

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

**C.M. No. 126 of 2016 in/and
CWP No. 12583 of 2004
Date of decision:-11.05.2016**

Subhash Chander

...Petitioner

versus

H.U.D.A and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Yesh Paal Malik, Advocate,
for the applicant/petitioner.

Mr. Aman Chaudhary, 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 ?

RITU BAHRI , J.

C.M. No. 126 of 2016

The application seeking early hearing of the main case is allowed and the main case is taken up today itself.

C.W.P No. 12583 of 2004

Petitioner has approached this Court praying for issuance of writ in the nature of certiorari quashing the office order dated 24.11.2003 (P-6) vide which the last line of Annexure P-5 has been modified and also partly impugned office order dated 25.11.2003 (P-7)

whereby the services of the petitioner has been regularized as W.P.O helper instead of W.P.O and further prayer is for issuance of direction to the respondents to regularize the services of the petitioner as W.P.O, in view of the Government instructions dated 07/18.03.1996

Petitioner was engaged on daily wages on 28.11.1988 as Water Pump Operator in HUDA, Divn No. 1, Panchkula, and his name was entered in mustar rolls and was being paid the wages, as per rate fixed by Deputy Commissioner from time time.

Thereafter, State of Haryana had issued instructions dated 07.03.1996 regarding regularisation of the services of its work charges/casual/daily wages employees, who have completed 05 years service on 31.01.1996. The condition of 05 years was further reduced to 03 years.

Petitioner represented the respondent-authorities for regularisation of his services as W.P.O, in view of policies/instructions. Petitioner also sent a demand notice dated 09.08.2001 and thereafter, sent a reminder dated 11.10.2001.

Petitioner filed CWP No. 184 of 2002, which was decided by this Court on 04.01.2002 by giving direction to the respondents to decide the legal notice dated 09.08.2001 and 11.10.2001, within six months. But vide office memo dated 21.08.2002, respondents rejected the claim of the petitioner.

Petitioner again filed C.W.P No. 6457 of 2003 and this Court vide order dated 13.05.2003 quashed order dated 21.08.2002 and respondents were directed to reconsider the matter and pass fresh order (P-4). Thereafter, respondent No. 3 passed office order dated 30.09.2003 (P-5) and the services of the petitioner was regularized as A.P.O/W.P.O as per HUDA policy w.e.f 19.03.1997.

Thereafter, without affording any opportunity to the petitioner, respondent No. 1 modified order dated 30.09.2003 and changed the designation of the petitioner from A.P.O/W.P.O to W.P.O Helper w.e.f 19.03.1997, vide order dated 24.11.2003 (P-6). Thereafter, petitioner was informed vide office memo dated 25.11.2003 (P-7) that he was designated W.P.O Helper on regular basis w.e.f 19.03.1997

At the very outset, learned counsel for the petitioner submits that the case of the petitioner is squarely covered by the judgment of this Court in a case of Ved Singh and others v. HUDA and others, passed in CWP No. 15011 of 1998 wherein petitioners were seeking directions to the respondents to regularise their services as Water Pump Operators Grade II instead of Water Pump Operator (Helper) or Water Pump Attendant. This Court allowed the writ petition and directed the respondents to regularise the services of the petitioners against Class III post and further monetary benefits which may accrue to them was ordered to be released. The relevant portion

of the order reads as under:-

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.”

Learned counsel for the respondents while referring to the written statement contends that the petitioner was matriculate whereas the qualification required for the post of WPO is matric with ITI in trade of Motor/Tractor/Diesel/Mechanical/electrical/Wireman and thus the petitioner did not fulfill the aforesaid qualification.

This argument of the learned counsel is liable to be rejected as in the years 1987-1989 when the petitioner was appointed there were no laid down qualifications for the posts of Water Pump Operator.

The case of the petitioner is squarely covered by **Ved Pal's**

case (supra).

Accordingly, the writ petition is allowed and order dated 24.11.2003 (P-6) is hereby set aside. Respondents are directed to regularise the services of the petitioner against class-III post. 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 petitioner be released to him within a further period of 2 months. It is made clear that if any due benefit is not granted to the petitioner within the aforesaid period, he 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.

(RITU BAHRI)
JUDGE

11.05.2016

G Arora