

Before Arun B. Saharya, C.J. and V.K. Bali, J.

NEERAJ KUMAR GAUR,—*Appellant*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents*

L.P.A. No. 254 of 1989

30th July, 1999

Letters Patent Appeal, 1919—Cl. X—Consequential benefits—Appellant was selected to the post of Science teacher but was not given appointment—Another appointed on that post—Appointment successfully challenged by the appellant—Learned Single Judge ordered that appellant be issued letter of appointment—Now seeking relief of consequential benefits—Relief upheld—When citizen has been deprived of his right of appointment all consequential benefits like pay, seniority would be inherently embedded into the relief sought.

Held, that in matters of illegally withholding promotion of an employee, on promotion ordered by the Court, he shall be entitled to all consequential benefits, like pay seniority etc. This proposition of law, in our view, has to be applied in a far more pronounced way when a citizen has been deprived of his right of appointment after due selection by connivance of those who are entrusted with a responsible duty but go even to the extent of tampering with the records and conferring the benefit to some one else to which alone a specific citizen was entitled to.

(Para 7)

Further held, that if the petitioner is declared deemed to be in service as Science teacher from the date respondent No. 5 was appointed, all other consequential benefits, like pay and seniority would be inherently embedded into the relief aforesaid.

(Para 8)

Jaswant Jain, Advocate, *for the appellant.*

S.P. Laler, Dy. AG, (Haryana), *for the respondent.*

JUDGMENT

V.K. Bali, J.

(1) Selected on the post of Science Teacher, appellant (here-in-after referred to as 'petitioner'), was stealthily kept out of appointment

whereas Mohinder Singh—respondent No. 5 was appointed on the post against which the petitioner was selected in a most cloistered manner. Petitioner successfully challenged the order of appointment of respondent No. 5 to the post on which he was actually selected, through Civil Writ Petition No. 7134 of 1987. Learned Single Judge, before whom the matter came up for final adjudication, quashed appointment of respondent No. 5 and ordered issuance of appointment letter, on the same terms and conditions, to the petitioner, on which respondent No. 5 was appointed.

(2) The only grouse of the petitioner in the present appeal filed by him under Clause X of the Letters Patent is why he should not be entitled to the salary and other consequential benefits that he would have naturally got if respondent No. 5 would have not replaced him in a wholly illegal and unwarranted matter.

(3) Brief facts that need a mention for the purpose of deciding the only question, referred to above, reveal that there were some vacancies of Science Teachers in the Department of Education under the Administrative control of District Education Officer, Narnaul—respondent No. 3. The respondent aforesaid sent a requisition for five posts to the Employment Exchange, Narnaul for sponsoring the suitable candidates. The Employment Exchange sponsored the name of petitioner also. Interviews were conducted on April 6, 1987 by respondent No. 3. Petitioner's name appeared at Sr. No. 4 of the merit list. Since there were five vacancies to be filled up, petitioner had a right to be appointed as Science teacher. Respondent No. 3,—*vide* letter dated April 29, 1987 informed the District Employment Officer, Narnaul that the candidates at Sr. Nos. 1, 11, 12, 14 and 15 sponsored by him had been selected and appointed as Science Teachers. Petitioner was at Sr. No. 14 of the list of candidates sponsored by the Employment Exchange, Narnaul. However, the petitioner did not receive any appointment letter. Constrained, he approached the Employment Exchange, Narnaul for renewal of his registration and was, in turn, informed that there was no question of renewal of his registration as he had since been selected for appointment as Science teacher. As the petitioner was actually not appointed and his name was also not being renewed by the Employment Officer, he requested the latter to intimate him with regard to his selection as Science Teacher in writing, who in turn did the same. There being official intimation to the petitioner that he stood selected for appointment to the post under contention and still reality being that he was yet on road, he made enquires and came to know about the irregularities committed by the respondents in appointments of candidates. It is in these trying circumstances that he

asked for his appointment and quashing the appointment letter issued to respondent No. 5 through Civil Writ Petition No. 7134 of 1987, with the result, as mentioned above.

(4) In the writ petition, notice of motion was issued and respondents were directed to produce the relevant records pertaining to selection of teachers. Despite several opportunities, records were not produced. The fact aforesaid has also been mentioned by the learned Single Judge.

(5) In the written statement that came to be filed by respondent No. 4, it was admitted that petitioner had secured 47 marks whereas respondent No. 5 had secured 44 marks. However, when the result-sheet was presented before the Members of the Selection Committee for signatures, they insisted that respondent No. 5 be given 12 marks and only then they would sign the same. It was for that reason that respondent No. 5 was given 12 marks for interview. As a result thereof, the total marks secured by respondent No. 5 worked out to be 48 and he was placed at Sr. No. 4. Consequently, the merit list was amended by inserting respondent No. 5 at Sr. No. 4 whereas he was earlier at Sr. No. 5.

