

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

Date of decision: 15.02.2017

CWP No.7 of 2000

Anand Kumar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.N.Lohan, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

Petitioner was engaged as Ticket Verifier in Haryana Roadways, Faridabad on daily wages on 20.06.1983. In the year 1988, statutory service Rules were framed which included criteria for appointment of Ticket Verifiers and came into force in the same year. The minimum qualification prescribed for the post of Ticket Verifier became Matriculation. Concededly, the Petitioner was 9th class pass. The rules rendered him ineligible for appointment and consequently to the cherished goal of regularisation of service. All of a sudden, 03.11.1988 the petitioner's services were dispensed with by the management without notice or hearing or compliances of the industrial law.

Feeling aggrieved, the petitioner approached the Industrial Tribunal by raising a dispute on 19.01.1989 claiming reinstatement with back wages and consequential benefits. Conciliation proceedings failed to achieve a settlement between the disputants. Vide award dated 16.03.1993,

Industrial Reference No.25 of 1989 after trial and recording of evidence produced by the parties was answered in favour of the petitioner and he was held entitled to reinstatement with continuity of service and full back wages as Ticket Verifier by declaring the termination illegal and void for non-compliance of the mandatory procedure for retrenchment as commanded in the Industrial Disputes Act, 1947.

The award was resisted in implementation by the respondent department which brought the petitioner to file CWP No.14107 of 1994 for implementation of the award Annex P-1, which was allowed vide order dated 19.01.1995 and as a result the petitioner was taken back in service on daily wages as a Ticket Verifier on 16.03.1995.

On 29.08.1995, the General Manager, Haryana Roadways Depot, Faridabad forwarded a letter to the Transport Commissioner Haryana intimating that the petitioner's services cannot be regularized on the post of Ticket Verifier as he does not possess the educational qualification required under the rules or enable the department to re-instate him on the post of Ticket Verifier. To accommodate him an additional post may have to be sanctioned or he may be transferred to some other Depot queried the General Manager for guidance.

On 02.09.1999, the services of the petitioner were regularized on the lower post of Chowkidar without assigning any reason for downgrading him. Aggrieved by this action the petitioner has approached this court for setting aside the order and to direct the department to regularize him as a full-fledged Ticket Verifier *de hors* the rules which do not apply retrospectively.

In raising this dispute the petitioner seeks parity with one Suresh Kumar, who was also not eligible under the rules but was regularized w.e.f. 01.04.1987. A notice was issued to Suresh Kumar to show cause as to why his services should not be regularized on Class-IV post. Said notice was challenged by him by filing a CWP No.5404 of 2003 and by an interim order dated 24.04.2003, the show cause notice of reversion was stayed. Suresh Kumar was due to superannuate on 30.11.2014, but he expired on 16.06.2010 while in service. Since Suresh Kumar continued to work on the same post i.e. Ticket Verifier by virtue of operation of the interim order, his post-retirement benefits on the assumption he superannuated as Ticket Verifier including ex-gratia benefits were released in the pay scale of Ticket Verifier. CWP No.5404 of 2003 was dismissed as having been rendered infructuous on 04.10.2016.

Apt to mention that the Petitioner on re-induction to service, together with some of his co-employees had filed CWP No. 2478 of 1988 for regularization of their services which petition was allowed by the division bench of this Court vide orders dated 29.11.1988 in terms of the High Court judgment in Piara Singh's case reported in 1988 (4) SLR 739 [before judgment of the Supreme Court in appeal came in *State of Haryana v. Piara Singh*, (1992) 4 SCC 118]. Since the petitioner was not in service at that time having been terminated 03.11.1988, there from the State argues that no question arose regarding regularization of his services in terms of the final order. However, the labour court in its award dated 16.3.1993 held the termination illegal and reinstated the petitioner as a Ticket Verifier holding as follows in the operative part:

“.....In my view, the management has illegally terminated the services of the petitioner w.e.f. 03.11.88. Admittedly no notice or pay in lieu thereof or retrenchment

compensation was paid to him while terminating his services. Petitioner has continuously worked with the respondent from 01.04.84 to 02.11.88 as Ticket Verifier. The management has not produced any appointment letter to prove that the petitioner was appointed as Helper w.e.f. 01.08.88. In these circumstances, termination of petitioner's service as Ticket Verifier was illegal and unjustified. Petitioner is entitled to reinstatement with continuity of service and full back wages. Reference is answered and returned accordingly with no orders as to cost."

Petitioner's appointment as Ticket Verifier on daily wages was much before the rules were notified in the year 1988 which rendered him ineligible for want of qualification. But the State in its written statement refers to the instructions dated 11.5.1994 as the applicable law pertaining to regularization which instructions would thus come into play. Are they against the petitioner to deprive him consideration? These instructions deal with ad hoc and daily wage employees. So far as qualifications are concerned the instructions in sub-para. (vi) of para. 1 apparently make out a case in the affirmative for the petitioner to overcome the hurdle of higher qualification prescribed by the rules of 2008. The relevant provision reads as follows:

"1. Ad hoc Employees – xx xx xx

(vi) that the employees possessed the prescribed qualification for the post at the time of their appointment on ad hoc basis."

