

in this contention. The Administration has chosen to extend the concession of out of turn allotment to the spouse and not to the son. The reason is obvious. The children when they grow up, get married and they sometimes leave their parents in the lurch. To meet such a situation, the Administration has reserved a power to make an out of turn allotment in favour of the serving spouse. The reason is that the couple shall be able to continue to stay together in Government accommodation. If the Administration has chosen to extend the concession to only the spouse and not the son, we find no ground to intervene or to hold that the provision is *ultra vires* the Constitution. There is nothing arbitrary or violative of Article 14 of the constitution.

(16) We may observe that there are people who are in service for a period longer than petitioner No. 2. Their rights cannot be stifled merely because the petitioner's father was in possession of a Government house. The second petitioner shall have to wait for his turn along with others who are in the queue earlier than him. The action of the Administration and the order passed by the Tribunal are justified. These call for no interference.

(17) No other point has been raised.

(18) In view of our answers to all the three questions, we find no merit in this writ petition.

(19) Resultantly, it is dismissed in limine.

R.N.R.

Before Jawahar Lal Gupta & K. S. Kumaran, JJ

JASMER SINGH & OTHERS,—*Petitioners.*

versus

THE CHANDIGARH STATE COOPERATIVE BANK LTD. &
ANOTHER,—*Respondents.*

C.W.P. No. 17994 of 1998

18th December, 1998

Constitution of India, 1950—Arts. 14, 16 & 226/227—Termination of service—Petitioners appointed against various posts which were not sanctioned at the time of appointment—No proper selection process followed—Services terminated—Held, appointments being illegal were rightly terminated.

Held that an employer is entitled to make appointments to the available posts so as to carry on the daily functioning. However, it is equally essential under the law that the available posts are advertised. The eligible candidates are invited to compete and then an appropriate process of selection is followed so that the best persons are appointed to the different posts. In the present case, no advertisement was issued. No requisition was sent to the Employment Exchange. No notice of any kind was given. Applications were obtained and appointments made. Such a process of making appointments was wholly illegal and violative of the basic principles of fairness.

(Para 5)

Further held, that sanctioned posts did not, in fact, exist at the time when the petitioners were appointed. No process of selection was followed when the appointments were made. The appointments being illegal were rightly terminated.

(Para 7)

P. S. Patwalia, Advocate,—*for the Petitioners.*

K. K. Gupta, Advocate,—*for Respondent No. 1.*

J. S. Sidhu, Advocate,—*for Respondent No. 2.*

JUDGMENT

Jawahar Lal Gupta, J, (Oral)

(1) The petitioners in this case were appointed to different posts between 2nd April, 1998 and 5th June, 1998. On 21st November, 1998 they were conveyed that their services were “being dispensed with as no longer required” on the ground that they were appointed “beyond the sanctioned strength”. Separate orders were conveyed to each of the petitioners. Copies of two out of these orders have been produced as Annexures P-4 and P-5 with the writ petition. Aggrieved by the orders of termination, the petitioners have approached this Court through the present writ petition. They pray for the issue of a writ to quash the orders of termination and to allow them to work as Clerks/Peons with all consequential benefits.

(2) The respondents contest the petitioners’ claim. In the written statement filed on behalf of respondent No. 2 it has been pointed out that the appointments have been made without following any procedure.

There was no advertisement or selection. Still further, even the sanctioned posts did not exist at the time of appointment of the petitioners. The appointments having been made against non-existent posts without following any procedure were totally invalid. It has also been submitted that certain posts have now been sanctioned and that these shall be filled up by following the prescribed procedure.

(3) Learned counsel for the parties have been heard.

(4) Mr. Patwalia who appears for the petitioners contends that the orders of termination are vitiated as no opportunity was granted to the petitioners. Secondly, the counsel submits that the bank has always made recruitment without any advertisement. Thus, the action of the respondents in terminating the services of the petitioners suffers from the vice of discrimination. Lastly, it has been contended that Board has passed a resolution for the creation of posts. Thus, the very basis for termination of the posts is non-existent. The claim made on behalf of the petitioners has been controverted by the learned counsel for the respondents.

