

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

**Regular Second Appeal No.5817 of 2015 (O&M)
Date of Decision: November 27, 2015.**

State of Haryana and others

.....APPELLANT(s).

VERSUS

Nihal Dutt and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Subhash Chand, DAG Haryana
for the appellant (s).

SURINDER GUPTA, J.

This Regular Second Appeal has been filed against judgment and decree dated 06.05.2014 passed by Civil Judge (Junior Division), Gurgaon whereby the suit of the plaintiffs was decreed for declaration that they are entitled to regularization w.e.f. 1st April, 1993 on the post of Water Pump Operator Grade-II (for short-WPO-II) except plaintiff No.2, who is entitled to be regularized w.e.f. 31st January, 1996 on that post. The defendants were directed to calculate the financial benefits from the date of regularization and pay the same with interest @ 6% per annum.

2. The first appeal filed by the appellants against the judgment and decree of learned Civil Judge (Junior Division) was dismissed by District Judge, Gurgaon.

3. I have heard learned Deputy Advocate General Haryana and have perused the paper book with his assistance.

4. Admittedly, the plaintiffs were working as daily-wage employees with State of Haryana and under the policy notified on 11th May, 1994 and 31st January, 1996, they were regularized to the post of WPO-II. The claim of the plaintiffs is that they should be regularized to the Class-III post instead of Class-IV post, as has been ordered in the civil suit filed by one Mukesh Kumar (Civil Suit No.387 of 2008) decided by Civil Judge (Junior Division) Rewari. Mukesh Kumar was regularized to Class-III post and similar benefits were also given to other employees namely Ram Kishan and Hira Lal, whose suits were also decreed.

5. Learned Deputy Advocate General, Haryana representing the State has argued that the plaintiffs-respondents could not be regularized as Class-III employees as they did not possess the requisite qualification for post of WPO-II. He has made reference to the departmental notification dated 17th April, 1998, which prescribed the qualification for the post of WPO Grade-II as follows:

- i) Matric,
- ii) ITI certificate in the trade of Motor/Tractor/Diesel/
Mechanical/Electric/Wireman
- iii) Knowledge of Hindi upto Matric standard.

6. The Courts below have taken note of this argument and the first Appellate Court in para no.16 has observed as follows:-

*“So far as prescribed qualification of WPO-II Matric with
ITI Certificate in trade of Motor/Tractor/Diesel/Electrical*

Mech. and literate should be (sic have) minimum experience of 5 years and field test is concerned, it is admitted by DW-1 Ramesh Kumar that in letter Ex.P2 no such qualification has been mentioned for the said post and it appears that in Annexure-A appended to the grounds of appeal the qualification of having ITI Certificate is in alternate to the qualification of literate should be (sic have) minimum experience of five years and field test. This point has been clarified in CWP No.681 of WPO 1998 titled "Naresh Kumar Vs. State of Haryana and others" decided on 08.08.2001 wherein it has been held that in absence of ITI certificate, the requirement is only of being a literate with minimum of five years experience. This second qualification of being literate with five years experience is fulfilled by all the respondents and, therefore, the embargo of requisite qualification of having ITI certificate would not be applicable in the case of respondents who have been admittedly working as daily wagers and having completed five years of service as per Ex.P2."

7. The services of plaintiffs were regularized under the Policy of Government circulated vide notification dated 11th May, 1994 and 31st January, 1996. Learned State counsel has not been able to point out any document on record which prescribes that the qualification for the post of WPO Grade-II at the relevant time was matriculate with ITI certificate. The notification referred by learned State counsel pertains to the year 1998 i.e. subsequent to the date of regularization of plaintiffs, as such, is not applicable to them.

8. On perusal of the paper book and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

9. No substantial question of law requiring determination arises in this appeal, which has no merit.

10. Dismissed.

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11. There is delay of 108 days in filing the appeal. As the appeal has been decided on merits and the matter of condonation of delay is only of academic interest. Keeping the reason, given in application in view, the delay in filing the appeal is condoned and the application is allowed.

November 27, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE