

Improvement Trust, Ludhiana

Vs

Kuldip Singh and Another

Civil Appeal No. 7701 of 1997

(S. C. Agarwal, S. R. Babu JJ)

13.11.1997

ORDER

1. Special leave granted.

2. This appeal relates to the matter of regularisation of Kuldip Singh, Respondent 1 herein, on the post of Clerk with the Improvement Trust, Ludhiana, hereinafter referred to as "the appellant-Trust". The said respondent was appointed as a Peon on ad hoc basis by order dated 3-6-1983. By order dated 1-8-1986 he was appointed as Clerk on ad hoc basis in the leave vacancy of Miss Sukhdev Kaur. Since audit objection had been raised to his appointment as Clerk on the ground that he was not qualified to be posted against the post of Clerk, he was not paid the salary for the said post of Clerk. The salary for the post of Clerk for the period from 1-8-1986 to 11-2-1988 was paid to him subsequently as per the direction given by the High Court of Punjab and Haryana in contempt proceedings initiated by the said respondent in WP No. 15650 of 1990 wherein the respondent had sought regularisation of his services as a Clerk. The said writ petition has been disposed of by the High Court by order dated 6-12-1990 whereby it was directed that the claim of the respondent be examined by the appellant-Trust by passing a speaking order. In accordance with the said direction contained in the order dated 6-12-1990, the Chairman of the appellant-Trust passed the order dated 31-1-1992. In the said order, the Chairman has referred to the instructions of the Government of Punjab dated 24-8-1983 relating to appointment of Class IV employees on a Class III post wherein it is required that the employee should have (i) matriculation qualification, and (ii) 5 years' experience in a Class IV post, and should qualify in Punjabi typewriting test. The Chairman of the appellant-Trust in his order dated 31-1-1992, has stated that although the respondent is matriculate but he did not have the minimum experience of 5 years as Peon on 1-8-1986 at the time of his appointment as Clerk on ad hoc basis and he did not know Punjabi typewriting. The Chairman, therefore, decided that the respondent could not be regularised on the post of Clerk. Feeling aggrieved by the said order of the Chairman of the appellant-Trust dated 31-1-1992, the respondent filed a second writ petition in the High Court of Punjab and Haryana which has been disposed of by the impugned judgment dated 24-9-1996. The High Court, while allowing the said writ petition, has set aside the order dated 31-1-1992 passed by the Chairman of the appellant-Trust. The High Court has not dealt with the reasons given by the Chairman of the appellant-Trust in the order dated 31-1-1992 for refusing regularisation of the respondent, viz., that he did not possess the requisite experience of 5 years as Peon on 1-8-1986 and he also did not have knowledge in Punjabi typewriting. The High Court has proceeded on the basis that since no order of reversion had been passed from the post of Clerk to the post of Peon after the appointment of the respondent as Clerk by 1-8-1986, the respondent continues to be a Clerk and on that basis the order dated 31-1-1992 has been set aside.

3. Shri Manoj Swarup, the learned counsel for the appellant-Trust, has invited our attention to the order dated 12-2-1988 (Annexure IV) which reads as follows :

"Since appointment of Shri Kuldip Singh as Clerk has not so far been approved by the Government, so he is adjusted in Refund Branch to assist the Dealing Clerk Smt Randhir Kaur. Shri Jaswinder Pal Singh, Clerk is adjusted in Water-Rate Branch as Dealing Clerk.

sd/- Executive Officer, Improvement Trust, Ludhiana.###

4. It has been submitted that this order clearly indicates that in view of the appointment of the respondent not being approved by the Government he had to be reverted back to his original post and that the High Court was in error in proceeding on the basis that Respondent 1 had not been reverted from the post of Clerk after his appointment on the said post by order dated 1-8-1986.

5. Shri B. S. Walia, the learned counsel appearing for Respondent 1, has, on the other hand, invited our attention to the order dated 23-11-1989, whereby the respondent was placed under suspension. In the said order Respondent 1 has been described as "Clerk, Water-Rate Branch". The submission of Shri Walia is that this order shows that Respondent 1 had not been reverted on 12-2-1988, as claimed by the appellant-Trust. We are unable to construe the order dated 23-11-1989 as to mean that in spite of the order dated 12-2-1988 Respondent 1 continued as Clerk after that date. In this context, it may be mentioned that in the order of reinstatement dated 25-5-1990, Respondent 1 has been described as "Sewadar". This shows that the description of Respondent 1 in the orders passed after 12-2-1988 has not been consistent. In these circumstances, we are unable to uphold the view of the High Court that Respondent 1 continued to hold the post of Clerk after 11-2-1988.

6. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondent before the High Court is dismissed.

7. It has, however, been pointed out that Respondent 1 has now acquired 5 years' experience on the post of Peon, he fulfils the conditions for appointment on the post of Clerk and that if he qualifies in the Punjabi typewriting test, he would be eligible for appointment on the post of Clerk. In the circumstances, it is directed that the respondent may be permitted to take the test in Punjabi typewriting after six months from the date of passing of this order and, if he qualifies in the test, he should be given due consideration for appointment on the post of Clerk. No order as to costs.