

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MANGAL SINGH,—Petitioner.

versus

THE STATE OF PUNJAB, ETC.,—Respondents.

Civil Writ No. 3793 of 1970.

December 10, 1971.

Punjab Reorganisation Act (XXXI of 1966)—Section 80(3), first proviso—Employee of Beas Project proceeding on leave before the date of constitution of Beas Construction Board—Whether “engaged in the construction of any work relating to Beas Project”—Such employee—Whether to report for duty to the Board after the expiry of the leave.

Held, that an employee of Beas Project who goes on long earned leave before the date of the Constitution of Beas Construction Board is a person “engaged in the construction of any work relating to the Beas Project” immediately before the constitution of the Board within the meaning of first proviso to sub-section (3) of section 80 of Punjab Re-organisation Act, 1966. He continues to be the employee of the Board on or after the date of its constitution. He has to report for duty after the expiry of his leave to the Board which has to issue posting orders. He can be returned by the Board to the Punjab State only after consulting that Government and obtaining the previous approval of the Central Government.

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued commanding the respondents Nos. 1 and 2 to issue the necessary posting orders of the petitioner as Executive Engineer and directing the respondents to pay to the petitioner his entire salary and the allowance, etc., for the period commencing from the date of his report of return of duty on 9th February, 1968, on return from leave till the posting order is given and further directing the respondents Nos. 1 and 2 to sanction the extension of leave applied for, i.e., from 17th June, 1967 to 9th February, 1968, as admissible under rules pending with them, expeditiously to enable the petitioner to claim his leave salary for the period.

M. R. Agnihotri and Suresh Aggarwal, Advocates, for the petitioner.

Surjit Kaur Taunque, Advocate, for Respondents 1 & 2.

P. C. Khungar, Advocate, for Respondent No. 3.

JUDGMENT

TULI, J.—(1) The petitioner was working as Executive Engineer, Beas Project, on November 1, 1966—the appointed day on which the reorganisation of the erstwhile State of Punjab took place. He belonged to Punjab Service of Engineers Class I and was an employee of the composite State of Punjab as it existed prior to November 1, 1966. From that date, he was provisionally allocated to the State of Punjab,—*vide* Secretary to Government, Punjab's letter No. 13767/E/SPL, dated October 30, 1966. He was finally allocated to the State of Punjab with effect from November 1, 1966,—*vide* Chief Engineer, Irrigation Works, Punjab's letter No. 11157-12157/E, dated September 4, 1968. Copies of these letters are Annexures 'A' and 'B' to the writ petition.

(2) On February 16, 1967, the petitioner applied for earned leave from April 2, 1967, to April 30, 1967, for domestic reasons. That leave was sanctioned by the Chief Engineer (Drainage), Irrigation Works, Punjab Government, by an order, dated April 15, 1967. In this order it was certified that "after expiry of leave the officer is likely to return to the post and station carrying the same rate of pay and allowance." The petitioner was, however, relieved with effect from the afternoon of June 16, 1967, when he handed over charge to Shri Rattan Singh, Executive Engineer, who was to hold that charge in addition to his own duty. The earned leave sanctioned for the petitioner was of 27 days and on July 13, 1967, he submitted a revised application on the prescribed form for 90 days' earned leave with effect from June 17, 1967, to September 14, 1967. This application was addressed to the Chief Engineer (Drainage), Irrigation Works, Chandigarh, but was sent through the proper channel, that is, the Chief Engineer, Beas Sutlej Link Administration. This application was not forwarded to the Chief Engineer (Drainage), Irrigation Works, but was dealt with in the Beas Sutlej Link Circle No. 1, wherein the petitioner had been working before proceeding on leave. He was informed by a telegram sent by the Superintending Engineer of that Circle on August 11, 1967, that extension of leave beyond 16th August, 1967, was refused and the petitioner was directed to join at once otherwise he was to be treated absent without leave. Copy of that telegram was endorsed to the Chief Engineer (Drainage) Irrigation Works, Punjab, with a request not to entertain any leave application from the petitioner. The petitioner, however, did not report for duty on or after August 16, 1967. Instead on September 14, 1967, he sent another application

Mangal Singh v. The State of Punjab, etc. (Tuli, J.)

