SUPREME COURT OF INDIA

Haryana Rajya Sainik Board-cum-Defence & Security Relief Fund &Member Management Committee

Vs.

Mohan Lal

C.A.No.5607 of 2008

(R. V. Raveendran and Lokeshwar Singh Panta JJ.)

11.09.2008

JUDGMENT

Lokeshwar Singh Panta, J.

1. Delay condoned.

2. Leave granted.

3. This appeal arises out of judgment and order dated 26.04.2005 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in CWP No. 563/2003 and order dated 27.09.2005 in Review Application No. 236/2005. By the impugned order, the High Court allowed the writ petition of Mohan Lal - the respondent herein and directed the appellant to regularise his services and granted him all benefits as a regular employee. The review petition filed by the appellant-Haryana Rajya Sainik Board- cum-Defence & Security Relief Fund & Member Management Committee against the order of the High Court in the said writ petition was dismissed.

4. Briefly stated the facts of the case are that the appellant- Haryana Rajya Sainik Board-cum-Defence & Security Relief Fund & Member Management Committee (hereinafter referred to as "the Committee") is a social welfare organization registered as a Society under the *Societies Registration Act, 1860*. The aim, object and purpose of the Committee are to look after the welfare of war widows, their dependents, ex- servicemen, disabled armed officials, their dependents and dependents of the serving officials. The appellant-Committee does not receive any grant from the Central Government. It receives its finance from the Defence Security Relief Fund which had been raised in the years 1965 and 1972 out of public donations during declaration of hostilities between India and Pakistan. The grant-in-aid is being provided by Haryana Government only to augment the Defence and Security Relief Fund [for short `DSR Fund'].

5. The appellant-Committee on 01.10.1991 appointed Mohan Lal-respondent as Mali on daily wage. As per the terms and conditions of the letter of engagement placed on record of this appeal, the services of the respondent were liable to be terminated at any point of time. The services of the respondent were terminated with effect from 27.02.1993 being temporary in nature.

6. The respondent claimed reference under the *Industrial Disputes Act, 1947* [hereinafter referred to as `the I.D. Act'] alleging that his services were terminated without following the provisions of Section 25-F of the I.D. Act. The Haryana Government vide Notification No. 12307 dated 22.01.1994 made the following reference to the Labour Court:-

> "Whether the termination of services of Shri Mohan Lal is valid and justified? If not so, to what relief is he entitled?"

7. The Additional District and Sessions Judge, Presiding Officer, Labour Court, Ambala, by Award dated 02.02.1999 in Reference No. 10/1994 held the termination of the services of the respondent illegal and unjustified and accordingly, directed his reinstatement with continuity in service. However, the claim with regard to back wages was given up by the respondent, therefore, he was not held entitled to back wages.

8. Thereafter, the respondent No. 1 filed writ petition in the year 2003 [W.P. No.563/2003] before the High Court of Punjab and Haryana at Chandigarh praying for issue of mandamus directing the appellant-Committee to regularise his services. The Division Bench of the High Court, on the basis of Policy Instructions dated 07.03.1996 issued by the State of Haryana with regard to regularizing the work charged/casual/daily-rated employees of the departments of the State Government, directed the appellant-Committee - "to regularize the services of respondent and, accordingly, grant him other benefits as a regular employee". The appellant- Committee being dissatisfied with and aggrieved by the order of the Division Bench filed a review application before the High Court, which came to be dismissed on September 27, 2005. Hence, the appellant-Committee has filed this appeal by way of special leave petition challenging the correctness and validity of the orders of the High Court.

9. We have heard Mr. Alok Sangwan, learned counsel for the appellant-Committee and Mr. Prem Malhotra, learned counsel for the respondent - Mohan Lal, and with their assistance perused orders of the High Court and other material on record.

10. The defence of the appellant-Committee in its counter affidavit filed before the High Court in opposition to the writ petition was that the appellant-Committee was registered as a Society in the backdrop of the following eventualities:-

> "In 1965, large scale incursion into Jammu and Kashmir by subversion elements from Pakistan flared into declaration of hostilities between India and Pakistan. The patriotic fervour of our people rose to the occasion and they offered large quantities of cash and valuables. In the Punjab (which then included Haryana) the general

> response was overwhelming. A fund, known as `Punjab Defence and Security Fund' was instituted to account for this donation. The initial target was set at Rs. 50 lakhs, but by 15.11.1966, the collection by the people approximated Rs. 3.75 crores.
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> In, 1966, the composite Punjab was re- organised into the new states of Punjab and Haryana. Haryana's share of the fund was transferred to it for the benefits of war widows and ex-servicemen belonging to Haryana and their families. The transferred fund came to be known as the Haryana Defence and Security Relief Fund now DSR Fund in short. Later on the contribution of this Fund was made by the people of Haryana during 1971 war. To manage the DSR Fund, a Committee was set up."

