

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6071 of 1999 (O&M)

Date of Decision: 08.09.2016

Ram Dia and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ravi Sharma, Advocate,
for the petitioners.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioners were engaged as drivers in February 1994 in the Haryana Roadways, Ambala Depot, Ambala on contract basis. The two petitioners have claimed regularization of their services. An agreement was reached between the Government and the recognized Union of Workers of Haryana Roadways on June 16, 1994 wherein it was decided that contractual drivers and conductors would be entitled to benefit of uniform on completion of one year of service and they would be further entitled to regularization against vacancies on completion of two years of service. Accordingly, the policy decision was taken in the shape of instructions dated July 28, 1994. The Government withdrew the policy decision on November 17, 1995. Still further by instructions dated September 26, 1997 the instructions dated November 17, 1995 stand withdrawn. The immediate effect of which the petitioners say was that the revival of the policy decision

dated July 28, 1994 had been revived. Their claim for regularization is based in this manner.

2. When the instructions were withdrawn some of the affected conductors and drivers approached this Court challenging the action in CWPs 11174 of 1997 and 12697 of 1997 which petitions were allowed by the Division Bench by their Lordships judgment dated November 22, 1997. It was held that the petitioners therein were entitled for consideration for regularization from the date they completed two years of service. Accordingly, in the light of above said decision read with the agreement dated June 16, 1994 and the policy dated July 28, 1994 the Transport Commissioner, Haryana reconsidered the matter and issued another policy decision laying down that all drivers and conductors working on contractual basis who had completed two years of service from June 16, 1994 to January 08, 1998 are entitled for regularization from the year 1998. The services of all drivers and conductors working on contractual basis who had completed two years of service had been regularized pursuant thereto but the petitioners were left out of consideration. The ruling was obviously read in personam. They represented to the authorities for similar treatment. They met with little success.

3. Hence, the petitioners approached this Court in CWP No.6071 of 1999 in the present petition and notice of motion was issued for July 23, 1999. No interim orders were passed in the first hearing on May 07, 1999. Pending litigation, the services of petitioner No.1-Ram Dia were terminated vide impugned order dated June 07, 1999 which had led to filing of the amended writ petition challenging the order of termination as well.

4. There are thus two parts of this writ petition. One is for setting aside the order of termination qua the 1st petitioner and then for regularizing his services, while the 2nd petitioner claimed regularization alone at that stage. When the matter was taken up for final hearing, the learned Law Officer for the State of Haryana pointed out on the strength of reply to the application No.6083 of 2015 filed by the petitioner that the memo dated March 23, 1998 (Annex P-3) regarding regularization of services of drivers and contractors working on contractual basis there is a serious misrepresentation in the typing of the material text of paragraph 4 of the instructions and, therefore, a false copy of the annexure has been placed on record where the word “not” is intentionally typed as “got” which changes the meaning in favour of the petitioners. The true text of the policy dated March 23, 1998 has been placed at Annex R-1/A. The misquoted para.4 actually reads as follows:-

“4. The drivers and conductors on contractual basis against whom disciplinary actions are pending be got regularized in service till their cases are finalised. In such eventualities posts be kept vacant for such workers till the finalisation of their cases.”

5. The word “got” changes the meaning completely and even in cases where contractual drivers and conductors against whom disciplinary actions are pending would also have a right of regularization till the cases are finalized. This was the text presented at the motion hearing which makes a word of a difference in issuing process to the respondents.

