

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-55-2007

Date of decision : 12.09.2017

Baljit Singh Sudan (now deceased) represented through legal representatives

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Alka Chartrath, Advocate
for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

AMOL RATTAN SINGH, J.

By this petition, the petitioner (now represented by his legal representatives) seeks the issuance of a writ of certiorari, quashing the order Annexure P-5, dated 16.10.2006, and the communication Annexure P-6, dated 23.11.2006, both 'emanating' from the 3rd respondent herein, i.e. the District Education Officer, Yamuna Nagar.

By the order dated 16.10.2006, the petitioners' claim to 'regularise' him in service, as a Social Studies Master, was rejected on the ground that he did not have English as a subject in the B.A. Examination, making the order conditional to any Court orders that the petitioner had obtained.

The communication, Annexure P-6, simply conveys the aforesaid order to the petitioner.

A 'consequential' writ of mandamus is also prayed for, directing the respondents to 'regularise' the services of the petitioner w.e.f. 01.10.2003, as was done in the case of persons stated to be similarly situated, pursuant to

the policy of the same date.

Yet further, it has also been prayed in the writ petition that the respondents be restrained from taking any action against the petitioner and that he be allowed to continue in service on the post of Social Studies Master.

2. As per the petition, the petitioner possesses a graduate degree obtained from the University of Bombay in the year 1989, after having undergone a 3 year integrated degree course examination, in the English medium. Thereafter he obtained a post-graduate degree in History in the year 1991, again in the English medium, from the same University; and thereafter a B.Ed. degree from the same University, (in the English medium), in the year 1996.

3. Armed with the aforesaid degrees, having earlier passed the Higher Secondary Certificate Examination in the year 1986 from the Maharashtra State Board of Secondary & Higher Education, with 54.83% marks, he responded to an advertisement dated 19.08.1997, issued by the respondent State of Haryana in its Education Department, inviting applications from candidates wishing to be considered to be appointed as S.S. Masters. Upon being selected, he was issued an appointment letter dated 20.10.1997, a copy of which has been annexed as Annexure P-2.

Though it is not stated at that stage in the writ petition, a perusal of the appointment letter shows that it was a contractual appointment for a limited period of 89 days, stating therein that the contract could also be terminated at any time without notice.

However, it is stated in the petition that the petitioner having been appointed as per the aforesaid terms and conditions, against a regular sanctioned post, the action of the Government in limiting the appointment to

89 days, was challenged before this Court in a bunch of writ petitions, the lead case being **Polu Ram & Ors. v. State of Haryana & Ors**, with the said writ petitions having been allowed by this Court, thereby quashing the said condition of limiting the appointment to a period of 89 days, further directing that the selected candidates would be allowed to continue till the posts were filled up by 'regular selection' and that they would also be entitled to the pay scale as prescribed for the post to which they had been appointed.

4. It is further contended that at the time of petitioners' appointment, the service conditions of the teachers in the department, at the level of the petitioner, were governed by the Punjab Education Service Class-III (School Cadre) Service Rules, 1955, with the said rules having been repealed and replaced by the Haryana School Education Group-C Service Rules, 1998, which came into effect from 12.05.1998, i.e. about 7 months after the petitioners was appointed to the service.

As per the petitioner, for appointment to the post of an S.S. Masters, the following qualifications were required, as per the 1955 Rules:-

“B.A./M.A., B.T./S.S.T.”

There was no requirement under those rules that in addition to the aforesaid qualifications, there must be a combination of two subjects at the graduate level, from amongst the following subjects:-

“i) History (ii) Political Science (iii) Economics
(iv) Geography (v) Sociology (vi) Public Administration”

The petitioner having a qualification of B.A. and M.A. in History, alongwith a graduate degree in Education (B.Ed.), was therefore appointed as per the old rules.

5. In the new rules of 1998, the following qualifications were

stipulated for appointment as an S.S. Master, by way of direct recruitment:-

“i) B. A. with B.T./B.Ed. From a recognised University. OR B. A. Education (4 years course) from a recognised University;
ii) In addition to English in B.A. or B.A. Education a combination of at least two subjects out of the following:- (1) History (2) Political Science (3) Economics (4) Geography (5) Sociology (6) Public Administration.
iii) Knowledge of Hindi upto Matric standard”

6. Thereafter, upon CWP no.396 of 2002, titled as Hassan Mohammad v. State of Haryana and others having been filed before this Court, a direction was given therein, by a Division Bench, on 30.05.2003, (the said petition having been decided alongwith another bunch of petitions), to the State Government, to frame a policy of regularization, within 6 months of the issuance of the direction. Parameters of, length of service, eligibility of regularization and “treatment to be given to the past service”, was to be stipulated by the Government, in the policy of regularization to be framed.

