

I. L. R. Punjab and Haryana

(1968) 1

CIVIL MISCELLANEOUS

*Before Tek Chand, J.*DEVI CHAND,—*Petitioner**versus*STATE OF HARYANA AND OTHERS,—*Respondents*

Civil Writ No. 1434 of 1967

November 24, 1967

Punjab Reorganisation Act (XXXI of 1966)—Ss. 82 and 83—Person serving Punjab Roadways at Chandigarh immediately before the appointed day—State to which he could be allocated.

Held, that by virtue of the provisions of section 82 of the Punjab Reorganisation Act, 1966, the petitioner who was serving the existing State of Punjab immediately before the appointed day, was to continue to serve provisionally in the new State of Punjab, unless he was required, by general or special order of the Central Government, to serve elsewhere. In view of the clear language of section 82(1), the petitioner could not be treated as a person allocated to the Union Territory of Chandigarh, simply because he, along with thousands of others, was serving in Chandigarh immediately before the appointed day. His proper allocation is in the State of Punjab.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued, quashing the orders of respondents Nos. 3 and 4 thereby relieving the petitioner of his duties and subsequently allocating his service firstly to Punjab State and then to Himachal Pradesh.

R. P. BALI, ADVOCATE, for the Petitioner.

ANAND SWAROOP ADVOCATE-GENERAL (HARYANA) AND A. S. BAINS, ADVOCATE, FOR ADVOCATE-GENERAL (PUNJAB), for the Respondents.

ORDER

TEK CHAND, J.—This is a petition of writ and the respondents are the State of Haryana, the State of Punjab, the Provincial Transport Controller and the General Manager, Haryana, Roadways, Chandigarh.

Devi Chand *v.* State of Haryana, etc. (Tek Chand, J.)

The facts giving rise to the petition are that the petitioner Devi Chand was serving as a black-smith under the General Manager, Punjab Roadways at Chandigarh before the reorganisation of the Punjab State. He had been in service for about three years prior to the reorganisation. It is stated in the petition that after reorganisation, his services were allocated to the Haryana State and respondent No. 4 had posted him in that State where he worked for a period of a month and a half. After having served for about six weeks, he was informed by the Haryana authorities, that he had been relieved of his duties and that since his allocation was in the Punjab State, he should go and report for duty to the General Manager, Punjab Roadways, Chandigarh. Accordingly, the petitioner reported himself for duty to the General Manager, Punjab Roadways at Chandigarh, but the latter refused to accept him and directed him to report back to the General Manager, Haryana Roadways (respondent No. 4). Instead of deciding one way or the other, the General Manager, Haryana Roadways, did not take any notice for considerable time. The petitioner submitted a representation to the Provincial Transport Controller, Haryana (respondent No. 3). This officer referred the petitioner to Joint Provincial Transport Controller, Haryana. By order, dated 28th December, 1966, the petitioner was directed by the Joint Provincial Transport Controller, Haryana, to report himself for duty to the General Manager, Himachal Government Transport, Simla, on the ground that his services stood allocated to Himachal Pradesh. A copy of the order of the Joint Provincial Transport Controller, Haryana, is Annexure 'A' and is to the following effect:—

“Shri Devi Chand, Black-smith, who has been relieved of his duties, with effect from 17th December, 1966 (forenoon), stands allocated to Himachal State, against Workshop Staff given over to Himachal Pradesh along with the vehicles, already transferred. He may, therefore, be entertained to avoid break in his service.”

It may be mentioned at this stage that no attempt whatsoever has been made to justify this order by the Joint Provincial Transport Controller, Haryana. It has been stated at the bar that this might have been done by mistake. With this order of the Joint Provincial Transport Controller of Haryana, the petitioner presented himself to the General Manager, Himachal Government Transport at Simla, but the latter refused to accept the petitioner and directed him to

report back to the Joint Provincial Transport Controller, Haryana, but he is stated to have kept silent for a long time. The petitioner not finding any response from the Haryana authorities submitted two applications, dated 17th February, 1967, and 25th of March, 1967, to the Provincial Transport Controller, Haryana (respondent No. 3) but he too kept silent and did not pass any order. Copies of these applications are annexures 'B' and 'C', respectively.

The petitioner also submitted a representation on 25th of March, 1967, to the Secretary, Transport, Haryana, and he called for the comments of respondent No. 3, but no such comments were sent and the petitioner received no information as to the fate of his representation. On 9th of May, 1967, a notice demanding justice was submitted by the petitioner to respondent No. 1, the State of Haryana, and to respondent No. 3, the Provincial Transport Controller, Haryana. The Provincial Transport Controller, Haryana, addressed a letter to the Secretary to Government, Haryana, Transport Department, with a copy to the petitioner's advocate to the effect that Shri Devi Chand stood allocated to Punjab Roadways and that being the case, he was relieved and directed to report to the General Manager, Punjab Roadways. The responsibility of absorbing him was that of the Punjab State.

The petitioner, who has been sent from pillar to post, feels aggrieved, and has come up in the writ petition seeking redress under Articles 226 and 227 of the Constitution, praying for issuance of a suitable writ or direction regarding his allocation. One fact stands out, that he was relieved on 17th of December, 1966, and has not been paid any salary or emoluments ever since, and the Administrations concerned, to whomsoever he applied for succour, declined to accept responsibility. The petitioner has been treated in an off-hand manner with an utter disregard of his interests, rights or feelings. No blame has been attached to his conduct. He has been serving the Administration faithfully till he found that all of a sudden on 17th December, 1966, he had been relieved. Whenever he sought relief, he was told to report to another Administration. He was even asked to report to Himachal Pradesh Administration, though there was no basis whatsoever for sending him there.

