

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

**CWP No. 2434 of 2013 (O&M)
Date of decision : 05.01.2016**

Balbir Singh

...Petitioner

versus

Haryana Agro Industries Corpn. Ltd.

..Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. J.P. Dhull, Advocate
for the petitioner.

Mr. Pankaj Gupta, Advocate
for the respondent.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

Petitioner-Balbir Singh has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing of letter/order dated 24.02.2012 (P-9) whereby the request of the petitioner for regularization of his service in Group C or D cadre w.e.f 29.07.2011, in terms of the notification dated 29.07.2011 (P-7) issued by State of Haryana, was declined

Brief facts of the case are that petitioner was appointed on

daily wager in the respondent-Department in April, 1996 by departmental selection committee. Thereafter, the service of the petitioner was terminated by the respondent-Department in June, 1999 without following provisions of Section 25 (F), (G) and (H) of the Industrial Disputes Act and junior persons to the petitioners have been retained in services. The petitioner raised the Industrial Dispute and the matter was referred to the Industrial Tribunal by the Government of Haryana for decision. The matter was subsequently compromised between the parties in the Lok Adalat on 02.11.2003 and it was agreed that the respondent-department will re-employ the petitioner by giving him the benefit of continuity of service but not the back-wages. Thereafter the petitioner resumed his duties on daily wages in the respondent-department on the terms and conditions mentioned above. Thereafter, the petitioner was assigned different duties i.e Security Guard, Chowkidar, vide Annexure P-1 to P-6 respectively. Thereafter, the Haryana Government issued notification dated 29.07.2011 for regularization of the service of daily wages/adhoc/work charged/part time basis serving the Government as well Corporation with immediate effect who had completed 10 years of service on 10.04.2006 and were in service on 10.04.2006 (P-7). Thus, the petitioner made a request to the respondent-department to regularize his service, in terms of

notification dated 29.07.2011 (P-8), which was rejected vide letter dated 24.02.2012 on the ground that there is no sanctioned post vacant on regular basis in these cadres.

The grievance of the petitioner is that once he had completed 10 years of service on 10.04.2006 and fulfills the educational qualification for the post and regular sanctioned posts are also still lying with the respondent-department, the service of the petitioner should have been regularized.

Learned counsel for the petitioner submits that there are number of posts lying vacant in the respondent-department in Group C and D cadre and the respondent-Corporation is not filling up these regular sanctioned posts and the respondent-Department is adopting the pick and choose policy. The action of the respondent-department is illegal, arbitrary and discriminatory and is in violation of Articles 14 and 16 of the Constitution of India.

On the other hand, learned counsel for the respondent has referred to written statement filed by the respondent-department wherein the appointment of the petitioner as a daily wage worker to work as Chowkidar in April 1996 and thereafter, termination of the petitioner in June, 1999 and the matter was settled in Lok Adalat in the year 2003 and the petitioner resumed his duties on 03.11.2003, has

been admitted by the respondent-department. Reference has been made to notification dated 29.07.2011 issued by State of Haryana. The relevant clause (i) and (v) reads as under:-

“(i) That the employee/worker should have continued to work for not less than ten years as on 10.04.2006ws and is still in service but not under cover of the orders of the Courts or Tribunals, against duly sanctioned vacant posts. The periods of continuous break in such service should not be more than one month in a calendar year.

(v) That the employee should be regularized against a sanctioned vacant post of relevant category.”

Since there is no regular sanctioned vacant post of the daily wager/Chowkidar/Security Guard, the services of the petitioner are not liable to be regularized, in view of the above clauses of the policy dated 29.07.2011.

It was further denied that the petitioner was selected by a duly constituted selection committee and he fulfills the educational qualification for the post and that the regular posts are lying with the respondent-department in different cadres of Class III or IV.