It was further directed that the policy would include the cases of at least those employees as had rendered 5 years service upto 31.03.2003.

After carrying through the entire process of regularizing ad-hoc/contractual employees and adjusting those already regularly selected, the State was further given a direction to finalize the number of vacancies that were still available, and to make regular selections on the said posts, as per law.

7. It is stated in the petition that it was upon these directions that the policy dated 01.10.2003 (a copy of which has been annexed as Annexure P-3 with the petition), was formulated by the respondent Government, in which the following conditions were stipulated as regards the class of

employees that the petitioner belongs to:-

“1. Adhoc employees/Contract Employees:-

- (i) that only such Adhoc/Contract employees who have completed three years service on 30th September, 2003 and were in service on that date should be made regular. If the break in service of an adhoc/contractually employed person has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period i.e. not more than six months. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days;
- (ii) that the employees possessed/possess the prescribed qualification for the post(s) held on Adhoc basis/Contract basis;
- (iii) that the work and conduct of such employees shall be of overall good category and no disciplinary proceedings/criminal proceedings are pending against them; and
- (iv) that the employees shall be regularized, who were originally appointed against the vacant posts;
- (v) that only those contract employees shall be regularized who are appointed against sanctioned posts on regular pay scale or on consolidated salary.

However, the employees who have been promoted on adhoc basis pending recruitment by Haryana Staff Selection Commission will not be covered under this decision.”

8. Thereafter, an amendment to the aforesaid policy was issued on 10.02.2004, by which it was stipulated that all employees who had served for three years would be regularized, even if there was a break of more than 6 months in such employment, if the break was not attributable to the employee.

More importantly, for the purpose of the present petition, the said amendment also stated to the following effect:-

“(B) In condition number 2;

- (a) for the words, “fulfill the requisite qualifications and were originally appointed against vacant posts, “the words, figures and sign “fulfill the requisite qualifications on the date of engagement or on 30.9.2003” shall be substituted.
- (b) for the figures and words “30 days” the figures and words “30 days in a year”, shall be substituted:”

Thus, the contention is that the eligibility qualifications of the employee who was to be regularized in terms of the policy dated 01.10.2003, were to be seen either on the date that he was appointed, or on 30.9.2003, as the case may be.

9. The petition further states that a large number of employees were regularized in pursuance to the aforesaid policy, including S.S. Masters who were appointed alongwith the petitioner, with some of them not fulfilling the condition of a two subject combination, as contained in the 1998 Rules, (which was not a condition prescribed in the 1955 Rules, as already noticed).

10. The petitioner having applied for regularization, his case was however rejected, vide the impugned order Annexure P-5, conveyed to him vide the communication, Annexure P-6, dated 23.11.2006.

11. It is further contended that in the year 1991, some persons who had applied for the post of S. S. Masters, were not considered for the said post by the (then existent) Subordinate Service Selection Board, Haryana, on the ground that they did not have the necessary subject combination at the graduate level. That rejection led to the filing of CWP no.1402 of 1995, titled as Dharam Vir & Ors. v. State of Haryana & Ors., before this Court. The ground of challenge in that petition was that the qualification prescribed in the advertisement was contrary to the statutory rules, i.e. the then existing 1955

Rules.

The said judgment was subsequently followed in another judgment dated 16.11.2002, titled as Tek Chand & Ors. v. State of Haryana & Ors. (CWP no.6339 of 2000).

12. Thereafter, the petitioner filed CWP no.19925 of 2001, titled as Baljit Singh v. State of Haryana & Ors., seeking a writ of certiorari quashing advertisement no.2/99, vide which earlier advertised posts of S.S. Masters, in the years 1994, 1995 and 1996 were re-advertised, alongwith more posts added in the year 1999, for appointment of S.S. Masters by way of 'regular selection'. The challenge was on the ground that those who had already been working on the said posts, were not given any relaxation from the provisions of the Rules of 1998, in terms of the earlier prevalent Rules of 1955.