The provision is categorically in favour of the petitioner since possession of prescribed qualification for the post is to be considered at the time of appointment on ad hoc basis and not thereafter. Since the instructions deal with ad hoc and daily wage employees, they cover the field even according to the respondent – State in its reply. At the time of

appointment, no rules were prescribed as admitted by the departmental witnesses before the Labour Court. The petitioner being middle pass it was sufficient to make him a regular or permanent Ticket Verifier. Therefore, subsequent rules cannot act retroactively when it is not expressly laid down in the rules. If they operate prospectively, then the higher qualification imposed in the new rules the same does not apply to the petitioner and he has a case of consideration de hors the rules.

The Labour Court had given a categorical finding that no order was produced before it treating the petitioner as a Helper. If the petitioner refused to accept the post of Helper as asserted in the written statement in the negative way, he was well within his right to refuse to be downgraded to a post of Helper or Chowkidar (Watchman). I have, therefore, no doubt in my mind that the petitioner has a case worthy of interference in the impugned order wrongfully designating him as a Chowkidar by way of regularisation. When his rights were protected both by the award of the Labour Court and the orders passed in his earlier writ petition bearing CWP No.14107 of 1994 directing implementation of the Award as also orders passed in the still earlier writ petition bearing CWP No.2478 of 1988 to which he was a party directing regularisation of services of the petitioners therein, those must be given full effect to. The petitioner could not avail the benefit of the order dated 29.11.1988 because his services were wrongly terminated when the writ petition was pending. Thereafter, the petitioner was left with no recourse except to litigate before the Labour Court, where he finally won and secured reinstatement, continuity of service and back wages. Still further, the petitioner has a right to claim regularization on the strength of the case of Suresh Kumar, who was regularized as Ticket Verifier, when he was his colleague who was fortunate to be retained in

service and did not suffer the fate of the petitioner on being left without a job because of an illegal order of termination.

For these reasons, I find that the impugned order is illegal, arbitrary and unconstitutional. It has been passed by wrong application of law. Indisputably, the petitioner possesses the qualification for the post of Ticket Verifier on the date of his appointment but not from the date of consideration for regularization but that is no detraction. The matter can be looked into from another angle, as suggested by the learned counsel for the petitioner that in the case of daily wager workers employed for substantial length of time, who may not possess the requisite qualifications to hold the post so as to entitle them to be confirmed, they would still have acquired practical hands-on experience. With such experience the person would more effectively discharge the duties attached to the post and be a sure guide to assess suitability. To support his stand, the petitioner relies on the decision of the Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, 1990 (1) RSJ 255, where it is observed that such experience would be sufficient for confirmation although employee, a daily wager, was not possessing the requisite qualification. In the same line is a decision of the Single Bench of this Court cited by Mr. Lohan in case titled Simla Devi Vs. State of Punjab & others, 2006 (2) SCT 264, where this Court considered several past precedents, one of which is *Bhagwati Prasad* case. This Court held that long experience is good qualification as substitute to the basic necessary academic qualifications. To which principle I would add that it is truer still, while dealing with menial and semi skilled jobs which qualify to be categorized as workmen. The department committed a Himalayan blunder in applying the 1988 rules retrospectively to regularize the petitioner on the lower post of Chowkidar only to demean him and lower

his status. After all he was eligible to hold the post during pre-rule period from where his rights flow. The rules are prospective and not retroactively enacted to disturb past events, accrued and pre-existing rights. The petitioner possesses such rights against downgrading to the post of Chowkidar by the legal fiction created by the award of the labour court and the writ for implementation of award issued by this Court in favour of the petitioner. When a legal fiction is created by Court all past rights stand revived unless taken away by order. Neither the executive authority nor enactment can take away a judicial decision/writ except by way of retroactive legislation which the 1988 rules pretend not to do, either in fact, or in law.

Thus, I would follow the law stated for guidance of the Courts and allow the writ petition by vindicating the rights and grievance of the petitioner as claimed in this petition. Consequently, the impugned order dated 02.09.1999 is quashed upon certiorari issued to the respondents. The petitioner will be entitled to consideration for regularization on parity at least from the date when Suresh Kumar son of Beli Ram was regularized as Ticket Verifier in view of continuity of service granted by the Court and who was a non-matriculate. In case, the nomenclature of the post has changed, then the petitioner is held entitled to consideration to regularization against the changed or equivalent post. Accordingly, the arrears of past financial benefits will be determined and paid to the petitioner and his pension and retirement benefits revised by re-fixing the last pay drawn. This exercise is directed to be done and completed up to payments/realization within three months from the date of supply of a certified copy of this order and communicated to the respondents, either by Court or by the petitioner, whichever is earlier. Failing which the amounts calculated as due and payable will earn 12% interest compounded 6 monthly.

Accordingly, the orders reserved are pronounced today in open Court.

15.02.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>