Reference has been made to minutes of meeting of the Standing Committee on Public Enterprises held on 06.01.2004 (R-1)

wherein it was stated that there were 51 sanctioned and 33 filled up posts of the Security Guards under Category D with the respondent-department. Under the re-structured plan, 18 posts of the Security Guards out of 51 were abolished and remaining 33 posts of the Security Guards and many other posts under different categories were put under “Diminishing Cadre” and it was finalized that these services are to be outsourced on contract, as required. Diminishing Cadre implies that as and when the post falls vacant due to any reason i.e retirement/resignation/death/ promotion/adjustment elsewhere etc, the post shall stand abolished forthwith. The approval of the State Government of Haryana on the decision of the Standing Committee on Public Enterprises taken in its meeting held on 06.01.2004, as conveyed by the Financial Commissioner & Principal Secy to Government of Haryana, Agriculture Department vide memo dated 09.06.2004 (R-2).

The point for consideration before this Court is that once the respondent-department in the meeting of the Standing Committee on Public Enterprises held on 06.01.2004, finalized that 18 posts of the Security Guards out of 51 were abolished and remaining 33 posts of the Security Guards and many other posts under different categories were put under “Diminishing Cadre, thereafter, the service of the petitioner can be regularized who was engaged as daily wager to perform the

work of the Chowkidar/Security Guard.

Reference at this stage can be made to judgment passed by Larger Bench of Hon'ble the Supreme Court of India in a case of ***Zabar Singh and others v. State of Haryana and others, 1972 (AIR) (SC) 1982*** whereas Hon'ble the Supreme Court was considering a case where the State Government had formed two cadres i.e State Cadre and Provincialised Cadre. The Local Bodies Schools had been taken over by the Government and the employees working in the Local Bodies Schools were taken in to Provincialised Cadre and the new appointments were to be made under the State Cadre. In para 40 of the judgment, it has been observed as under:-

“40. To sum up the position, the two services were from as early as 1937 and before separate. At no stage, even after provincialisation was decided upon the principles of its implementation were drawn up there was any integration of the two. In fact, after considering the alternatives which the Government had before it, it opted, on consideration of difficulties of integration, for the alternative of keeping the two separate. Since the State cadre had its own Rules of 1955, the Government decided in 1960 upon certain principles upon which Rules could be framed for the provincialised cadre. The

real grievance of the provincialized teachers could be not that an integrated service was split up into two by the Rules, but that the Rules did not combine the two. No principle under Article 14 or Article 16 is involved if such an integration was not brought about, for consideration the past history of the two services and the differences existing between them, Government could not be required to fuse them into one upon any principle emanating from the two Articles. The decision to make the provincialised cadre a diminishing one, to implement which that cadre had to be closed at one end, aimed at seeing the provincialised cadre gradually vanish leaving approximately at the end of 30 years, the State cadre alone in the field. There is nothing either Article 14 or Article 16 under which Government could be compelled to maintain that cadre in its original strength or make fresh appointments in that cadre. The logic of Government decision to make the provincialised cadre a diminishing one was that as the posts in that cadre gradually diminished, the number of selection posts also diminished. The proportion of 85 : 15, however, remained intact, and teachers in both the cadres according to their seniority continued to obtain their promotional chances. No

justice in this process could justifiably be claimed as and when the posts in the provincialised cadre were larger in number, its members got a larger number of selection posts. The block system in Rule 3 was devised to implement the process of diminution in a phased manner. Whether the ratio of 11/13 resulted from it or not is not material, for once the principle of that cadre being a diminishing one is accepted as not violating the rule in Article 14 or Article 16 and so long as 15 per cent remained untouched, the block system is no more than a method to further the process of diminution. The two services thus being separate both before and after provincialisation and there being no complaint about dissimilar or arbitrary treatment among members of the provincialised cadre, it is difficult to appreciate the grievance of discrimination or the denial of equal opportunity. The conclusion on the reasons here above given is that no infringement of there of the two Articles is involved in the case.

In view of the above observation, the Government has the power to create a diminishing cadre, which has been done in the present case by the respondents in the meeting of the Standing Committee on Public Enterprises held on 06.01.2004 (R-1) wherein

under the re-structured plan, 18 posts of the Security Guards out of 51 were abolished and remaining 33 posts of the Security Guards and many other posts under different categories were put under “Diminishing Cadre.

No ground is made out to interfere in the letter/order dated 24.02.2012 (P-9).

The writ petition is dismissed.

(RITU BAHRI)
JUDGE

05.01.2016

G Arora