(6) On the pleadings of the parties, learned Single Judge came to a definite conclusion that "interview was held on April 6, 1987 and the name of petitioner was at Sr. No. 4 in the merit list. It was at a later stage that the entire merit list was tampered with in order to facilitate the selection of respondent No. 5..... Even respondent No. 3 had informed the Employment Exchange that the petitioner had been selected for the post of Science Teacher. This information was given to the Employment Exchange on April 29, 1987, i.e., much after the date of interview". The conduct of respondent No. 4 was adversely commented by the learned Single Judge by observing that "he, in connivance with the members of the Selection Committee, had tampered with the selection merit list and, thus, deprived the petitioner of his selection for which he was duly selected in the first instance. The entire action of the Chairman of the Selection Committee amounted to nepotism which could not sustain in law in any manner. Respondent No. 4, who was the District Education Officer had no regard for moral values. His act in reducing the merit of the petitioner was immoral".

(7) Petitioner, while laying his claim in the Court, through writ petition, referred to above, had prayed that he be deemed to be in service as Science Teacher from the date respondent No. 5 was appointed. Deeming the petitioner in service from a date respondent No. 5 was appointed would naturally mean his continuance in service

from the date respondent No. 5 was appointed and all consequential benefits would necessarily be deemed to have been embedded in the said relief: We find considerable merit in the contention of learned counsel for the petitioner that if a citizen is deprived of his due benefit on account of no fault of his, and in fact and reality for the reason that those entrusted with the duty of granting a particular relief to a citizen have connived with each other and committed a fraud, the said citizen, while granting relief to him has to be held entitled to all that he ought to have earned or gained if such fraud was not committed upon him, it is too well settled that in matters of illegally withholding promotion of an employee on promotion ordered by the Court, he shall be entitled to all consequential benefits, like, pay and seniority etc. This proposition of law, in our view, has to be applied in a far more pronounced way when a citizen has been deprived of his right of appointment after due selection by connivance of those who are entrusted with a responsible duty but go even to the extent of tampering with the records and conferring the benefit to someone else to which alone a specific citizen was entitled to. Surely, in such an event; insofar as Government is concerned, it has a right to proceed against those who might have failed to do their duty. Further, it is quite apparent from the pleadings of the parties that moment the petitioner came to know of the fraud committed by respondent No. 4, he came to this Court asking for the relief inclusive of that he should be deemed to have been appointed on the post of Science Teacher from the date when respondent No. 5 was so appointed. It is also quite apparent from reading of the pleadings of the parties that petitioner was not doing anything but for pursuing his remedy either before the Employment Officer or this Court.

(8) Mr. Laler, learned Dy. Advocate General, Haryana even in the impressive array of facts, as are before us in the present case, still contends that petitioner had made no prayer to the effect that he be given pay for the period he was deprived to work on the post of Science Teacher and other consequential benefits and for that reason alone, he is not entitled to the same. The contention of learned counsel, noted above, appears to have been made without reading clause (iv) of the prayer clause wherein it has been mentioned as follows :-

“(iv) It is also prayed that the petitioner may be deemed to be in continuous service as a Science Teacher from the date respondent No. 5 was appointed.”

If the petitioner is declared deemed to be in as Science Teacher from the date respondent No. 5 was appointed, all other consequential benefits, like pay and seniority, as mentioned above, would be inherently embedded into the relief aforesaid.

(9) For the reasons recorded above and in the peculiar facts and circumstances of this case, we hold that the petitioner is entitled to pay from the period when respondent No. 5 was appointed to the post of Science Teacher till such time he was actually appointed with all consequential benefits. It will be in the discretion of the State Government to take action against its erring officer (s) in accordance with law. The appeal is accordingly allowed with costs quantified at Rs. 3300/-.

J.S.T.

Before G. S. Singhvi and Iqbal Singh, JJ.

SWARAN SINGH,—Appellant

versus

P.S.E.B. PATIALA AND ANOTHER.—Respondents

L.P.A. No. 595 of 1994

10th February, 2000

Constitution of India, 1950—Art. 226—Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1970—Reg. 14 (ii)—Industrial Disputes Act, 1947—S. 25-F—Scope of interference under Art. 226 against awards of Labour Court—Long absence from duty—Termination of employee without complying with the provisions of Reg. 14(ii)—Labour Court holding termination as illegal and ordered reinstatement with continuity of service—Ld. Single Judge while quashing the award held that the charge on which the appellant's services were terminated proved to the hilt—Plea of retrenchment and misconduct untenable—Termination of services held ultra vires Reg. 14(ii)—Order of learned Single Judge set aside—Award of Labour Court restored with modification that appellant entitled to 25% back wages from date of demand notice till joining—However, PSEB left free to hold enquiry in accordance with law.

Held, that instead of holding regular departmental enquiry in accordance with the procedure prescribed by Regulations 8 to 13 of the Regulations, the Superintending Engineer, Distribution Circle, Ludhiana had invoked the provisions of Regulation 14(ii) and terminated the appellant's service on the premise that it is not reasonably practicable to hold enquiry. This necessarily means that the concerned authority did not issue notice to the appellant for holding a departmental enquiry into the allegation of long absence from duty nor any enquiry was, in fact, held to prove that allegation and the