

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.M. No.9110 of 2015 in/and
C.W.P. No.15011-1998
Date of Decision : 29.07.2015**

Ved Singh & others

..... Petitioners

Versus

Haryana Urban Development Authority and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Yash Paal Malik, Advocate
for the applicant-petitioners.

Mr. Padamkant Dwivedi, Advocate
for the respondents.

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

AJAY TEWARI, J. (Oral)
C.M. No.9110 of 2015

For the reasons recorded, the application is allowed.

Documents (Annexures P-20 to P-23-A) are taken on record.

C.W.P. No.15011-1998

By this petition the petitioners have challenged the action of the respondents in regularizing their services against the Class-IV post of Water Pump Operator (Helper) instead of against Class-III post as Water Pump Operator Gr-II.

The admitted facts are that the petitioners were appointed between the year 1986 to 1989 on daily wage basis. It is averred that when their turn came for being considered for regularization their services were regularised as Water Pump Operator (Helper) while many persons junior to them were also given the benefit of regularization as Water Pump Operator Gr-II. In the reply it has been stated that the petitioners did not fulfill the qualifications of Water Pump Operator Gr-II which have been prescribed as Matric+ITI Diploma. It has further been pleaded that as per the instructions Annexure R-I (under which the petitioners are seeking regularization) it was specified that if on the date of consideration of the claim of an employee the regular Class-III posts are not available then they should be got created from the Finance Department or the employee should be regularized in Group 'D' scale as a matter of compassion. Reliance has been placed on a Division Bench judgment titled as "**Sanjay Kumar Vs. Haryana Urban Development Authority & others**" 2000(3) RSJ 74, wherein it was held as under :-

"9. An analysis of the notification dated 11.5.1994 and the circular letter dated 7.3.1996 shows that the services of an employee could be regularised on Class-III posts subject to his fulfilling the following conditions :

- (i) he must be qualified for appointment on that posts;*
- (ii) he must have been originally appointed on that post;*
- and*
- (iii) vacant post is available.*

The rationale behind the imposition of the condition that the employee concerned must have been originally appointed on

Class-III post appears to be that benefit of the policy of regularisation should now be allowed to work-charged/casual/daily rated employee on a post higher than the one on which he was initially appointed/engaged. While imposing this condition, the government must have taken into consideration the fact that a substantial number of employees engaged on Class-IV posts on muster rolls were assigned duties on superior posts due to extraneous reasons and, at times, senior employees were not assigned such duties. The government must have also been aware of the fact that the action of the departmental authorities to assign duties of higher post to an employee appointed/engaged on a lower post was highly irregular. The government must have also been aware of the fact that although as per the existing procedure the competent authorities were required to send requisition to the employment exchange for making appointment on Class-III posts, in a large number of cases such appointments were made without sending any requisition.

10. In view of the above, we hold that as per the policies framed by the State Government, the services of a person originally appointed/engaged on/against a Class-IV post cannot be regularised on a Class-III post simply because he may have been assigned the duties of Class-III post or he may have worked against a Class-III post for a particular length of time.

11. We shall now examine the petitioner's claim to be regularised on a Class-III posts. Admittedly, the petitioner had been engaged on 23.9.1992 as Mali-cum-Chowkidar on temporary muster roll. Therefore, the regularisation of his services on a Class-IV post is quite consistent with the policy instructions issued by the State Government which were

made applicable to the HUDA services vide memo dated 15.4.1997 and the mere fact that he had been asked to discharge the duties of Clerk cannot ensure to the petitioner's benefit because by issuing a direction under Article 226 of the Constitution of India, the Court cannot amend or modify the conditions of legibility prescribed by the State Government for regularisation of the services of ad hoc, work-charged, casual and daily rated employees."

Accordingly, it is argued by learned counsel for the respondents that the petitioners are not entitled to be regularized against the post of Water Pump Operator Gr.II.

On the contrary, the learned counsel for the petitioners has argued that the qualification of Matric+ITI Diploma was prescribed for the first time in the year 2009 and that the judgment of Sanjay Kumar's case (supra) could not be applicable to the present case because persons who were appointed after the petitioners and who had similar qualifications were regularized against the Class-III post of Water Pump Operator Gr.II.

Learned counsel for the respondents has fairly accepted that some persons who had similar qualifications as the petitioners were given the benefit of regularization to Class-III post but has stated that was because of orders passed by different Courts.

In my opinion, this argument would not suffice. If the respondents have accepted judgments which as per them did not lay down the correct law and regularized persons junior to the petitioners,

they can not now turn around and deny the benefit of that fact to the petitioners. A perusal of para 11 of Sanjay Kumar's case (Supra) also reveals that in that case the petitioner was appointed against the Class-IV post, whereas in the present case the petitioners were appointed against Class-III post of Water Pump Operator.

Learned counsel for the respondents at this stage has again argued that in the written statement it has been denied that the petitioners were appointed against Class-III post but I find that denial to be evasive. It was averred in the written statement that the petitioners were not appointed as Water Pump Operator but were appointed to a particular Class-IV post. In that case, it may have been held to be a specific denial but a bald denial is no denial.

Learned counsel for the respondents has also had to accept the fact that in the years 1987-1989 when the petitioners were appointed there were no laid down qualifications for the posts of Water Pump Operator.

In these circumstances, it has to be held that when the petitioners were appointed on daily wage basis against the post of Water Pump Operator, they could not be held unqualified for the same and once the respondents have regularized the services of persons juniors to the petitioners against class-III posts they can not deny the same benefit to the petitioners on the ground that there were no vacant posts of class-III available at the relevant time.

No other argument has been raised by the learned counsel for the petitioners.

Petition is allowed. Respondents are directed to regularise the services of the petitioners against class-III posts. Let necessary exercise be done within three months from the date of receipt of a certified copy of this order and the monetary benefits which may accrue to the petitioners be released to them within a further period of 2 months. It is made clear that if any due benefit is not granted to the petitioners within the aforesaid period, they would be entitled to claim the same with interest at the rate of 8% p.a. from the date/s the amount/s fell due till the date/s of payment/s.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

July 29, 2015

Pooja Sharma-I

**(AJAY TEWARI)
JUDGE**