

Anil Kumar Soni

Vs

Managing Director, Punjab Financial Corporation and Another

Civil Appeal No. 2835 of 1986

(N. M. Kasliwal, M. M. Punchhi JJ)

25.07.1991

JUDGMENT

KASLIWAL, J. –

1. This appeal by special leave is directed against the decision of the Punjab and Haryana High Court dated May 9, 1985. The appellant Anil Kumar Soni was appointed as Assistant Technical Officer in the Punjab Financial Corporation (hereinafter referred to as 'the Corporation'). The appellant was confirmed as Assistant Technical Officer (Textiles) on July 14, 1976. The appellant then applied for the post of Assistant Manager which was to be filled up by direct recruitment. The appellant was selected and appointed as Assistant Manager on probation on May 26, 1980. The period of probation of the appellant was extended from time to time and ultimately the Corporation vide its order dated May 11, 1984 terminated the service of the appellant in exercise of the powers conferred by Regulation 19(2) of the Punjab Financial Corporation (Staff) Regulation, 1961. The appellant aggrieved against the order of termination filed a writ petition which came to be dismissed by the High Court by the impugned order dated May 9, 1985.

2. The only contention raised by Shri M. K. Ramamurti, learned senior counsel which appealed to us is that even if the impugned order of termination from the post of Assistant Manager during the period of probation was held to be proper, still the appellant was entitled to continue on the post of Assistant Technical Officer on which he was admittedly confirmed as back as July 14, 1976. In order to consider this aspect of the matter it would be proper to consider the respective contentions raised by the learned counsel for the appellant as well as the Corporation. The High Court in this regard took the view that so far as the post i.e. Assistant Technical Officer which the appellant held before he was selected for the post of Assistant Manager is concerned, it stood abolished from the date he was appointed to the post of Assistant Manager in view of the resolution of the Board (Annexure R-1/3). The relevant part of the aforesaid resolution reads as under :

"The various levels of posts, subject to such modifications as may be decided by the Board, may be advertised. Officers of the Corporation who fulfil the requisite qualifications and experience, may apply for these posts and may compete with the candidates from the open market. Within the overall strength proposed earlier, officers may be selected to various levels of hierarchy depending upon their professional competence and experience ... The posts now held by the employees of the Corporation, who happen to be inducted into the new cadre posts, shall be abolished from the date of their appointment to the new cadres ..."

3. Taking support from the above resolution it has been contended on behalf of the Corporation that

as soon as the appellant was selected for the post of Assistant Manager, the earlier post of Assistant Technical Officer held by the appellant stood abolished. It has thus been contended that there was no post of Assistant Technical Officer on which the appellant could have been appointed after his termination of service from the post of Assistant Manager by the impugned order dated May 9, 1985.

4. We see no force in the above contention. It is an admitted position that the appellant was a permanent employee of the Corporation having been confirmed as Assistant Technical Officer on July 14, 1976. The Corporation advertised the posts of Assistant Manager to be filled up by direct recruitment and the employees of the Corporation were also allowed to compete with the candidates from the market. The appellant was no doubt selected and appointed as Assistant Manager on probation on May 26, 1980 but his services were terminated on May 11, 1984 during the period of probation and before the confirmation of the appellant on the said post. The object of the resolution of the Board extracted above was that if an employee of the Corporation was inducted in the new cadre post then the post already held by him shall be abolished from the date of such appointment in the new cadre. The entire purpose of such resolution was that if an employee of the Corporation was appointed in the new cadre post to be filled up by direct recruitment then the Corporation did not want to continue the earlier post held by such employee of the Corporation. Thus in the scheme of things such appointment of the employee of the Corporation to the new cadre posts ought to have been confirmed appointment. It would be against all canons of justice that a confirmed employee of the Corporation though allowed to compete for a new cadre post by direct recruitment but having not been confirmed on such post is not allowed to claim his right even on the lower post on which he had permanent lien to continue. It would be a travesty of justice to throw the person on the streets after a period of service of nine years in the Corporation. The post of Assistant Technical Officer held by the appellant as a confirmed employee, could have only been abolished in case he was confirmed on the post of Assistant Manager. The contention of the learned counsel for the Corporation that mere selection on the new cadre post of Assistant Manager was sufficient for abolishing the post of Assistant Technical Officer cannot be accepted. The appointment in the new cadre post as mentioned in the resolution of the Board means confirmed appointment on such post.

5. In the result we allow appeal in part, set aside the order of the High Court dated May 9, 1985 and uphold the impugned order of termination of the appellant so far as the post of Assistant Manager is concerned, but direct the respondent Corporation to allow the appellant to continue on the post of Assistant Technical Officer (Textiles) on which he had already been confirmed on July 14, 1976 with all the back wages and other benefits. It is, however made clear that in case no post of Assistant Technical Officer (Textiles) is existing in the Corporation, the appellant can be appointed on any other equivalent post carrying the same scale of pay which the appellant was drawing on the post of Assistant Technical Officer. The Corporation shall pass appropriate orders to comply with our direction within one months from today. The parties to bear their own costs.

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