

CM No.6534 of 2015 in/and
CWP No.19586 of 1998

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM No.6534 of 2015 in/and
CWP No.19586 of 1998
Date of decision: 12.08.2015

Balwant Singh and another

----Applicants/petitioners

Versus

Haryana Urban Development Authority and others

----Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. A.S. Tewatia, Advocate
for the applicants-petitioners.

Mr. Ajay Nara, Advocate
for HUDA.

HARINDER SINGH SIDHU, J.

CM No.6534 of 2015

This application has been filed seeking disposal of the main case in terms of order dated 20.11.2000 passed in CWP No.920 of 2000 titled as '**Jaibir Singh and others Vs. Haryana Development Authority and others**'.

Notice of the application was issued on 29.07.2015.

Mr. Ajay Nara, Advocate has put in appearance on behalf of the respondents and did not raise any objection to the prayer made.

Accordingly, Civil Misc. Application is allowed and the writ petition is being taken up for disposal today.

Main Case.

This petition has been filed praying for direction to the respondents to regularize the services of the petitioners as Auto Mechanic Grade-I/Grade-II instead of as Mechanical Helper w.e.f. 31.03.1993 in terms of the Government policies dated 27.05.1993 (Annexure P-2) and 11.05.1994 (Annexure P-3).

At the outset, learned counsel for the petitioners states that he is not pressing this writ petition qua petitioner No.1, who has been granted the relief prayed for.

Petitioner No.2 was appointed as Chowkidar/Operator on daily wage basis w.e.f. 09.10.1987. He was later appointed as Auto Mechanic Grade-II w.e.f. 01.07.1990 on daily wage basis. He holds a National Trade Certificate in Welder Trade. His services were regularized vide order dated 29.12.1994 on the post of Mechanical Helper. Though at the time of regularization, he was working as Auto Mechanic Grade-II, which is group-C post, he has been regularized on the post of Auto Mechanical Helper, which is a group-D post. The grievance of the petitioner No.2 is that in terms of the regularization policies (Annexure P-2 and P-3), he ought to have been regularized on the same post on which he was working at the time of regularization. He draws attention to the policies dated 27.05.1993 (Annexure P-2) and 11.05.1994 (Annexure P-3). The relevant part whereof are extracted hereunder:

Policy dated 27.05.1993 (Annexure P-2)

*“While attracting your kind attending
towards the above subject, I am directed to say that*

the matter pertaining to the regularization of workcharge/Casual/Daily-wage employee was under consideration of the Government. After careful examination of the matter it has been decided that the services of these employees may be made regular in the following manner:

Workcharged Employees

The services of the workcharged employees having continuous service of 5 years or more as on 31.03.1993 and those who were in service as on 31.3.1993 may be made regular. On regularization of their services these employees will be liable to be posted/transferred in any Project/work in the State of Haryana.

Casual/Daily-wage employees:

The services of those casual daily-wage employees who had completed 5 years service as on 31.3.1993 and who were in service on that day, may be regularized. On regularization of their services such employees will be entitled to get the pay scales, allowances and other benefits of Govt. employees of Group-D or which benefits are being allowed to the employees of identical pay scales.”

Policy dated 115.1994 (Annexure P-3)

“In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with the proviso to clause 6 of Haryana Government, General Administration Department (General Services), Notification No.523-3GS-70/2068, dated the 28th January, 1970 and all other powers enabling him in this behalf and in supersession of Haryana Govt., General Administration (General Services-I) Notification No.GSR/31/Const/Art/309/93, dated the 1st June,

1993, the Governor of Haryana hereby specifies such class III posts as have been held for a minimum period of two or five years on the 31st March, 1993, by class III employees on adhoc or daily wages basis to be taken out of the purview of the Subordinate Services Selection Board, Haryana and their services shall be regularized if they fulfill the following conditions, namely:-

(1) Ad hoc employees.(i) that only such adhoc employees as have completed a minimum of two years' service on 31st March, 1993, should be made regular. However, break in service rendered on adhoc basis upto a period of one month may be condoned excluding breaks occurring because of the concerned employee having left service of his own volition or where the adhoc appointment was against a post or vacancy for which no regular recruitment was required or intended to be made i.e. leave arrangements of filling up of other short time vacancies, may not condoned;

(ii) that the employees have completed two years service on the 31st March, 1993, and were in in service on the 31st March, 1993;

(iii) that the employees shall be regularized against the posts or vacancies of relevant categories. The employees of general category may be regularized in excess of their quota with the clear stipulation that in future recruitment, only the candidates from reserve categories will be appointed until the back log arising out of utilization of reserve category vacancies by general category adhoc employees is cleared.

xxx

xxx

xxx”

Learned counsel states that the aforesaid policies do not envisage a situation where a person working on Group-C post is to be regularized on a lower post.