13. The said writ petition came up before a Division Bench of this Court and was disposed of on 21.12.2001 with the following directions:-

“Notice of motion to the respondents, Shri Rajbir Sehrawat, Assistant Advocate General, Haryana accepts notice.

We have heard the learned counsel for the parties and with their assistance gone through the record of this case and we are of the opinion that the present writ petition can be disposed of at this stage without taking written statement of the respondent.

The present writ petition is disposed of in terms of order dated 29.11.2001 passed in Civil Writ Petition no.6339 of 2000, Tek Chand and others versus State of Haryana and others.”

14. Thus, the contention of the petitioner is that even at the time that regular selection was held in the year 1999, the more stringent qualification prescribed in the 1998 Rules were held to be not applicable in the case of those who were already working on contract/adhoc basis in the department as S.S. Masters, with their qualifications being in consonance with the earlier

prevalent 1955 Rules, and therefore, the same principle would apply even at the time of regularization of such adhoc/contractual employees, in the year 2003, who had previously been working on the said posts by then for about 5 years.

15. Yet further, it is contended that in any case, the Chief Secretary to the Government of Haryana having issued a notification on 10.02.2004 (Annexure P-4), stipulating therein that it would be the requisite qualifications on the date of engagement or on 30.09.2003, that would be essential for regularization of service, that obviously meant that if a person possessed the requisite qualifications as required on the date of his recruitment, as per the rules then prevalent, such person also was eligible for regularization for his service.

16. In the written statement filed by the respondents, it has been stated that English is compulsory as a subject in B.A. or in B.Ed, for recruitment in the year 1998, and therefore, the petitioner not having passed the subject of English in either B.A. or in B.Ed. (from the University of Bombay), he was not eligible to be regularised in terms of the aforesaid rules.

17. The judgment of the Supreme Court in **Secretary, State of Karnataka and others v. Uma Devi and others** (2006) 4 SCC 1, has also been cited to submit that regularization of contractual or daily wage employees is not a legal right available to anyone.

A “request” has, in fact, been made in the preliminary submissions, that a show cause notice be allowed to be issued to the petitioner as to why his services should not be terminated, as he did not possess the requisite qualifications at the time that he was recruited, further stating in paragraph 10 of the reply on merits, that even at the time of such recruitment,

it was the instructions dated 03.11.1983, issued by the Director School Education Haryana, to all District Education Officers, that were in force, by which it was stipulated that only those who possessed the required qualifications should be appointed to posts even on adhoc basis, and not ineligible persons. (A copy of the said instructions has been annexed as Annexure R-1 with the reply of the respondents).

18 Though learned counsel for the State would rely upon the judgment of the Supreme Court in **Deepak Agarwal and another vs. State of Uttar Pradesh and others**, (2011) 6, SCC 725, to also submit that it would be the statutory rules prevalent on the date of recruitment that would prevail and not the statutory rules as on the date of engagement of an employee initially, for the purpose of regularization also, Ms.Alka Chatrath, learned counsel for the petitioner, has pointed to a judgment of a co-ordinate Bench of this Court in **Neeraj Kumar vs. The State of Haryana and others** (CWP no.14321 of 1993 decided on November 16, 2002), wherein a Division Bench judgment in **Dharamvir vs. State of Haryana and another** (CWP no.1402 of 1995 decided on 07.12.1995) was referred to. In the said judgment it was held that for the filling up the post of an S.S. Master, the combination of subjects at the graduation level would not be an essential qualification in terms of the previous rules in force, i.e. the Punjab Education Service (Class III) School Cadre Rules, 1955, (as applicable to the State of Haryana).

Learned counsel for the petitioner has also relied upon the order of this Court passed in CWP no.19925 of 2001, i.e. the petition earlier filed by the petitioner, which was disposed of by a Division Bench on 21.12.2001 in terms of the order passed in CWP no.6339 of 2000 title as **Tek Chand & others vs. State of Haryana & others** (as already noticed), a copy thereof

being Annexure P-8 with the petition). A direction was issued to the respondent-State, that those ad hoc /contractual Masters / Mistresses, who were in service as on 12.05.1998, shall not be considered ineligible for the purpose of the examination which was likely to be conducted by the Government in pursuance to the advertisement dated 14.11.1999. (The significance of the date, 12.05.1998, is that the new rules governing the service to which the petitioner seeks to be regularized in, were promulgated with effect from that date).

