

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

C.W.P. No.4196 of 2014

Date of Decision : 10.03.2015

Harish Chand and others

..... Petitioners

Versus

Additional Director CGHS and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Deepak Balyan, Advocate
for the petitioners.

Mr. B.S. Kanwar, Sr. Panel Counsel
for the respondents-UOI.

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)

This petition has been filed for a direction to the respondents to regularize the service of the petitioners.

The brief allegations are that the petitioners were appointed by way of public appointment on merit against sanctioned vacant posts but on contractual basis. It is further averred that the petitioners have continued to serve without a break for the last more than 10 years at least but the claim for their regularization has not been considered. In the written statement,

the facts are not disputed but it has only been urged that the petitioners had never been promised that they would be regularized. The reliance has been placed upon the judgment of the Hon'ble Supreme Court in the matter of *Amarendra Kumar vs. State of Orissa, AIR 2014 (SC) (Civil) 1155, decided on 19.02.2014*, to canvas that employees like the petitioners have no right to be regularized.

Learned counsel for the petitioners has argued that the reliance placed on Amarendra Kumar's case (supra) by the respondents is misplaced and rather that judgment is in their favour.

In my opinion, the argument raised by the respondents can not succeed. Once it is not disputed that the petitioners were appointed against sanctioned regular posts and were not back door entrants but were appointed after full advertisement and selection process, it is for the respondents to justify why they have taken this expedient recourse to fill regular posts by way of contractual employees. There is also no reason shown why the petitioners were allowed to continue for more than 10 years. In the circumstances, it is hard to resist the conclusion that the exercise of appointing the petitioners on contractual basis is a colourable exercise of power in the facts and circumstances of the case. Moreover, in the case of Amarendra Kumar (supra) the Hon'ble Supreme held as follows:-

“57. Having said that we are of the opinion that even when the challenge to the constitutional validity of the impugned enactment fails, the degree holder Junior Engineers currently working as ad hoc Assistant Engineers are entitled to the relief of regularisation in service, having regard to the fact that they have rendered long years of service as Assistant Engineers on

ad hoc basis for 17 to 18 years in some cases. While it is true that those in service degree holders working as Junior Engineers were not the beneficiaries of the legislation under challenge, the fact remains, that they were eligible for appointment as Assistant Engineers on account of their being degree holders. It is also not in dispute that they were appointed against substantive vacancies in the cadre of Assistant Engineers no matter by utilizing the direct recruit quota. Even in the case of Stipendiary Engineers the vacancies were utilized out of the 67% quota meant for direct recruitment. What is, however, significant is that the utilization of the quota reserved for direct recruitment for appointing Stipendiary and Junior Engineers as Assistant Engineers has not been assailed either before the High Court or before us. On the contrary the contention urged on behalf of Junior Engineers degree holders who are still working as Junior Engineers was that the remainder of vacancies comprising 5% of the cadre strength should be utilised to appoint the eligible degree holder Junior Engineers. We shall presently deal with that contention. Suffice it to say for the present that the appointments granted to degree holder Junior Engineers as Assistant Engineers on ad hoc basis were pursuant to a Government decision whereunder such degree holders as were already in-service as Junior Engineers, were also given an opening for upward movement. Appointment of such degree holders was not grudged by their diploma holder colleagues as no challenge was mounted by them to such appointments ostensibly because degree holder Junior Engineers were getting appointed without in the least affecting the quota of 33% reserved for the promotees. In a way the upward movement of the degree holders as Assistant Engineers brightened the chances of the rest to get promoted at their turn

in the promotees quota. All told, the Junior Engineers have served for almost a lifetime and held substantive vacancies no matter on ad hoc basis. To revert them at this distant point of time would work hardship to them. Besides, we cannot ignore the march of events especially the fact that Stipendaries appointed at a later point of time with the same qualifications and pursuant to the very same Government policy as took shape for both the categories, have been regularised by the Government through the medium of a legislation. That this Court can suitably mould the relief, was not in serious controversy before us. In the circumstances, we hold the degree holder Junior Engineers currently working as Assistant Engineers on ad hoc basis writ petitioners in the High Court entitled to the relief of regularisation with effect from the same date as the Validation Act granted such regularisation to the Stipendiary Engineers.

68. [In Narender Chadha & Ors. v. Union of India & Ors.](#) (1986) 2 SCC 157, this Court was dealing with a somewhat similar fact situation. The petitioners in that case were not promoted by following the actual procedure prescribed by the relevant Service Rules even though the appointments were made in the name of the President by the competent authority. They had based on such appointments, continuously held the post to which they were appointed and received salary and allowances payable to incumbent of such post. The incumbents were entered in the direct line of their promotion. The question, however, was whether it would be just and proper to hold that such promotees had no right to the post held by them for 15-20 years and could be reverted unceremoniously or treated as persons not belonging to the service at all. Repelling the argument that such service would not count for the purposes of seniority, this Court observed:

“ It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in Grade IV. The above contention is therefore without substance. But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reversed from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. In the instant case the Government has also not expressed its unwillingness to continue them in the said posts. The other contesting respondents have also not urged that the petitioners should be sent out of the said posts. The only question agitated before us relates to the seniority as between the petitioners and the direct recruits and such a question can arise only where there is no dispute regarding the entry of the officers concerned into the same Grade. In the instant case there is no impediment even under the Rules to treat these petitioners and others who are similarly situated as persons duly appointed to the posts in Grade IV because of the enabling provision contained in the Rule 16 thereof. Rule 16 as it stood at the relevant time read as follows :

16. The Government may relax the provisions of these rules to such extent as may be necessary to ensure satisfactory working or remove inequitable results.” (emphasis supplied)”

69. The ratio of the decision in the above case was not faulted by the Constitution Bench of this Court in Direct Recruit's case (supra). As a matter of fact the Court approved the said decision holding that there was force in the view taken by this Court in that case. This Court observed:

“In Narender Chadha v. Union of India the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts

without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.”

70. In the light of what we have said above, we do not see any illegality or constitutional infirmity in the provisions of Section 3(2) or 3(3) of the impugned legislation.

71. Having said so, there is no reason why a similar direction regarding the writ-petitioners degree holder Junior Engineers who have been held by us to be entitled to regularisation on account of their length of service should also not be given a similar benefit. We must mention to the credit of Dr. Dhawan, appearing for the Stipendiary Engineers who have been regularised under the provisions of the Legislation that such Stipendiary- ad hoc Assistant Engineers cannot, according to the learned counsel, have any objection to the degree holder Junior Engineers currently working as Assistant Engineers on ad hoc basis being regularised in service or being given seniority from the date they were first appointed. It was also conceded that Stipendiary Engineers all of whom were appointed after the appointment of the Junior Engineers would enbloc rank junior to such ad hoc Assistant Engineers from out of degree holder Junior Engineers. But all such regularised Assistant Engineers from Stipendiary Stream and from Junior Engineers category would together rank below the promotee Assistant Engineers.”

In the circumstances, the writ petition is allowed and the respondents are directed to consider the case of the petitioners for

regularization in accordance with law. Let the necessary exercise of considering their case be done within a period of 4 months from the date of receipt of a certified copy of this order.

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

March 10, 2015

ashish

**(AJAY TEWARI)
JUDGE**