In response to the legal notice submitted by petitioner No.2, claiming the aforesaid relief, he received a reply dated 22.01.1998, which furnishes no reason or explanation as to why, he was not regularized on the post against which he was working. In paragraphs iii, iv and v of the said reply, it has been stated as under:

"i) to ii) xx xx xx

iii) That Shri Balwan Singh was appointed as Chowkidar on daily wage basis w.e.f. 9.10.87. He was further appointed as Auto Mechanic Grade-II w.e.f. 1.7.90 on daily wage basis. He was given daily rate as per post and revised rates by the Govt. time to time. His services have been regularized w.e.f. 3.8.93 by Chief Engineer, HUDA, Panchakula in the scale of Rs.750-940.

iv) That the contents of this para is wrong and denied because the regularization of services are in accordance with the Govt./HUDA instruction No.614/90S GSI dated 27.3.97 as the initial appointments of the officials are group 'D' cadre and were regularized in group 'D' cadre as per Govt. policy in the pay scale of Rs.750-940 later on Shri Balwant Singh was promoted as Auto Mechanic Grade-II in the pay scale of 950-1400 on seniority basis against vacancy.

v) That Shri Balwan Singh was joined as Chowkidar w.e.f. 9.10.87, which is a Group 'D' Cadre post and services of Shri Balwan Singh was regularized in group 'D' cadre as per Govt. Policy

No.6/4/90/4GSI dt. 27.5.97.”

vi) xx xx xx”

Learned counsel for the petitioner No.2 also relies on the decision in Jaibir Singh's case (supra). In this case, the petitioners who were working as Water Pump Operators, which is class III post were regularized against the post of Water Pump Operator (Helpers), which is a class-IV post. They challenged this action. Their writ petition was allowed by observing as under:

“In our opinion, the matter is squarely covered by a Division Bench judgment of this Court dated 25.9.1996 passed in CWP No.811 of 1996. Since the petitioners had been discharging the duties of water pump operators for a number of years prior to when their cases came up for regularization, there appears to be absolutely no justification in regularizing them against a lower post and giving them lower pay scale. Water pump operator (helper) carries a lower pay scale while water pump operator carries a higher pay scale. All the petitioners had been working as water pump operators on daily wages prior to 7.3.1996 when the Government issued instructions for regularizing work charged/ casual/ daily rated employees, petitioners should have been regularized on the posts on which they had been working on daily wages. Persons similarly situated deserves the same treatment. On this principle also, we hold that the petitioners should have been regularized on the posts of water pump operators in the pay scale of Rs.950-1400 w.e.f. from the date they were regularized i.e. 19.3.1997.

We, therefore, allow this writ petition and direct the respondents to regularize the petitioners as Water Pump Operators and put them in the pay scale of Rs.950-1400 w.e.f. the date they were regularized i.e. 19.3.1997. We direct the respondents to pay them arrears of pay and allowances in the higher scale within four months of the receipt of copy of this order. In case the amount of arrears is not disbursed to the petitioners within the stipulated period, they shall be paid interest at the rate of 18% per annum from the date of expiry of that period till the date of actual payment.”

The case of the petitioner No.2 is squarely covered by the aforesaid decision.

Accordingly, this writ petition is allowed. The respondents are directed to regularize the petitioner No.2 as Auto Mechanic Grade-II and place him in the pay scale of that post with effect from the date of his regularization i.e. 31.03.1993. The respondents are also directed to pay him arrears of pay and allowances in the higher scale within three months from the date of receipt of a certified copy of this order.

**(HARINDER SINGH SIDHU)
JUDGE**

**12.08.2015
Atul**