for earned leave of 120 days with effect from June 17, 1967 to October 14, 1967, with permission to stuffix October 15, 1967, being Sunday. This application was addressed to the Chief Engineer, Irrigation Works, Chandigarh, but was sent through proper channel. Another application for leave was submitted by the petitioner on October 15, 1967, to the Chief Engineer, Irrigation Works, Chandigarh, through proper channel, asking for leave on average pay for 63 days from October 15, 1967 to December 16, 1967. The petitioner was informed by the Chief Engineer, Beas Sutlej Link Project, Sundrenagar, by letter, dated November 21, 1967 that "a Government servant returning from leave is not entitled, in the absence of specific orders to that effect, to resume, as a matter of course, the post which he held before going on leave. As such, you should apply for leave to the Chief Engineer of your State". On November 29, 1967, the previous earned leave application submitted by the petitioner were returned to him with the following remarks:—

"As advised by Chief Engineer, BSL, you should apply to the Chief Engineer, Irrigation Works, Punjab, Chandigarh."

On January 9, 1968, the petitioner sent an application to the Chief Engineer, Punjab, Irrigation Works, Chandigarh, reading as under:—

"In continuation of my previous advance application for earned leave from 17th June, 1967 to 14th October, 1967, i.e., 120 days submitted to your office on 14th September, 1967 and further application, dated 15th October, 1967 for leave on half average pay from 15th October, 1967 to 16th December, 1967 (63 days) I submit herewith my leave application in a consolidated form as per S.E., B.S.L. Admn. and Accounts Circle, Sunder Nagar letter No. 2819/PF, dated 18th November, 1967 (copy enclosed) for leave from 17th June 1967 to 14th October, 1967, i.e., 120 days earned leave and from 15th October, 1967 to 9th February, 1968 (119 days) half pay leave as admissible under rules 8.116 and 8.119 of C.S.R. Volume I, Part I.

Due to non-availability/short supply of building material like cement and bricks etc., I could not complete the whole work during my previous leave. It is, therefore, requested that my leave for 119 days as per form enclosed may kindly be extended."

The letter of the Superintending Engineer, Beas, Sutlej Link Administration and Accounts Circle, to which a reference was made in the application, dated January 9, 1968, reads as under:—

“The leave application for earned leave, etc., should be submitted to the Chief Engineer (D) Irrigation Works, Punjab, direct.”

The Chief Engineer, Irrigation Works, Punjab, did not take any action on that application as, according to him, the petitioner was under the administrative control of the Beas Construction Board which had been constituted with effect from October 1, 1967. In paragraph 4 of the petition it has been stated that the petitioner approached respondents 1 and 2 before the expiry of his leave applied for for obtaining posting orders which was necessary because the leave had been originally sanctioned by the Chief Engineer, Punjab, and the Chief Engineer, Beas Sutlej Link Project had directed him to apply for extension of leave direct to the Chief Engineer, Punjab, Irrigation Works, as the General Manager, Beas Dam, had surrendered the petitioner's services to the Punjab Government by letter No. 30272/BPA/3821/60, dated October 26, 1970. It is further stated that on return from leave the petitioner, being a Gazetted Government servant, was required to seek the posting orders from the Punjab Government which was his appointing authority under rules 8.45, 8.46 and 2.24 of Punjab Civil Services Rules, Volume I, Part I. No specific reply has been given to this paragraph by respondents 1 and 2 in their return but respondent 3 has admitted the same. Respondents 1 and 2 have, however, stated in the return that the Chief Engineer, Punjab (Irrigation Branch) sent a telegram, dated April 25, 1968, to the General Manager, Beas Dam Project, stating, “Shri Mangal Singh, X.E.N. working on Project on 1st November, 1966 is to continue there”. The confirmation of the above telegram was sent by post on the same date to the General Manager, Beas Project with an endorsement in which it was made clear to him that the petitioner was working as Executive Engineer on the Beas Project at the time of the reorganisation of the State of Punjab and, as such, all payments to such officers were the liability of the Project authorities. Copy of this letter was endorsed to the petitioner directing him to report for duty to General Manager, Beas Project, Talwara Township. The petitioner insisted that he was an employee of the Punjab Government and not of the Beas Project and, therefore, posting orders should be issued to him by the Chief Engineer, Irrigation Works, Punjab, within that State.

Mangal Singh v. The State of Punjab, etc. (Tuli, J.)