6. Be that as it may, the State has filed a written statement of the General Manager, Haryana Roadways, Ambala on behalf of the respondents averring that services of both the petitioners stand terminated after adopting

lawful procedure in two separate disciplinary cases pending against them at the time of filing of the writ petition and, therefore, it is objected that the petitioners have alternative remedy of raising an industrial dispute under the provisions of the Industrial Disputes Act, 1947 and the case of petitioner No.1 with respect to termination of services involves disputed questions of fact and hence no relief is available in writ jurisdiction. The services of petitioner No.2 were also terminated on May 03, 1999 as against petitioner No.1 on June 07, 1999. It is maintained that the policy decision dated July 28, 1994 and not July 29, 1994 was withdrawn vide letter dated November 17, 1995 which also was withdrawn vide memo dated September 26, 1997. Thus the policy dated July 28, 1994 remained in force till January 08, 1998, that is, the date on which the agreement was revoked. It is explained that since departmental proceedings were pending the names of the petitioners could not be considered for regularization along with the other co-officials. The denial of regularization was as per para.4 reproduced above. The State has thus denied that the petitioners can be accorded parity with the writ petitioners in CWPs 11174 and 12697 of 1997 in view of the reasons explained above. The true facts regarding the first petitioner have been narrated in the written statement are that on February 28, 1998, he was on duty with Bus No.HR-37/1016 which caused the accident in which a passenger died. Later on, the Motor Accident Claims Tribunal, Ambala awarded compensation to the legal heirs of the deceased vide award dated December 14, 1998. As per the findings of the learned Tribunal the first petitioner was found to be rash and negligent in driving on account of which the department had to suffer financial loss to the tune of Rs.2,79,513/-.

Based on the findings of the learned Tribunal the first petitioner was issued a show cause notice and his reply was considered by the punishing authority who heard him in person on March 30, 1999 and finding his reply unsatisfactory in the face of the findings recorded by the Tribunal his services were terminated on June 07, 1999. It is argued by the State that a full-fledged inquiry was not necessary in view of the findings of rash and negligent driving returned by the Tribunal on the part of the bus driver/petitioner No.1. Besides, at that time, he was not a regular Government servant and was serving on contractual basis. The claim based on parity with the case of Rajinder Kumar, driver also on contract like the petitioner, has been disputed by the State in its reply that in spite of a huge claim amounting to Rs.10 lacs was allowed by holding him responsible for the accident was an incorrect statement and it is refuted that his services were regularized in May 1998 as asserted in sub-para(vii) of para.9 of the writ petition. It is not disputed, since it is a matter of judicial record of the present proceedings, that on June 14, 1999 the Division Bench of this Court while allowing the miscellaneous application allowed the amended writ petition to be taken on record. While notice of the amended writ petition was accepted by the learned Law Officer, the case was adjourned to July 23, 1999 and the operation of the impugned order (Annex P-5) was stayed till the next date. On the next date, the interim order was continued till further orders.

7. As a result, the petitioner was again recalled to service in compliance of the interim orders. When the matter came up before the Division Bench on January 22, 2002 the main petition was dismissed by

passing the following order:-

“Prayer made in this petition filed under Article 226 of the Constitution of India is for regularisation of services of the petitioners who were said to be working on contractual basis after completion of two years service pursuant to government policy referred to in the petition.

In response to the notice of motion having been issued, respondents have entered defence by filing written statement opposing cause of the petitioners. It has inter alia been pleaded in the written statement filed by the respondents that no question of regularising the services of the petitioners arises in wake of their dismissal pursuant to the departmental enquiry, which order has not been challenged in this writ petition.

We find no answer coming forth from the petitioners to the defence projected in the written statement. Dismissed.”

8. This led to filing of CM No.10129 of 2002 for review of the order. At review stage the counsel changed and it was argued on May 09, 2003 in the application that the previous counsel who might have argued the case had not brought out the points consideration that may emerge from the pleadings and this would be a good ground for review as envisaged under Order 47 Rule 1 of CPC. Counsel sought time to study the case from this angle to show whether sufficient grounds have been made for review.

