

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**CWP No. 568 of 2015(O&M)
Date of decision March 19th , 2015**

Khubi Khan

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE A MIT RAWAL

Present:- Mr. S. K. Nehra, Advocate
for the petitioner.

Mr. Ravi Partap Singh, AAG., Haryana.

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?

AMIT RAWAL, J .

The petitioner has approached this Court seeking regularization on the premise that he was working as an Electrician on contractual basis in the office of the respondent-State since 16.9.2004 and his services were extended from time to time. He is stated to have passed 10+2 examination and also done a certificate course of an Electrician and in that regard attached a certificate alleged to have issued by the Principal Medical Officer B. K. Hospital, Faridabad showing that his work and conduct had been found satisfactory during all the period. It has further been submitted that his case for regularization had been recommended by a Civil Surgeon, Faridabad to Director General, Health Services, Haryana-

respondent No.2. He has based his claim to seek regularization on the basis of notification dated 8.6.2014 (Annexure P-4) promulgated by Haryana Government Chief Administrative Department and on the basis of condition No. (i) of the notification *ibid* as he is stated to have worked for more than 3 years as on 28.5.2014 and being still in service. The letter Annexure P-5 dated 14.8.2014 has been attached, to contend that the Civil Surgeon had also send a reminder seeking regularization of the services of the petitioner on the post of an Electrician.

The respondents in written statement came out with a plea that while considering the case of the petitioner for regularization it was found that the petitioner did not have essential qualification for the post of Electrician. For the sake of brevity the requisite qualification is extracted hereunder:-

S.No.	Name of Post	Qualification
9.	General Electrician	(i) <i>Matric.</i> (ii) <i>Polytechnic/ITI trained in electrical trade;</i> (iii) <i>Should hold license as wiremen; and</i> (iv) <i>Should possess 3 years experience in re-winding of electrical motors.</i>

It has further been stated that the petitioner has passed Matriculation and submitted a certificate dated 19.6.1993 issued by Board of Haryana Secondary Education, Delhi and the

Haryana Board of Secondary Education is not a recognized Board. It has further been stated that the petitioner is stated to have passed his Matriculation from Hindi Sahitya Sammellan, Prayag, Allahabad and submitted a certificate dated 31.12.1993 issued by the aforementioned Authority (Annexure R-5) and the said Hindi Sahitya Sammellan, Prayag has been held to be not a recognized Board much less could not be considered for admission at the National Institute of Open Schooling and since the petitioner did not possess the prescribed qualification of Polytechnic and ITI, as well as of Wireman, the case of the petitioner did not fall in any of the conditions of regularization policy dated 18.6.2014. It was further stated that the petitioner was not appointed/engaged against the sanctioned vacant post.

During the course of the hearing, this Court had an occasion to consider a very vital fact that under what circumstances the Government could come out with a notification dated 18.6.2014 particularly when the Hon'ble Supreme Court has already issued a direction contained in paragraph 44 of the judgment in **Secretary State of Karnataka and others Vs. Uma Devi and others (2006) 4 SCC 1** and as well as the fact that already a Division Bench of this Court in **Madhu Bala Sharma and others Vs. State of Haryana and others in LPA No.117 of 2005 decided on 20.11.2008,** has held that the degree/diploma certificates awarded by Hindi Sahitya Sammellan, Allahabad and/or Hindi Sahitya Sammellan, Prayag to be fraudulent and bogus, much less not issued from a recognized University.

Faced with this situation the replication to the specific averments, made in the written statement filed on behalf of the State, had been filed wherein the petitioner has relied upon judgment dated 25.1.2006 rendered by this Court in **Dewan Singh, Sanitary Supervisor Vs. U.T.Chandigarh 2006 (3) SCT 644** to contend that the Government of India, Ministry of Education and Youth Services had issued a circular dated 18.2.1970 which has been addressed to all the Education Secretaries of all State Governments/Union Territories wherein it has been mentioned that Prathma Examination of Hindi Sahitya Sammellan, Allahabad has been recognized as being equivalent to the Matriculation examination and thus this Court had an occasion to discuss the said circular and held that the State was not justified in not treating the qualification of Prathma Examination equal to Matriculation examination. Even circular dated 18.3.1975 issued by the Secretary to Government of Haryana, Education has been annexed as Annexure P-9, to contend, that all degrees and diplomas which are recognized by Government of India will be deemed to be recognized by Haryana Government.

It has further been averred in the replication that many juniors of the petitioner who have joined the service much after the petitioner have been regularized by the Haryana Government in pursuance to the policy dated 18.6.2014 and copy of the order dated 12.8.2014 of regularization of 27 persons who have joined the services in the year 2008, 2009 and 2010 have been annexed as Annexure P-10.