(5) It is the admitted position that the bank cannot create new posts without the approval of the Registrar. Rule 3 of the Chandigarh Co-operative Financing Institutions Service Rules categorically provides that the Board of the bank is competent to determine the strength of the substantive posts for the Head Office as well as for the Branch Offices. This is, however, "subject to the approval of the Registrar". Admittedly, the approval of the Registrar for creation of posts beyond 31 had not been obtained by the bank till 5th June, 1998 when the petitioners had been appointed or even by 21st November, 1998 when their services had been terminated. That being so, it is clear that the posts duly sanctioned by the competent authority did not exist at the time of the appointment of the petitioners. Secondly, it is also not disputed that the bank had not advertised the posts at any stage. In fact, it appears that each one of the petitioners submitted an application to the Managing Director and he passed the order of appointment. By way of illustration, the bank has produced copies of some of the applications and the orders passed thereon by the Managing Director. This action of the bank in making appointments to different posts without either inviting applications through advertisement or even making a reference to the Employment Exchange was totally arbitrary and violative of Articles 14 and 16 of the Constitution.

(6) It is, undoubtedly, true that an employer is entitled to make appointments to the available posts so as to carry on the daily functioning. However, it is equally essential under the law that the available posts are advertised. The eligible candidates are invited to compete and then an appropriate process of selection is followed so that the best persons are appointed to the different posts. In the present case, no advertisement was issued. No requisition was sent to the Employment Exchange. No notice of any kind was given. Applications were obtained and appointments made. Such a process of making appointments was wholly illegal and violative of the basic principles of fairness.

(7) Still further, it deserves mention that the petitioners had been appointed on probation. It had been observed in the order that "you will be on probation for a period of one year.....". It was further provided that the Management "has every right to terminate your service during or at the end of the probation period". Having been appointed in April/June 1998, the petitioners had not completed the period of probation in November, 1998 when their services were terminated.

(8) In view of the above, it is clear that sanctioned posts did not, in fact, exist at the time when the petitioners were appointed. No process of selection was followed when the appointments were made. The appointments being illegal were rightly terminated,—*vide* order dated 21st November, 1998. Mr. Patwalia, however, contends that the petitioners had a right to be heard. He relies on the decision in Civil Writ Petition No. 13697 of 1996 decided by a Single Bench of this Court on 8th April, 1997. In this case the factual position was totally different. The appointments had been made after following the prescribed procedure. The selected candidates were working on the higher posts. Their services were terminated in pursuance of an enquiry conducted by the Government. The petitioners had not been associated with that enquiry. In that situation it was observed that the petitioners had a right to be heard. However, nothing of that sort has happened in this case. The petitioners have not been appointed after following the prescribed procedure. No sanction for their appointment had been sought. The orders of termination have been passed as sanctioned posts are not available. If the authority had kept quiet and allowed the period of probation to elapse the petitioners may have claimed that they are deemed to be confirmed. The authorities have passed innocuous orders

of termination. In this situation, the petitioners were not required to be given a hearing and the action of the authorities in proceeding to pass the orders without any notice cannot be said to be either arbitrary or illegal.

(9) Mr. Patwalia has contended that the action suffers from the vice of discrimination inasmuch as various persons who had been similarly appointed since the year 1980 are still continuing while the petitioners had been chosen to face termination. This contention cannot be sustained. Firstly, two wrongs never make a right. If the bank has allowed certain people who were wrongly appointed to continue in service, it cannot be said that the wrong should be repeated. Secondly, the persons who are allegedly continuing in service illegally are not parties in this petition. No order to their prejudice can be passed in their absence. Thirdly, the plea of discrimination cannot be sustained in view of the Rule enunciated by their Lordships of the Supreme Court in *M/s. Faridabad Ct. Scan Centre v. D. G. Health Services & others* (1). Consequently, the contention that the action suffers from the vice of discrimination is rejected.

(10) It was also contended that the posts are available. Admittedly, the sanction for the posts has been accorded by the Registrar on 3rd December, 1998. It has been stated before us by the learned counsel for the respondents that the posts which are now available shall be filled up by following the prescribed procedure. We have no doubt that the petitioners as also various other eligible persons shall have the chance to compete. Those, who are found suitable shall be selected and appointed. However, the availability of posts at this stage cannot confer a right on the petitioners to continue in the service. The sanction of the posts,—*vide* order dated 3rd December, 1998 cannot operate retrospectively to vitiate the orders of termination which were validly passed on 21st November, 1998.

(11) Lastly, it was contended that the Board had decided to follow the Punjab pattern and passed a resolution for the creation of posts. On this basis it was submitted that the Board having resolved to create posts, the petitioners should be deemed to have been appointed against the posts validly created. The contention is misconceived. The provisions of Rule 3 are clear. The proposal of the Board required the approval of

the Registrar. In 1998 when the petitioners were appointed there was no approval of Registrar for the creation of any additional posts.

(12) No other point has been raised.

(13) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed.

J.S.T.