11. It was the specific and categorical case of the appellant- Committee that the DSR Fund is neither a Government Department nor a statutory body or an instrumentality of the State. It is a Committee which comprises the Chief Minister of the State as its Chairman and other unspecified number of officials and non-officials as its Members. Its strength and composition continues to be ad hoc from the beginning. The DSR Fund gets aid from the Haryana Government only to augment the DSR Fund. Haryana Defence and Security Relief Fund Committee has been registered under the *Societies Registration Act, 1860.*

12. The appointment of the respondent as `Mali' (Gardener) by the Assistant Manager, Sainik Pariwar Bhawan, Chhachhrauli, with effect from 01.10.1991 (FN) as per the daily wage fixed by the Deputy Commissioner is not in dispute. The services of the respondent were terminated on 27.02.1993 in terms of the engagement letter. Against the termination order, the respondent raised the industrial dispute which was referred to the Labour Court by the State of Haryana and finally the Labour Court, as stated above, directed the appellant-Committee to reinstate the respondent with continuity in service without back-wages. Before the High Court, it was the categorical defence of the appellant- Committee that the respondent was appointed as Mali for a temporary period at the rate fixed by the Deputy Commissioner, Yamuna Nagar. The respondent, in compliance to the Award of the Labour Court, has been reinstated by the appellant-Committee. It was also contended that the appellant-Committee has not received any grant from the Central Government or the State Government of Haryana, but it receives its finances from the DSR Fund which has been raised out of public donations received in the wake of 1965 and 1972 wars with Pakistan. However, the grant-in-aid is being provided by Haryana Government only to augment the DSR Fund which was set up for the welfare of ex-servicemen and their dependents, war widows, soldiers' widows and their dependents, etc. etc. The appellant-Committee also stated that none of the daily wagers working with the Committee have been regularized by the appellant-Committee against the vacancy which is reserved only for ex-servicemen and war widows, etc. It was also submitted that no other employee was selected or engaged in place of the respondent after the Award of the Labour Court which was complied with by the appellant-Committee.

13. In the factual situation of the case and legal proposition governing the terms and conditions of the services of the respondent, in our considered opinion, the High Court has misapplied the Policy Decision/Instructions dated 07.03.1996 issued by the Government of

Haryana with regard to the regularization of work-charged / daily wage / daily-rated employees employed by the various Departments of the State to the claim of the respondent. We have gone through the said Policy decision which is placed on record of this case as Annexure-P3. The Policy decision reveals that there are three categories of employees, namely, work-charged employees, casual daily wage employees and daily-rated employees (class- III) of the State Government who are covered under the said Policy decision. The policy decision provides that the casual daily-rated employees, who have completed five years service on 31st January, 1996, shall be regularized provided they have worked for a minimum period of 240 days in each year and the break in service in any year is not more than one month at the time. A further condition stipulated was that such employees who have worked on different posts having different designations in the same Department shall also be regularized if they fulfill their conditions. On regularization, they shall be put in the time-scale of pay applicable to the lowest Group `D' cadre in the Government and they would be entitled to all other allowances and benefits available to regular Government Servants of the corresponding grade.

14. We are not in a position to accept the finding of the learned Judges of the High Court that the services of the respondent are governed by the said Policy decision of the State of Haryana in the matter of regularization. The respondent was not an employee of the State of Haryana in Group `C' or Group `D' posts nor was he engaged in any Department or other authority of the State on daily wage by the competent authority of the State Government or the authority, as the case may be. Indisputably, he was appointed by the appellant-Committee as Mali on daily wage and not in the cadre of ex-servicemen for which the vacancy is reserved in terms of the Sainik Parivar Bhawan's Haryana Service (Common Cadre) Rules, 1999. Thus, the High Court gravely erred by holding that the Policy decision of the State of Haryana dated 07.03.1996 will be ipso facto applicable to the employees of the appellant-Committee without proving that the same has been adopted by the appellant-Committee and made applicable to its employees. The appellant-Committee has framed its own Service Rules called `The *Sainik Parivar Bhawan's Haryana Service (Common Cadre) Rules, 1999'*, for regulating the recruitment and conditions of service of the persons appointed to Sainik Parivar Bhawan's Haryana. Details of posts authorized in Saink Parivar Defence Organisation prescribing qualifications/experience required and pay equalency are mentioned in Appendix `A' of the said Rules. The post of Peon-cum-Mali is shown at Serial No. 22 of Appendix `A' for which the essential qualification is 5th class with two years experience of gardening. The footnote provides that certain posts, including the post of Peons and Peon-cum- Mali, are reserved for ex-servicemen/war widows and widows only. In the teeth of the separate service rules of the appellant-Committee framed for governing the service conditions of its employees, the High Court was not justified in applying the Policy decision/Instruction of 1996 of the State Government to the employees of the appellant, which undoubtedly is an independent body registered under the Societies Act exclusively for the welfare of the widows and their dependents (males/females) and dependents of ex- servicemen and serving Armed Forces personnel, etc. of Haryana.

15. In the facts and circumstances narrated hereinabove, the judgment of the High Court directing the appellant- Committee "to regularize the services of the respondent and, accordingly, grant him all other benefits of regular employee" is unjustified and unsustainable both on facts and in law and the same deserves to be set aside on this short ground without entering upon the merits of other issues involved in regard to the power of the High Court to issue mandamus in mandatory form directing regularization of the respondent against the service rules of the appellant-Committee and granting him all benefits of a regular employee.

16. In the result, for the aforesaid reasons, the judgment and order dated 26.04.2005 of the Division Bench passed in CWP No. 563/2003 and order dated 27.09.2005 dismissing the Review Application No. 236/2005 in the said writ petition, are quashed and set aside. The writ petition filed by the respondent would stand dismissed. The appeal is accordingly allowed.

17. In the facts and circumstances of the case, the parties are left to bear their own costs.