

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.756 of 2001 (O&M)

Date of Decision: 08.11.2016

Mool Chand Arora

... Petitioner

Versus

The State of Haryana and others

... Respondents

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

Present: Mr. Rajesh Arora, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. Ad hoc service when not followed by regularization before reaching the age of superannuation would not bring relief to the retiree who cannot avail benefit of past service (15 years in this case) towards service pension, pensionary entitlements like gratuity and leave encashment available to regular employees. The reason why the petitioner's services could not be regularized as Lineman Instructor (Practical) was on account of want of possession of the requisite qualification prescribed for the post. The Haryana Government letter dated April 28, 1997 (P-2) allowed only such ad hoc employees to be considered eligible for regularization w.e.f. November 01, 1986 and September 30, 1988 as of whom possessed the prescribed qualification for the post at the time of appointment on ad hoc basis.

2. The petitioner had earlier filed CWP No.6493 of 1995 seeking directions to regularize his services but the same was dismissed by the

Division Bench by the order dated November 28, 1995 by passing the following order:-

“Heard Learned Counsel for the parties and perused the written statement filed on behalf of respondents no. 1 and 2. The dispute in this writ petition relates to regularization of the petitioner's service as Lineman Instructor (Practical). Respondent's nos. 1 & 2 in paragraph 2 of the written statement has shown the required basic qualification for the post in question. It is not disputed before us that the petitioner does not hold the basic qualification namely NAC in Lineman trade with one year experience from reputed firm or organization. The petitioner is having a qualification of NTC in Wireman and Military service as Lineman Field-I.

Learned Counsel for the petitioner, however urged that NTC in Wireman is being treated equivalent to NAC in Lineman trade. No material is brought before us to hold so. In this view of the matter not only on the date of appointment but even today also, the petitioner does not hold the basic qualification i.e. NAC in Lineman trade. As and when the petitioner acquired the said qualification we have no manner of doubt that the respondent will consider the case of regularization of the petitioner's services. In this view of the matter, no relief can be granted to the petitioner.

The writ petition to stand summarily rejected.”

3. The petitioner has not appended the text of the order in the petition as an annexure except to mention the proceedings in para.9 of the petition. He says that pursuant to the directions issued in CWP No.6493 of 1995 he filed a representation before the respondent authorities which was rejected and the decision conveyed vide letter dated June 27, 1997. The order dated November 28, 1995 was dependent for the future on acquisition of the prescribed qualification and in that event his case would be

considered for regularization, but in the petition, no relief was granted to the petitioner. The petitioner has not filed a replication to the written statement or brought on record anything to suggest that he had acquired the prescribed qualification after the dismissal of his petition. The only reason given in the petition for approaching the Court again is in para.16 where it is pleaded that the petitioner fulfilled all the qualifications since he came through the Employment Exchange and raising such an objection that too after 15 years of service and attaining the superannuation is, to quote: *“useless, futile, baseless, unconstitutional against the rules and notification and against the natural justice which tantamounts of depriving the petitioner from the retiral benefits.”*

4. When the petitioner has been unable to surmount the obstacle placed before him, and on the basis of which the earlier writ petition was dismissed, he can have no legitimate claim on the respondents to treat the period of ad hoc service as regular for purposes of pension and pensionary entitlements. It may also be noted that in para.21 of the petition, the petitioner had declared that he had not filed any civil writ petition either in this Court or in the Supreme Court of India on the same cause of action. He even did not care to mention in the formal declaratory paragraph the existence of the earlier litigation which is mentioned in passing in para.9 of the petition. There was even an earlier petition by which he approached this Court in CWP No.2663 of 1987 claiming regularization. The orders passed in the first petition have not been placed on record but in para.7 it is stated that the writ was disposed of with directions for considering his case for regularization. On the basis of the directions, he filed another representation

on May 27, 1987 claiming regularization but no decision was taken till he approached the Court once again in CWP No.6493 of 1995.

5. The petitioner had served for 15 years in the Indian Army and was an Ex-serviceman appointed to civil service on ad hoc basis vide letter dated February 22, 1984. The petitioner has placed no material on record from where this Court can study the question of equivalence of qualifications he may have earned while in military service with the prescribed qualification in civil service. Even though this is neither pleaded nor stoutly pressed at the hearing with any documentary evidence, I would find no good reason to make a fishing inquiry when the issue is neither raised before the authorities nor pleaded before the Court.

6. It is not enough for the petitioner to depend on long experience to be considered sufficient to make a person eligible to hold the post to which he is appointed originally without holding the necessary qualification. His reliance on the decision in Kali Charan v. Faridabad Central Co-op. Bank Ltd., 2001 (1) SCT 38 is of no avail to the petitioner. I do not know why learned counsel has cited this judgment when it is against him unless he was depending on the decision of the Supreme Court in Bhagwati Prasad v. Delhi State Mineral Development Corporation, 1990 (1) RSJ 225 relied upon by the Bench which was distinguished by the Division Bench in *Kali Charan*. I have noticed this argument because it has been pressed at the hearing and it would be fair to record the observations of the Supreme Court in *Bhagwati Prasad* as noticed in *Kali Charan* which read as under:-

“..... Once the appointments were made as daily rate

workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation”

7. *Bhagwati Prasad* was a case of daily rated workers claiming confirmation by considerable length of service. Daily rated workers do not hold posts under the State. In the present case, we are dealing with a public post of Lineman Instructor (Practical) governed by rules of service.

8. I find no error in the impugned order dated February 24, 2000 in applying the instructions of Haryana Government which contain a stipulation for regularization on completion of 15 years of service on January 31, 1999. On that date, the petitioner had not completed 15 years of ad hoc service and, therefore, could not claim regularization *de hors* the argument that he did not hold the educational qualification. The shortfall may be marginal but no inroad can be made by Court. At best, the petitioner can set up a case of relaxation of rules but he has not even done that and, therefore, I would leave this window open to the petitioner to approach the authorities in case, relaxation of instructions/rules can be granted to him for the reason that the impugned order does not dismiss his case on the strength of want of prescribed qualifications. It would, therefore, be necessary to quote the total text of the order dated February 24, 2000, which reads as follows:-

“In pursuance of your letter dated 6.1.2000. According to new instructions of Govt. You do not complete the condition of completing 15 years of service on 31.1.99. Therefore,

cannot be regularized.”

9. I am unable to find relief to the petitioner within the law and I am constrained to dismiss the petition.

10. The petition stands dismissed with the window left open, as above.

(RAJIV NARAIN RAINA)
JUDGE

08.11.2016
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Whether speaking/reasoned *Yes*

Whether reportable *No*