He did not report for duty to the Beas authorities. The various representations made by the petitioner to respondents 1 and 2 having failed, he filed the present writ petition for the issuance of appropriate writ, direction or order commanding respondents 1 and 2 to issue the necessary posting orders to him as Executive Engineer, to direct the respondents to pay to the petitioner his entire salary and allowance etc., for the period commencing from the date of his report of return to duty on February 9, 1968, after the expiry of his leave till the posting order is given to him and to direct respondents 1 and 2 to sanction the extension of leave applied for, i.e., from June 17, 1967 to February 9, 1968, as admissible to him under the rules expeditiously to enable him to claim his leave salary for the period.

(3) Separate written statements have been filed by respondents 1 and 2 and respondent 3. In a nut-shell the position of respondents 1 and 2 is that the petitioner was working as an Executive Engineer on the Beas Project on November 1, 1966, and although his allocation had been made to the State of Punjab, he continued to be engaged in the construction of that Project ever since that date and that effect from October 1, 1967, he became an employee of the Beas Construction Board and thus he had to report for duty to that Board and obtain the posting orders and his salary for the period of leave and thereafter. He was no more the responsibility of the Punjab Government for being posted in the State of Punjab. The position taken up by respondent 3, on the other hand, is that since the petitioner was not actually working on the Beas Project immediately before October 1, 1967—the date of the constitution of the Board—he did not become an employee of that Board but retained the status of an employee of the Punjab Government to whom he was to report for duty and posting orders after the expiry of his leave. It is thus evident that the stand taken up by the petitioner and respondent No. 3 is similar and it has to be decided whether the stand taken by respondents 1 and 2 is correct or the other stand which has been taken by the petitioner and respondent 3.

(4) In order to decide this matter, it is necessary to refer to section 80 of the Punjab Reorganisation Act, 1966, which reads as under:—

“80(1) Notwithstanding any thing contained in this Act or in any other law, the construction (including the completion of any work already commenced) of the Beas Project shall, on and from the appointed day, be undertaken by the Central

Government on behalf of the successor States and the State of Rajasthan :

Provided that the Governments of the successor States and the State of Rajasthan shall at all times provide the necessary funds to the Central Government for the expenditure on the Project [including the expenses of the Board referred to in sub-section (2)] and such amounts shall be apportioned among the successor States and the State of Rajasthan in such proportion as may be fixed by the Central Government after consultation with the Governments of the said States.

(2) For the discharge of its functions under sub-section (1) the Central Government may—

(a) by notification in the Official Gazette and in consultation with the Governments of the successor States and the State of Rajasthan, constitute a Board to be called the Beas Construction Board with such members as it may deem fit and assign to the Board such functions as it may consider necessary; and

(b) issue such directions to the State Governments of Haryana, Punjab and Rajasthan and the Administrator of the Union Territory of Himachal Pradesh or any other authority, and the State Governments, Administrator or other authority shall comply with such directions.

(3) The notification constituting a Board under clause (a) of sub-section (2) may empower the Board to appoint such staff as may be necessary for the efficient discharge of its functions :

Provided that every person, who immediately before the constitution of the Board was engaged in the construction of any work relating to the Beas Project shall continue to be so employed by the Board in connection with the said works on the same terms and conditions of service as were applicable to him before such constitution until the Central Government by order directs otherwise :

Provided further that the Board may at any time in consultation with the State Government or the Electricity Board

Mangal Singh v. The State of Punjab, etc. (Tuli, J.)

concerned and with the previous approval of the Central Government return any such person for service under that Government or Board.

- (4) Nothing contained in this section shall be construed as enabling the Central Government to reduce or enlarge the scope of the Beas Project as agreed to between the Governments of the State of Rajasthan and the existing State of Punjab except after consultation with the Governments of the State of Haryana, Punjab and Rajasthan.
- (5) Any component of the Beas Project in relation to which the construction has been completed after the appointed day may be transferred by the Central Government to the Board constituted under section 79 whereupon the provisions of that section shall apply as if it were a work included in sub-section (1) of that section.
- (6) That Bhakra Management Board constituted under section 79 shall be renamed as the Bhakra Beas Management Board, when any of the components of the Beas Project has been transferred under sub-section (5), and the Beas Construction Board shall cease to exist when all the components of the Beas Project have been so transferred."