Mr. S. K. Nehra, learned counsel appearing on

behalf of the petitioner contended that the Division Bench of this Court, in CWP No. 17441 of 2001 decided on 4.3.2008, had an occasion to deal with the similar situation where the action of the authorities of not having taken into consideration the matriculation examination from Hindi Sahitya Sammellan, Allahabad being not recognized by the Haryana Government was taken up and Division Bench of this Court while noticing the fact that the petitioner, therein, have qualified the Matriculation examination during the pendency of the writ petition and by relying upon the judgment of the Hon'ble Supreme Court in Ram Bhagat Sharma and others Vs. State of Haryana and others 1997 (4) RSJ (P&H) 134 quashed the action of the State and allowed the writ petition. The relevant extract of the judgment in Ram Bhagat Sharma's case (supra) is extracted hereunder:-

“With a view to protect the interest of the students community, we direct the Government of Haryana to take steps to prevent future recruitment of persons possessing qualifications awarded by Hindi Sahitya Sammelan, Allahabad, and/or Hindi Sahitya Sammelan, Prayag, Allahabad, and at the same time take appropriate measures to dispense with the services of unqualified teachers. For this purpose, the Government fo Haryana is directed to issue written instructions to all concerned that in future no appointment be given to the persons possessing qualifications by the institutions referred to here-in-above. We also direct the Government of Haryana to take steps for terminating the services of all such teachers who have secured employment

on the basis of degrees/diplomas/certificates issued by Hindi Sahitya Sammelan, Allahabad and/or Hindi Sahitya Sammelan, Prayag, Allahabad. However, those who have completed three years service should be given an opportunity to acquire the requisite qualification within a stipulated time. In case they fail to acquire such qualification, then appropriate order be passed to dispense with the services of such persons.”

From the perusal of the relevant portion, the Hon'ble Supreme Court with a view to protect the interest of the students community directed the Haryana Government to take steps to prevent future recruitment of persons possessing qualifications awarded by Hindi Sahitya Sammelan, Allahabad and/or Hindi Sahitya Sammelan, Prayag, Allahabad and take appropriate measures to dispense with the services of unqualified teachers and also a direction was issued to the Government not to make any appointment in future of the persons possessing such qualifications by aforementioned institutes. However, in order to protect the interest of such persons who have completed three years of service the Hon'ble Supreme Court gave an opportunity to acquire the requisite qualification within a stipulated time and in case they acquire the qualification then appropriate direction was issued not to dispense with services of such persons.

Mr. S. K. Nehra, learned counsel appearing on behalf of the petitioner further contended that since the petitioner undertakes to acquire the qualification within a stipulated period his services may not be dispensed with and allowed to continue on

contractual basis and in this context has relied upon the judgment in **Hargurpratap Singh Vs. State of Punjab 20017 (13) SCC 292.**

Mr. Ravi Partap Singh, AAG., Haryana contends that since the petitioner did not have essential qualification, much less the license of Wireman, he would not be eligible to be retained in service even on contractual basis, what to talk of regularization of service.

Mr. S. K. Nehra, learned counsel appearing on behalf of the petitioner in rebuttal cited two judgments of the Hon'ble Supreme Court in **Gujarat Agricultural Unviersity Vs. Rathod Labhu Bechar 2001 (2) SCT 394 and Bhagwati Prasad Vs. Delhi State Mineral Development Corpn. 1990 AIR SC 371** to contend that if a person has worked for a considerable length of time though at the time of appointment was not having minimum prescribed educational qualification, then confirmation cannot be refused on the ground that such persons lack prescribed qualification as practical experience would always come to the aid of the persons to effectively discharge the duties. In other words, the long experience/continuation of work carry presumption of existence of regular post.

I have heard learned counsel for the parties, appraised the paper book and heard respective arguments and law cited in respect of their contentions and am of the following view.

The policy dated 18.6.2014 (Annexure P-4) has been challenged in this Court vide CWP No. 17206 of 2014 and the next date is 23.4.2015 and it has been stated that pleadings are

complete. Since the policy has been challenged on the ground as having been issued in derogation of the directions contained in paragraph 44 of **Uma Devi's case (supra)** and the petitioner's case seeking regularization at this stage would not be maintainable and therefore is hereby rejected or in other words, cannot be considered. Since the petitioner had been appointed on contractual basis and had been continuously working since long and there is an interim protection given by this Court the petitioner would be entitled to continue to work as an Electrician on contractual basis till the regular incumbents are appointed.

The respondents are, therefore directed not to dispense with the services of the petitioner and he shall continue to draw the pay till regular incumbents are appointed.

The aforementioned direction is given in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Hargurpratap Singh's case (supra)**. The petitioner would be at liberty to achieve the qualification in view of the finding rendered by the Hon'ble Supreme Court in **Ram Bhagat's case (supra)**

Before parting with the aforementioned judgment this Court expresses anguish on the act of the Haryana Government as to how and in what circumstances the Government could regularize the services of similarly situated persons and has issued notification/policy which apparently appears to be in derogation to the directions contained in paragraph 44 of the judgment in **Uma Devi's case (supra)**. Paragraph 44 of the judgment mentioned above is extracted hereunder:-

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S. V. Narayanappa (supra), R. N. Nanjundappa (supra) and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

It is expected that the State Government would

comply with the directions of the Hon'ble Supreme Court in its letter and spirit in order to avoid any vagueness/create unnecessary litigation, discrimination etc.

With the aforementioned observations the writ petition stands disposed of.

It is made clear that the petitioner shall continue to work as an Electrician on contractual basis and his services shall not be dispensed with till regular incumbents are appointed and the case of regularization at this stage is rejected.

No other point or argument had been raised.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

March 19th, 2015
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