whose acquired land was far less than two acres as also less than the acquired land of the petitioner. Those candidates were given appointments commensurate to qualifications possessed by them, inasmuch as the petitioner was concerned, he was denied the appointment despite availability of a vacant post. A list of 23 candidates whose acquired land was less than 2 acres and have been appointed in terms of the policy has been annexed with the writ petition as Annexure P-9. A reading of Annexure P-9 would demonstrate that 23 candidates who have since been appointed on the jobs commensurate to their qualifications owned land from 0—5 Marlas to 3 Kanals 15 Marlas. It may be reiterated that so far as the petitioner is concerned, he owns 10 Kanals 18 Marlas. It is then contended by Mr. Surya Kant that the petitioner is the only candidate out of finally selected 205 persons who possesses requisite qualification for the post of Homoeopathic Physician. There was no candidate either out of those who have already been appointed or amongst those who were yet to be appointed who holds degree/diploma in Homoeopathic. In these circumstances, if the post of Homoeopathic Physician was created the same could be filled up on priority basis and not through employment exchange. It is then argued that in so far as age is concerned, the same has since been relaxed. It is further contended that,—*vide* letter dated 20th July, 1998, the Director/Personnel of the respondent-Board had given relaxation in age to the petitioner. This fact has been pointed out from para 11 of the written statement filed by the respondents. Another list of persons in whose case relaxation was given is also appended with the affidavit of the petitioner which would clearly demonstrate that in some cases even though the maximum age was 25 years, a person aged 43 years and 3 months was given appointment by relaxation of age.

(5) Mr. H.S. Lalli, the learned Counsel representing the Board, however, contends that inasmuch the job that could be offered to the petitioner became available when the policy of Board had changed. The petitioner could not take advantage of the earlier policy of the Board that came into being on 8th July, 1994 as also that there was no

question for the Board to have relaxed the age in the case of the petitioner.

(6) We have heard the learned Counsel representing the parties and with their assistance we have gone through the records of the case. We are of the firm view that rights of the petitioner were to be governed from the policy that came to be issued pursuant to acquisition of the land wherein land of the petitioner was also acquired. It will be relevant at this stage to refer to policy Annexures P-1 and P-2 that came into being in 1994. The very first line of Annexure P-1 reads as follows :—

“Consequent upon the acquisition of agricultural land from the residents of four villages namely Lehra Mohabbat, Lehra Sondha, Lehra Dhulkote and Patti Karamchand Maharaj.....”

(7) Annexure—A appended to Policy Annexure P-2 in so far as the same is relevant is reproduced below :—

“(i) The employment may be given to one member of each affected family i.e. son/daughter of the father, whose land has been acquired. The land should be in the name of the father or in the name of the candidate seeking employment as per revenue record to be produced for this purpose.

(ii) employment may be given as per qualifications prescribed for the recruitment of various category of posts and that will be limited maximum upto Class-III posts.”

(8) Reading of the two policies Annexures P-1 and P-2 read with Annexure A would make it clear that this policy was to apply to those persons whose land was acquired in four villages aforesaid. It is conceded position that the land of the petitioner is situated in village Lehra Mohabbat. That being the situation, the change brought about in the policy could not affect the petitioner. Even otherwise, this Court is of the view that a vested right of a person cannot be taken away by a subsequent change brought about. In any case, such a right cannot be taken away by retrospective change. Further, it is proved on the records of the case that,—*vide* memo dated 26th November, 1997, names of 277 persons including the petitioner for appointment were recommended. This recommendation is certainly before the change that was brought about by the respondent-Board, petitioner's name was, in fact, approved for the post under contention commensurate to his qualifications and it is only thereafter that the steps for creating

the post were taken. It is just a coincidence that when the time came for appointment, a change in the policy to the extent mentioned above has been brought about. We are of the view that this change cannot come to the disadvantage of the petitioner. In so far as relaxation in age is concerned, it is admitted position that number of persons who were selected pursuant to policy Annexures P-1 and P-2 were overage but were given the benefit of relaxation in age. Obviously, if the effort of the respondent is to deny to the petitioner the job that he seeks in the present case on the ground that he is overage, action of the respondents cannot but be termed as discriminatory.

(9) In view of what we have said above, we allow this petition and direct the respondent-Board to offer the appointment of the post of Homoeopathic Physician to the petitioner as early as possible and preferably within a month from today.

R.N.R.

Before Jawahar Lal Gupta & N. K. Agrawal, JJ

UNITED INDIA INSURANCE CO. LTD.,—Appellant

versus

KAMAL @ KAMLA DEVI @ KAMLA WATI & OTHERS,—Respondents

F.A.O. 2462 of 1998

20th March, 1999

Motor Vehicles Act, 1988—Ss. 2(16), 2(17) & 10—Driving licence—‘Heavy goods vehicle’ and ‘heavy passenger motor vehicle’—Defined, distinction—Parameters for both categories laid down unladen weight should exceed 12,000 Kgs.—There is no real or substantial difference between the two categories of vehicles so as to result in disqualifying a driver holding a licence to drive a ‘heavy motor vehicle’ from driving a bus—Insurer’s appeal liable to be dismissed.

Held that in Section 2(16) and (17) ‘heavy goods vehicle’ and heavy passenger motor vehicle have been separately defined. However, a perusal of these definitions shows that the parameters have been clearly laid down. The basic requirement is that the unladen weight should exceed 12,000 Kilograms. Once this requirement is fulfilled, it cannot be said that there is any real and substantial qualitative difference between the two categories of vehicles so as to result in disqualifying