According to this section, with effect from November 1, 1966, the construction of the Beas Project was taken over by the Central Government on behalf of the successor States and the State of Rajasthan which were the beneficiaries. The necessary finances for the expenditure on the Project were to be supplied by those Governments to the Central Government, in the proportion to be fixed by the Central Government after consultation with those Governments. It is thus evident that the petitioner was engaged in the construction of the Beas Project on November 1, 1966, and continued to be employed on that Project till he proceeded on leave. Under sub-section (2) of section 80, the Central Government was authorised to constitute a Board to be called the Beas Construction Board and, on its constitution, the Board was to take over the construction of the Beas Project and every person, who, immediately before the constitution of the Board, was engaged in the construction of any work relating to the Beas Project was to continue to be so employed in connection with the said works on the same terms and conditions of service as were applicable to him before such constitution until the Central

Government by order directed otherwise. The Board was, however, given the right to return any such person for service under the State Government or the Electricity Board, to which he belonged, after consulting that State Government or the Electricity Board and after obtaining the previous approval of the Central Government.

(5) The question for determination is whether on proceeding on leave with effect from June 17, 1967, the petitioner ceased to be a person, who was engaged in the construction of any work relating to the Beas Project. The argument on behalf of the petitioner is that he relinquished the charge of his office as Executive Engineer of the Beas Project when he proceeded on leave and under rule 8.45 of the Punjab Civil Services Rules, Volume I, Part I, he was to report his return to the Government in order to seek his order of posting from it, particularly because under rule 8.46 a Government servant returning from leave is not entitled, in the absence of specific orders to that effect, to resume as a matter of course, the post which he held before going on leave. He has to report on return for duty and await orders from the Government. It is pertinent to note that the Punjab Government did not withdraw the petitioner from the Beas Project when he proceeded on leave and the petitioner continued to be in the employ and on the establishment of the Beas Project authorities. That is why the petitioner submitted his leave applications on July 13, 1967, September 14, 1967 and October 15, 1967 to the Chief Engineer, Irrigation Works, Punjab, through the Beas Project authorities. His application for leave, dated July 13, 1967, was also dealt with by the Beas Project authorities and his leave was sanctioned only up to August 15, 1967. He was further informed that he should report for duty on August 16, 1967, and if he did not do so, he would be considered to be absent from duty without leave. The petitioner paid no heed to this direction contained in the telegram, dated August 11, 1967, and did not report back for duty on August 16, 1967. According to the petitioner himself (paragraph 4 of the writ petition) the Chief Engineer, Beas Project, had surrendered the petitioner's services to the Punjab Government on October 26, 1967, which also leads to the conclusion that till that date the Beas Project authorities considered him to be their employee. It was on November 18, 1967, that he was advised to apply for his leave direct to the Chief Engineer, Irrigation Works, Punjab. His applications for earned leave, which he had submitted through the Beas Project authorities, and which were not forwarded by them to the Chief Engineer, Irrigation Works, Punjab, were returned to him on November 29, 1967. If the Beas Project authorities considered that by proceeding on leave the petitioner had ceased to be their employees,

they should have forwarded the leave applications received from the petitioner to the Chief Engineer, Irrigation Works, Punjab, and should not have dealt with them at their own level. In the order sanctioning the leave, passed by the Chief Engineer, Irrigation Works, Punjab, on October 15, 1967, it was certified that the petitioner, after expiry of leave, was likely to return to the post and station carrying the same rate of pay and allowance. From this certificate, it is clearly understood that he would return to the duty from where he was relieved when he proceeded on leave and it was not necessary for the petitioner to report himself for duty to the Punjab Government and ask for orders of posting from it. It has also to be remembered that on October 26, 1967, when the Beas Project authorities surrendered the petitioner's services to the Punjab Government, it was not competent to do so without consulting the Punjab Government and obtaining the previous approval of the Central Government. It is not the case of the petitioner or respondent 3 that the Punjab Government was consulted or the prior approval of the Central Government had been obtained, before the petitioner's services were surrendered to the Punjab Government on October 26, 1967. I am, therefore, of the view that immediately before October 1, 1967—the date on which the Beas Construction Board was constituted—the petitioner was a person engaged in the construction of a work relating to the Beas Project in spite of the fact that he was on earned leave and, therefore, became an employee of the Beas Construction Board with effect from October 1, 1967, and he could be returned to the State Government only after consultation with that Government and obtaining the prior approval of the Central Government.