It has now been conceded that all this happened because of some mistake on the part of some officers concerned. No body in any Administration realised the sufferings and the harassment to which

Devi Chand v. State of Haryana, etc. (Tek Chand, J.)

the petitioner had been subjected for no fault of his. No one has been willing to take responsibility for allocating him to one State or the other. For over eleven months, he had received nothing by way of salary or other emoluments. The contention of the Haryana State is that it was through a mistake that he was allowed to work for one-and-a-half months under that Administration and he by his allocation ought to have been fitted in the Punjab State. The attitude of the Punjab Administration towards him has been equally forbidding. Like a shuttle-cock, he has been made to shift to and for between Haryana and Punjab and even Himachal Pradesh. The principal question is of his place of allocation. Section 82, sub-section (1) of the Punjab Reorganisation Act, 1966, provides :—

“82. (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Punjab shall, on and from that day, provisionally continue to serve in connection with the affairs of the State of Punjab unless he is required, by general or special order of the Central Government, to serve provisionally in connection with the affairs of any other successor State.”

The perusal of this provision leaves no room for doubt that the petitioner was to serve provisionally in the State of Punjab unless he was required, by general or special order of the Central Government, to serve elsewhere. No such order has been passed by the Central Government. In view of the provisions of section 82, sub-section (1), the Punjab State cannot deny its responsibility of absorbing the petitioner.

Annexure R-1 is a statement of “allocation of workshop staff for Punjabi Suba” relating to seventy-two employees. The petitioner is at serial No. 24. The statement bears the signatures of the General Managers of the Punjab and Haryana Roadways and Chandigarh Transport Undertaking. This statement is dated 27th October, 1966. Its perusal leaves no room for doubt that the petitioner was allocated to the Punjab State. Confusion has been created by another statement of allocation of workshop staff for Haryana Roadways, Chandigarh, under the signature of Shri Naunihal Singh, in which the petitioner has been shown at serial No. 22. Thus in one statement bearing the signatures of Shri Naunihal Singh, the petitioner is allocated to Haryana Roadways and in the other statement, also signed by Shri Naunihal

Singh and by two other officers, he is shown as having been allocated to the Punjab State. The Administrations among themselves, after having been apprised of the predicament in which the petitioner found himself, could not come to an agreed settlement as to where the petitioner should have been absorbed. There seems to be no justification why the decision about the petitioner's allocation could not have been taken in time and the difference, if there was any between the two Administrations, could not have been resolved expeditiously. It is an extremely hard case and the responsibility for the apathetic and unresponsive treatment meted out to the petitioner must be shared by the responsible officers of the two State Governments. What they could not decide within one year did not require more than a glance at sections 82 and 83 of the Act and R-1 the mutually agreed list of allocation, which included the petitioner's name among the staff meant for Punjab.

After hearing the arguments of the counsel, I am of the view that the State in which the petitioner could be allocated was the State of Punjab and not the State of Haryana. Reference at this stage may be made also to section 83 of the Act, which is a provision as to continuing of officers in the same posts. It provides :—

“83. Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Punjab in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in, that successor State :

Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any order affecting his continuance in such post or office.”

Immediately before the appointed day, the petitioner was discharging the duties of his post in connection with the affairs of the existing State of Punjab at Chandigarh. Section 2(m) defines “successor State” in relation to the existing State of Punjab as

Devi Chand *v.* State of Haryana, etc. (Tek Chand, J.)

meaning "the State of Punjab or Haryana, and includes also the Union in relation to the Union Territory of Chandigarh and the transferred territory". In view of the clear language of section 82(1), it does not seem to me that the petitioner should be treated as a person allocated to the Union Territory of Chandigarh, simply because he along with thousands of others was serving in Chandigarh immediately before the appointed day. His appropriate allocation, to my mind, is in the State of Punjab. He is entitled to receive his salary and emoluments from the State of Punjab with effect from the 17th of December, 1966.

The writ petition is allowed and the State of Punjab is directed to treat the petitioner as having been allocated to that State and to pay him his dues from 17th of December, 1966. He has already received his pay for a month-and-a-half while serving Haryana Administration. The petitioner is also entitled to his costs, which are assessed at Rs. 200 which shall be paid by the State of Punjab.

B. K. T.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

BHUPINDERPAL KAUR,—*Petitioner*

versus

THE FINANCIAL COMMISSIONER, PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2002 of 1967

November 24, 1967

Constitution of India (1950)—Article 226—Petition for writ stating notice of motion as required by Rule 1-A, Chapter IV-F(b), High Court Rules and Orders, Volume V, had been served when it was not served—Whether liable to be dismissed—Words and Phrases—Averment and affidavit—Distinction between—Members of the bar—Duties towards clients and courts stated.

Held, that the courts are entitled to expect *uberrima fides*—Most perfect good faith, from those coming to its portals seeking relief, and they include the litigants as well as the lawyers. Conduct which is in the nature of a sharp practice or fraud upon the court is contemptuous in the extreme and is liable to be visited with grave consequences. The persons responsible for making false averments in the petition should not go unpunished and the writ petitions containing false statements should be dismissed.