9. On January 16, 2004 the Court was confronted with the judgment of the Supreme Court ruling that the review application ought to be filed by the counsel who appeared when the main case was dismissed or at least certificate should have been obtained by the new counsel from the previous counsel to file the pending review application. When confronted with the position, counsel sought an adjournment. On December 03, 2004

the Division Bench found a patent mistake in their order dated January 22,

2002 in view of the admitted position that though the claim was for regularization but the termination had taken place which led to an amendment of the petition to challenge the order of termination as well and, therefore, the validity of the termination of the order had gone also to be gone into. For these reasons, the order dated January 22, 2002 was recalled on December 03, 2004. Ultimately, the matter was admitted on July 01, 2005 with stay to continue. When the order dated January 22, 2002 was recalled by the Division Bench for the case to be heard on merits, there was no specific order passed whether interim stay granted earlier was to continue. However, we would have to take it that the revival of the previous order would continue the operation of the ad interim order passed on the second date of motion hearing on the petition.

10. The question presently arising for consideration is whether the termination order with respect to the first petitioner is justified and in order. There is no challenge to Clause-4 of the instructions which deny right of regularization in cases where departmental actions are pending against drivers and conductors working on contract basis. Therefore, the memo dated March 23, 1998 which was the prevailing policy before the termination took place had to be given full effect to. The finalization of cases was a contingency contemplated in para.4 as against which posts were required to be kept vacant to accommodate such workers who were found innocent in departmental proceedings. I find nothing palpably wrong in the termination during the subsistence of contract for causing huge loss to the Haryana Roadways by act of the first petitioner causing fatal accident to a passenger.

11. Thus, the only question which remains to be answered in case of a contractual conductor or driver is whether their rash and negligent driving based on findings of the Motor Accident Claims Tribunal is sufficient warrant to dispense with their services for causing loss to the State Exchequer.

12. I do not think either law or equity is involved in a case of driver of a bus working on contract who causes an accident resulting in injuries and loss to state property which incidentally led to the death of a passenger can be viewed as pardonable to return the offender to employment only to jeopardize the lives of the travelling public. The Court, I think, will not issue a writ of certiorari or mandamus compelling the Haryana Roadways to continue with the services of the delinquent bus driver by setting aside the termination and then awarding the concession of regularization to make him a permanent Government servant. Therefore, I do not think that interference is warranted either in law or in fact or in equity. This legal position would govern the second petitioner as well, if not on identicalness of facts.

13. I also find no parallel in the judgments in CWP No.8412 of 2001 titled *Pawan Kumar and others v. State of Haryana and others* decided on February 11, 2003 and CWP No.1719 of 1998 titled *Mahabir Singh v. State of Haryana and others* to warrant similar treatment. Neither of these two cases involves disciplinary proceedings resulting from an accident causing financial loss to the State. Moreover, the policy instructions dated March 23, 1998 were not directly in issue in *Mahabir Singh* case. In any case, the authority deals with the case of pending disciplinary proceedings. In this case, the disciplinary proceedings were

ended with the termination orders during the pendency of this petition and at the earliest stage after process was issued and the State put to notice. These two cases relied upon by the petitioners are manifestly distinguishable on facts. However, it may be noted that in *Pawan Kumar* the Division Bench did consider the instructions dated March 23, 1998 but the petitioners therein succeeded on the basis of earlier instructions dated March 23, 1993 which were issued in the wake of the decision of the Supreme Court in State of Haryana and others vs. Piara Singh and others, (1992) 4 SCC 118 which is no longer good law in view of Secretary, State of Karnataka vs. Uma Devi, (2006) 4 SCC 1 the Supreme Court observing with reference to *Piara Singh* as follows:-

“With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of Piara Singh (supra) are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.”

14. Moreover, the present petitioners joined services on contract on February 23, 1994 or thereabout while in *Pawan Kumar and others* (supra)

the petitioners were appointed on contractual basis on fixed pay later in March 1996.

15. I find no valid or cogent reason to upset the termination orders and direct the State to regularize the services of petitioners and accordingly, the petition is dismissed. The interim orders are vacated. Pending applications, if any, will merge with the final order. No costs.

(RAJIV NARAIN RAINA)
JUDGE

08.09.2016
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Whether speaking/reasoned Yes

Whether reportable Yes