(6) The learned counsel for the petitioner and respondent 3 have, however, argued that the words "engaged in", used in the proviso to section 80(3) of the Punjab Reorganisation Act, mean a person actually engaged and working and not a person on leave. Reliance in support of this submission is placed on a judgment of the King's Bench Division in *Benninga (Mitcham) Limited v. Bijstra* (1), wherein it was observed by Machkinnon, L. J., that "the words in schedule I(g) to the Act of 1933 are 'some person engaged in his whole-time employment'. The word 'engaged' is deplorably ambiguous. An employer 'engages' a servant when he makes an agreement with him for his services. A workman is 'engaged' on work when he is actually carrying it out. In fact, 'engage' of a master has an entirely different meaning to 'engage in' of a workman. In the phrase we are concerned with the use is of the workman." The clause under

(1) 1946 K.B. 58.

consideration before the learned Judges wherein the words "engage in" occurred was clause (g) of sub-section (1) of section 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (23 and 24 Geo. 5, c. 32) which read as under :—

"3(1) (a) No order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply or for the ejection of a tenant therefrom shall be made or given unless the Court considers it reasonable to make such an order or give such a judgment, and

* * * *

(g) the dwelling-house is reasonable required by the landlord for occupation as a residence for some person engaged in his whole-time employment.....

* * * *

The words "engaged in" in clause (g) (supra) mean the person actually in employment and not a person, who had been engaged but had not joined the service. It is not the date of contract which determines the relationship between an employer and the employee but the date on which the employee joins service in pursuance of that agreement. On the facts of that case, therefore, the observation of the learned Lord Justice was perfectly correct, if I may say so with respect I have to interpret the words "engaged in" in the context of the proviso to sub-section (3) of section 80 of the Punjab Reorganisation Act and to determine whether during the period of his leave the petitioner had ceased to be the employee of the Beas Project, when he had been working on that Project immediately before proceeding on leave. I am doubtful whether the learned Lord Justice Mackinnon would have held that if an employee proceeds on leave, after joining his duty, he ceases to be an employee by merely proceeding on leave. We may look at it from another angle. Supposing the petitioner had been allowed house accommodation by the Project authorities while he was working there, could he be asked to vacate the accommodation merely because he proceeded on leave? The reply evidently is in the negative. No help, therefore, can be derived by the learned counsel for the petitioner and respondent 3 from the above judgment wherein the observation is made with regard to a workman that he shall be deemed to be engaged on work only when he is actually carrying it out. That observation was made in the context of that case and is not applicable to the facts of the present case.

Dera Baba Ram Gir v. The State of Haryana, etc. (Tuli, J.)

(7) For the reasons given above, I hold that the petitioner was a person "engaged in the construction of any work relating to the Beas Project" immediately before the constitution of the Beas Construction Board, within the meaning of the first proviso to subsection (3) of section 80 of the Punjab Reorganisation Act, 1966, and, therefore, continued to be the employee of the Board on or after October 1, 1967. He had to report for duty thereafter to the said Board who had to issue the posting orders to him. After that, he could be returned by that Board to the Punjab State only after consulting that Government and obtaining the previous approval of the Central Government. He could not be returned to the Punjab State as was done by the Beas Construction Board authorities on October 26, 1967. Respondent 3 is, therefore, directed to pass appropriate orders for the posting of the petitioner in case he reports to it for duty and to pass a proper order with regard to the period with effect from June 17, 1967, to the date he reports for duty in accordance with the rules. The petitioner will also be allowed the necessary relief by way of sanction of leave and payment of emoluments for the said period, etc., by respondent 3 to which he may be entitled under the service rules, and no relief will be refused to him merely because he did not report for duty to respondent 3 on or after October 1, 1967. His case will be dealt with by respondent 3 as if he had become its employee on October 1, 1967. The writ petition as against respondents 1 and 2 is dismissed. The necessary writ shall issue to respondent 3 in the above terms. The writ petition is accordingly allowed against respondent 3 only with no orders as to costs.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

DERA BABA RAM GIR,—Petitioner.

versus

THE STATE OF HARYANA, ETC.,—Respondents.

Civil Writ No. 404 of 1971.

December 13, 1971.

*Punjab Land Revenue (Surcharge) Act (XXXVI of 1954)—Section 2—
Punjab Land Revenue (Special Charges) Act (VI of 1958)—Section 3—
Payment of surcharge and special charges under—Muafidar—Whether liable
to make such payment.*