

Supreme Court of India

Raj Bhushan Gandhi vs Secretary, Haryana State ... on 9 February, 1993

Equivalent citations: 1993 LabLC 1956, (1994) ILLJ 88 SC, 1994 Supp (1) SCC 56

Author: B J Reddy

Bench: B J Reddy, A Anand

ORDER B.P. Jeevan Reddy, J.

1. Heard counsel for the parties. Leave granted.
2. The appeal is preferred against the judgment and order dated August 2, 1991 of the Punjab and Haryana High Court dismissing the writ petition in limine.
3. The appellant was appointed temporarily as a T-Mate by the respondent Haryana State Electricity Board on November 20, 1968. He continued as such till April 16, 1973. On that date he was appointed as a Shift Attendant on a regular basis. His services were terminated on November 15, 1974 with effect from December 15, 1974. This order the appellant did not challenge. Be that as it may, he was appointed on ad hoc basis on the same post on December 12, 1974. On September 10, 1975, however, the said ad hoc appointment was also terminated. This order he did not challenge. After a gap of about three years he was appointed on daily wages as a labourer on July 7, 1978. On September 11, 1987, he was transferred to A.E.E. Transformer Repair Workshop, Karnal, as a T-Mate. It appears that on February 10, 1990, the appellant made a representation to the respondent-Board to recall the termination order of November 15, 1974, and to regularise him in the post of Shift attendant with effect from 1986. Since no action was taken by the Board, the appellant filed a Writ Petition in the Punjab and Haryana High Court on August 1, 1990, challenging the order of termination dated November 15, 1974 and for certain other reliefs. On January 8, 1991, the High Court disposed of the Writ Petition with a direction to the Board to consider the appellant's representation dated February 10, 1990 within six months from the date of the order. Accordingly, the Board considered the appellant's case and by an order dated July 18, 1991, directed as follows:

...taking a sympathetic and humanitarian consideration he has been allowed relaxation in age for first entry into the Board service on October 10, 1988 and accordingly, his termination orders have been withdrawn' Though the order does not specify on which post was the said regular appointment made, it must necessarily be understood as regularisation in the post which he was holding on that date viz; T-Mate.

3A. The appellant then filed a Writ Petition in the Punjab and Haryana High Court claiming that in view of the revocation of the termination orders, he is entitled to his seniority and other benefits with effect from November 15, 1974. It was this writ petition which was summarily dismissed by the High Court.

4. The contention of the learned Counsel for the appellant is that once his termination orders are withdrawn, it must be deemed that he is in regular service with effect from November 15, 1974. He goes further and says that by virtue of the order dated July 18, 1991, the Board has withdrawn not only his termination order dated November 15, 1974 but also the termination order dated September

10, 1975. At any rate he submits that the relaxation of age granted under said order enures to validate his appointment made on February 16, 1978.

5. We are of the opinion that the learned Counsel for the appellant is not right in his interpretation and understanding of the Board's order aforesaid.

Firstly, it may be noticed that the appellant chose not to challenge the order of termination dated November 15, 1974 for a period of sixteen years. He challenged it for the first time on January 8, 1991. He also did not challenge the second termination order dated September 10, 1975. This laches on his part disentitles him to any equitable relief from the Court. Now let us see what does the Board's order say and whether it really grants the benefits the appellant claims on granted by it. In para 4 of the Board's order it is recited: "Sh. Rai Bhushan Gandhi remained out of the service of the Board from September 11, 1975 to July 6, 1978, for about 3 years. Sh. Raj Bhushan Gandhi, as per office record has been engaged as a fresh appointment w.e. f. July 7, 1978 and from July 7, 1978 to date, he has only a service of about 10 years as daily wages work charge and not 20 years as contended by him in his representation under disposal. 'Having so stated, the Board made the final order which has already been quoted hereinabove. The question is what does the final order passed by the Board mean? It is not open to the appellant to accept that portion which is favourable to him and reject that what is unfavourable to him. The order has to be read, as a whole and reasonably. If so read, the said order merely purports to appoint him on a regular basis, in the post of T-Mate on and with effect from 10th October, 1988 and it is for enabling the said appointment that his age was relaxed. The withdrawing of termination orders was merely to enable his appointment to be made with effect from October 10, 1988. In the fact of the express language of the order, the appellant cannot say that his appointment was intended to be effective from July 7, 1978 or April 6, 1973 or any earlier date. His appointment is effective only from October 10, 1988, as stated specifically in the order.

6. The next question is whether the appellant is entitled to any other relief in the facts and circumstances of the case. What impresses us in this case is that the appellant has been serving the Board from 1968 till date, with a gap of about 3 years, in one or other capacity continuously. Thus, he has not been vigilant in protecting his rights. That may be on account of unawareness of his legal rights; it may be for any other reason. After all he belongs to the lower category in Board Service. In these circumstances though it may not be possible to give him seniority and other benefits from 1968 since it is likely to affect other persons in the service, we are of the opinion that the following limited relief should be granted to him: We direct that for the purpose of calculating his pension and gratuity he shall be treated to have been appointed to the post of T- Mate, on a regular basis, on 7th July, 1978. Further his salary shall also be fixed on the basis that his regular appointment to the said post of T-Mate is on and with effect from 7th July, 1978, though he shall be not entitled to arrears of salary for the period 7th July, 1978 till 10th October, 1988. His salary shall be fixed on the above basis and he shall be paid that salary with effect from 10th October, 1988. It is made clear that his seniority shall count from 10th October 1988. With the above directions the appeal is disposed of. No costs