

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

205-2

**RSA-3243-2000 (O&M)
Date of decision: 30.05.2016**

Sunil Kumar

....Appellant

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Arvind Moudgil, Advocate for the appellant.

Mr. R.K.Makkad, DAG, Haryana.

P.B. Bajanthri, J. (Oral)

The appellant has questioned the validity of the order dated 30.10.1999 and order dated 20.04.2000 passed by the trial court and appellate court respectively.

2. The appellant is stated to had been appointed as Assistant Pump Operator Grade-II (Class III) on 04.05.1988 on adhoc basis. His services were regularized against Class IV post w.e.f 01.04.1993.

3. Appellant feeling aggrieved by the order of regularization against Class IV post contends that he is entitled for regularization for the post of Assistant Pump Operator Grade II (Class III) since his initial appointment was against the said post in the year 1988. Both the courts

have given concurrent finding. Aggrieved by the order of the trial Court as well as Appellate Court, the present appeal has been filed.

4. Learned counsel for the appellant vehemently contended that the matter is covered by decision of this Court as well as Apex Court i.e. In CWP No. 15051 of 1995 ***Puran Chand and others versus State of Haryana and others*** and Supreme Court decision passed in ***Amrit Lal versus State of Haryana*** reported as 1999 AIR (SCW) 4697. In the aforesaid decisions, the courts have held that appellants in both the cases are entitled to regularization against Assistant Pump Operator with reference to qualification namely “ii. Literate, should be minimum of 5 years experience and field tests”. Based on this qualification, it was ordered that appellants in those cases, are entitled for regularization to the post of Assistant Pump Operator Grade-II (Class III) instead of regularization against Class IV post. In view of these decisions, the present appellant is also entitled for regularization against post of Assistant Pump Operator Grade II (Class III) with effect from 01.04.1993 the date on which his services were regularized against Class IV post with all consequential benefits.

5. Per contra, learned counsel for the respondents submitted that qualification prescribed for the post of Assistant Pump Operator Grade II (Class III) is as under:-

- (i) ITI Certificate in the trade of Motor/Tractor/Diesel/
Electric/Mechanical and
- (ii) literate, should be minimum experience of 5 years and

field tests.

6. The appellant herein do not fulfil the education qualification of ITI (Ist qualification) therefore, rightly the authorities have regularized the services of the appellant against Class IV post. Hence, there is no infirmity in the order of regularization of the appellant against one of the Class IV post as well as orders of the Trial Court and Appellate Court. It was further contended that this Court as well as Supreme Court has not noticed that prescribed qualification for the post of Assistant Pump Operator Class III, one must have following qualifications:-

- (i) ITI Certificate in the trade of Motor/Tractor/Diesel/
Electric/Mechanical and
- (ii) literate, should be minimum experience of 5 years and
field tests.

7. Having regard to the statutory rule position cited decisions (supra) by counsel for the appellant are not applicable for the purpose of deciding the present case. Adhoc employee for the purpose seeking regularization against a post, he must fulfil the requisite qualification for the post. Statutory requirement of education qualification cannot be side track or ignored for regularization. The appellant has not made out a case so as to interfere with the order of the Trial Court as well as Appellate Court.

8. Heard learned counsel for the parties.

9. Crux of the matter in the present appeal is whether the appellant is entitled for regularization for the post of Assistant Pump Operator Class Grade-II or against Class IV post. The post of Assistant

Pump Operator Grade-II (Class III) covered by rules of recruitment which was issued in the year 1981 on 23.11.1981 which reads as under:-

“14. Assistant Water Pump Operator Gr.II 1) Rs. 100-4-440/5-160 (W/C)

Operation of Electric & Diesel Driven pumping sets.

1) ITI Certificate in the trade of Motor/Tractor/ Diesel/ Electric/Mech.

2) Literates should be min. exp. of 5 years and field tests.

i) Should be literate keyman/Dilman with 5 years exp.

ii) other categories i.e. Literate chow/Beldar F' coolies with 7 years exp. & field test.”

10. It is undisputed that appellant do not fulfil Ist qualification of ITI certificate in the trade of Motor/Tractor/Diesel/Electric/Mechanic. Therefore, rightly, department have regularized services of the appellant against Class IV post on 24.03.1994 w.e.f. 01.04.1993. There is no infirmity in the order of regularization dated 24.03.1994 so also order of the trial Court and Appellate Court.

11. Learned counsel for the appellant relied on the decision of this Court in Pawan Kumar as well as Supreme Court decision Amrit Lal are concerned in those decisions the courts have not noticed the education qualification prescribed for the post of Assistant Pump Operator Grade-II (Class III) that for the purpose of holding the said post one must have the following qualifications:-

“1) ITI certificate in the trade of motor/tractor/diesel/

electric/mechanic.

2) literate, should be minimum experience of 5 years and field test.

i) Should be literate keyman/Dilman with 5 years exp.

ii) other categories i.e. Literate chow/Beldar F' coolies with 7 years exp. & field test.”

12. Both the decisions were decided with reference to 2nd qualification and held that 2nd qualification is sufficient for the purpose of regularization against the post of Assistant Pump Operator Grade II (Class III). Supreme Court in the case of ***Secretary, State of Karnataka and others vs. Umadevi and others*** (2006)4 SCC 1, held that State should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts. Not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. In the absence of fulfilling the prescribed education qualifications and experience, ad hoc employee/daily wager is not entitled for regularization against the post for which he do not fulfill the qualifications. Therefore, the cited decisions are distinguishable. Supreme Court in the case of ***Nair Service Society Versus Dr. T.Beer Masthan and ors.*** reported in (2009)5 SCC 545, it is held in Para No. 45 as follows:

“45. Different State Governments in the country may have different methods for providing reservations, and these will be valid as long as the method adopted by a particular State Government does not violate any constitutional provision or statute. It is not for this Court to decide on the wisdom or otherwise of the said method of reservation. This Court should exercise judicial

restraint and not interfere with the same unless there

is some clear illegality. In our opinion the method prescribed by the Rules made by the State Government suffers from no infirmity or illegality, and hence the High Court acted wrongly in allowing the Writ Petition. We are clearly of the opinion that the High Court has placed a wrong interpretation on the relevant Rules.”

13. The Supreme Court in the above case held that before taking into consideration any decisions of the Court factual aspects are required to be examined in detail with reference to rules governing the post.

14. In view of these facts and circumstances, appellant has not made out a case so as to interfere with the order of appellant's regularization and so also decisions of the trial and appellate court. Appeal is dismissed.

15. Learned counsel for the appellant vehemently contended that the rules were very much placed before the Supreme Court in the case of ***Amrit Lal versus State of Haryana and others.*** However, in Para 3 it is noted that Ist qualification OR 2nd qualification is sufficient. Reading of method of recruitment to the post, it is crystal clear that for the purpose of appointment to the post of Assistant Pump Operator Grade-II (Class III), one must fulfil both the qualification i.e. Item No. i and ii (Supra). Therefore, the Supreme Court has not noticed that candidate/adhoc employee is required to fulfil both the education and experience qualifications. Thus, decision of the Supreme Court is distinguishable with reference rules of recruitment.

30.5.2016
pooja saini

(P.B. BAJANTHRI)
JUDGE