

[2009] 10 S.C.R. 1119

STATE OF PUNJAB & ORS.

A

v.

DR. SANJAY KUMAR BANSAL

(Civil Appeal No. 4532 of 2009)

JULY 16, 2009

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[S.H. KAPADIA AND AFTAB ALAM, JJ.]

SERVICE LAW:

Special Leave – High Court, on the ground of alleged discrimination, directed the Department to grant special leave of five years for self-employment– Held: Special leave is not a matter of right vested in the employee – It depends on administrative exigencies – Even in the case of discrimination, it is for the department to take into account contingencies which may arise in the course of administration – Order of High Court set aside – Constitution of India, 1950 – Articles 14 and 16.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4532 of 2009.

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From the Judgment & Order dated 06.08.2008 of the High Court of Punjab & Haryana at Chandigarh in CWP No. 13630 of 2007.

H.M. Singh, Jasmeet Kaur, Praveen Kumar and Kuldip Singh for the Appellants.

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A. Venayagam Balan for the Respondent.

The Order of the Court was delivered by

O R D E R

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KAPADIA, J. 1. Leave granted.

2. The short question which arises for determination in this case is whether the High Court was right in directing the Administration to grant special leave of five years for self

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A employment to the respondent on the ground of alleged discrimination in grant of such special leave to others and not to the respondent.

B 3. Special leave is not a matter of right vested in the employee. It depends on the administrative exigencies. In the present case the respondent is working as a Medical Officer. He had applied for special leave for three years under the Scheme which is Annexure P-3 collectively in the Special Leave Petition Paper Book. We have gone through Annexure P-3. It merely categorizes employees who are entitled to apply for special leave and those who cannot apply for special leave. C Such policy does not confer any right on the applicant to obtain special leave. On facts, the question of striking down the Order of Administration does not arise for the simple reason that in the counter the Administration has stated that shortage of D doctors is one of reasons for not granting special leave. In our view these are matters which fall in the category of "administrative exigencies" and this Court cannot sit in Appeal thereon. In the circumstances, the High Court had erred in coming to the conclusion that the Management had erred in E refusing the application for want of reasons.

F 4. Even on the case of discrimination it is for the Administration/Management to take into account the contingencies which may arise in the course of administration. The services of an employee may be required in a given case on more emergent basis vis-a-vis other employees. In such cases the services rendered by an employee, his seniority, the nature of work which he is required to do, his responsibilities etc. are required to be taken into account while taking decision on such applications. Lastly, it may be stated that in the Original G Writ Petition, factual malafides have not been pleaded by the respondent.

5. In the circumstances, we set aside the impugned judgment of the High Court. The Civil Appeal stands allowed with no order as to costs.

H R.P.

Appeal allowed.