

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.17549 of 1994

Date of decision: October 31, 2013.

Ram Avtar

... **Petitioner**

v.

The Cement Corporation of India Limited

... **Respondent**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Present: Shri Aakash Singla, Advocate, for the petitioner.

Shri H.N. Mehtani, Advocate for the respondent.

Dr. Bharat Bhushan Parsoon, J.

In this petition filed under Article 226 of the Constitution of India, the petitioner craves for issuance of an appropriate writ order or direction in the nature of mandamus directing the respondent – The Cement Corporation of India Limited (hereinafter referred to as, the Corporation) to appoint the petitioner in the Corporation, as also to pay him compensation for the loss incurred by him due to non-employment.

The facts may be noticed briefly. The petitioner was employed in the erstwhile Dalmia Dadri Cement Limited at its Charkhi Dadri Cement factory which was closed down and undertaking was taken over by the Central Govt. and was vested with

the Cement Corporation of India under the Dalmia Dadri Cement Ltd. (Acquisition & Transfer of Undertaking) Act, 1981. It is further averred that in the month of November, 1981, a meeting was convened in which representatives of various trade unions and the management participated, wherein it was resolved that out of 1600 ex-employees of the Dalmia Dadri Cement Unit, 830 would be re-employed/recruited strictly in consonance with their seniority in a phased manner and if any body's seniority has been disturbed, the same shall be set right.

It is averred that name of the petitioner figured at Sr. No.86 of the panel prepared by the Corporation. As per decision taken in the Standing Committee meeting held on 30.3.1985 regarding recruitment of ex-employees, the total manpower strength excluding executive in the Corporation was 832 in the factory and quarry. The Government also put an embargo on filling up of posts from outside.

The embargo on filling up of posts from outside sources was lifted in the year 1989 and the Corporation recruited 47 ex-employees to the exclusion of the petitioner. It is averred that thereafter the Corporation envisaged a Rehabilitation Compensation Scheme in the year 1983-84 for the remaining employees of the Dalmia Dadri Cement Unit. The petitioner also opted for the scheme but later on withdrew the same because as per clause 2.03 of the said Scheme, the ex-employees had to forfeit their claim for re-employment.

It is further averred that the Corporation had taken back all the ex-employees except the petitioner and seven others although out of total manpower strength of 862, only 600 workmen are in employment and, thus, there is a scope for employment of the

petitioner. The petitioner claims to have represented to various authorities of the Corporation vide Annexures P-3 to P-8, commencing from 26.12.1989 till 22.10.1994 and ultimately approached this Court by invoking its writ jurisdiction under Article 226 of the Constitution of India in the year 1994.

The petitioner alleges infringement of his fundamental rights enshrined under Articles 14 and 16 of the Constitution of India on the ground that his juniors have been taken in employment to his exclusion denying him employment without any plausible reason.

The respondent-Corporation has entered appearance and filed its written statement. The respondent-Corporation has vehemently contested the claim of the petitioner and has raised two-fold submission. It is contended that the respondent-Corporation had issued a circular dated 18.10.1989 (Annexure R-1) calling upon the ex-employees of the Dalmia Dadri Cement Limited in response whereof many had offered themselves for employment and were consequently taken in employment but the petitioner did not respond to the said circular and as such he could not be offered employment. It is, thus, contended that there is no violation of fundamental rights of the petitioner as enumerated in Articles 14 and 16 of the Constitution of India. The second limb of contention of the respondent-Corporation is that the petitioner is vested with a specific statutory remedy under Section 19(1)(c) of the Industrial Disputes Act, 1947 and, thus, is barred from invoking the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

I have heard learned Counsel for the parties while perusing the paper book.

On the face of circular (Annexure R-1) issued by the

respondent-Corporation, there remains nothing to be adjudicated upon in this case. It was incumbent upon the petitioner to be vigilant to his rights. No case of violation of fundamental right of 'equality' of the petitioner is made out, inasmuch, as the other similarly situated persons had responded to the aforesaid circular and got consequential employment whereas the petitioner kept on sleeping. He put in his attempts for employment only after the period stipulated for furnishing applications was over. The Corporation is not required to wait for the response from the petitioner indefinitely. It is well known proposition of law that the Courts do not come to the rescue of those who are not vigilant of their rights.

Apart from the above, it is further held that the petitioner was not competent to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India when an alternative statutory remedy under the Industrial Disputes Act was available to him.

For the foregoing discussion, the writ petition, being bereft of merit, is consequently dismissed.

October 31, 2013.
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[Dr. Bharat Bhushan Parsoon]
Judge