

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

Date of decision: 10.08.2016

CWP No.9765 of 1995

Udaivir Singh & another

...Petitioners

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. I.D.Singla, Advocate, for the petitioners.

Ms. Shruti Jain Goel, AAG, Haryana, for respondents.

RAJIV NARAIN RAINA, J. (ORAL)

The petitioners, namely, Udaivir Singh Sihag and Karam Singh Sheoran were appointed on ad hoc basis as Junior Engineers (General) by the Deputy Commissioner, Hisar, on their names being sponsored by the Employment Exchange, on 16.04.1981 and 06.06.1983 respectively. These appointments were to be last till the arrival of regular candidates from the Board, whichever is earlier. The Government announced its policy decision for regularisation of Class-III employees on 16.02.1987 (Annex R-1) with effect from 01.11.1986. The services of the petitioners were regularised w.e.f. 31.12.1990 by an order passed later with retrospective effect.

Petitioner No.1 made a representation for the first time in May, 1994 claiming regularisation of his services w.e.f. 01.11.1986 instead of 31.12.1990, while petitioner No.2 made no such representation, but later on came to approach this Court in the joint petition in hand as a co-petitioner.

It is the stand of the State that the petitioners were accorded the benefit of the instructions dated 28.02.1991 which helped regularization of their services from 31.12.1990. So far as instructions dated 16.02.1987 are concerned, on which the petitioners claim relief, those instructions laid down that in cases where posts have been taken out of the purview of the Subordinate Services Selection Board, Haryana, the persons working against such posts can be regularised on completion of two years of service. Since the posts of Junior Engineer of Development Department have not been taken out of the purview of the Board, hence the petitioners are not entitled for regularisation w.e.f. 01.11.1986 on the basis of said Government instructions. The relevant extract from the instructions dated 16.02.1987 (Annex R-1) reads as follows:

“2. The matter to regularise all Class-III ad hoc employees who are working against the posts which have been taken out of the purview of the Subordinate Services Selection Board, Haryana has been considered by the Government. It has been decided that the services of ad hoc employees other than teachers working against the posts, which have been taken out of the purview of the Board may be regularised as have completed two years service on 01.11.1986 and were in service on that day on the following terms & conditions:-

- (i) that the employees belonging to reserved categories shall be regularised only against the posts/vacancies which stand reserved for such categories;
- (ii) that the employees would have been recruited through the Employment Exchange or directly appointed by the appointing authority after obtaining N.A.C. from the

Employment Exchange on the basis of the recommendations off the Departmental Selection Committees;

- (iii) that the work and conduct of such employees is unblemished and is of overall good quality and no disciplinary proceedings are pending against them; and
- (iv) that the employees possess the prescribed qualifications for the post at the time of their appointment on ad hoc basis.”

It is well settled proposition of law that regularisation can only be against policy instructions issued under Articles 162 or 309 of the Constitution and not without them. The instructions of 16.02.1987 were not applicable since the posts occupied by the petitioners were not taken out of the purview of the Board, a fact to which there is no rebuttal in the shape of replication/rejoinder filed to deny assertions made in the counter. Therefore, the regularisation of the services of the petitioners were possible only under the subsequent instructions issued under Article 309 dated 28.02.1991, which specified such Class III posts as have been held for a minimum period of two years on 31.12.1990 by Class III employees on ad hoc basis to be taken out of the purview of the Subordinate Services Selection Board, Haryana and the services shall be regularized if they fulfill the condition laid down in these instructions. In absence of instructions from the Haryana Government under which the petitioners are entitled for regularisation w.e.f. 01.11.1986, no relief as prayed is capable of coming to the petitioners for antedated regularisation.

As a result of the discussion, the petitioners appear to possess no legal or constitutional right for the declaration prayed and the petition is liable to be dismissed.

Accordingly, the petition is dismissed.

[RAJIV NARAIN RAINA]
JUDGE

10.08.2016
Vimal

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>