19. That being the position, further with the respondents in fact not even relying upon the new rules to oust the petitioner, but on instructions dated 03.11.1983 (Annexure R-1 with the reply of the respondents), which instructions are simply to the effect that no person without requisite qualifications should be appointed.

That being so, I see no reason why this petition should not be allowed.

Firstly, it is seen that this Court had already held in *Dharam Virs'* case (supra) reiterated in *Neeraj Kumars'* and *Tek Chands'* cases, that qualifications prescribed in the advertisement, contrary to statutory rules then prevalent, i.e. the 1955 Rules, were not sustainable. Further, in the petitioners' own case, (CWP no.19925 of 2001), even though that case was filed after the new rules had come into force, it was disposed of in terms of the ratio of *Tek Chands'* case.

Though in the light of the ratio of the judgment of the Supreme Court in *Deepak Agarwals'* case (supra), the principle is that the rules prevalent on the date of selection would prevail, yet, I am in agreement with learned counsel for the petitioner, that in terms of the notified instructions of

the Chief Secretary, dated 10.02.2004 (Annexure P-4), the amendment in the regularization policy dated 01.10.2003 (i.e. the amendment in condition no.2), would cover the case of the petitioner squarely in his favour.

Prior to the amendment, clause 2 of the policy read as follows:-

“2. Daily-Wage Employees (Group-C)

That only such daily wage employees who have completed three years service on Group-C posts on 30th September, 2003 and were in service on 30th September, 2003 shall be regularised against their respective Group-C posts, provided they fulfil the requisite qualifications and were originally appointed against vacant posts. Provided further, that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days.”

(Emphasis applied in this judgment)

However, as reproduced in the amended clause (in paragraph 8 hereinabove), this was substituted by inserting sub-clauses (a), (b) and (c), of which sub-clauses (a) and (c) specify that the employee to be regularised must fulfil the requisite qualifications “on the date of engagement or on 30.9.2003”.

20. Very obviously, if the intention was that the employee must fulfil the qualifications as per the rules existent on 30.09.2003, there was absolutely no need to amend the original condition no.2 in the regularization policy, which already stated that the requisite qualifications must be fulfilled, with the employee being in service on September 30, 2003.

Thus, the adding of the phrase “on the date of engagement or on

30.09.2003” very obviously was to benefit those persons who had been in service for sometime, though recruited under the provisions of the old rules.

This would also be logical, inasmuch as even the regularly recruited employees, who were recruited under the old rules, naturally continued to remain in service even after promulgation of the new rules, and though at the time of fresh direct recruitment, only those fulfilling qualifications as per the rules existent on the date of advertisement would be eligible, however, the Government made it very clear by amending the policy on 10.02.2004, that it was giving the benefit of regularization to those persons also, who were continuing in adhoc/contractual service for sometime, even though they were recruited as per the provisions of the old rules, those being the prevalent rules at the time of such adhoc/contractual employment.

21. It needs to be further noticed here that the contention of the petitioner that he had passed his graduate level examination (B.A.) from the University of Bombay, having studied in the English medium (and thereby there being no necessity for him to have qualified specifically in the subject of English in that University), has not been refuted by the respondents in their written statement, though their stand is that the subject of English should have been separately passed.

The University of Bombay being one of the 'prime Universities' of this country, with the petitioner having studied in the medium of English in that University, at the graduate level, with that University not stipulating English to be a compulsory subject separately, for the obvious reason that the medium of instruction in other subjects was English, and the respondents having actually employed the petitioner on contract basis, in terms of the 1955 Rules, and not having found his service to be unsatisfactory for the five years

that he served from 20.10.1997 to 01.10.2003, I see no reason as to why he should not be given the benefit of the instructions dated 01.10.2003, read with the notification dated 10.02.2004.

22. Undoubtedly, in *Uma Devis'* case (supra), the practice of regularization the services of those not selected as per procedure, have been highly deprecated by the Supreme Court, but even while doing so, in paragraph 53 (SCC citation), their Lordships had given a one time 'window' to all State Governments to regularise the services of those who had been selected by due procedure against sanctioned posts, and had been in service for 10 years. Thus, State Governments were given permission to frame a one time policy of regularization, within 6 months from the date of the judgment, to regularise the services of such employees.

The petitioner no doubt did not have 10 years service in the year 2006, he having been appointed on 20.10.1997; however, his right to regularization of his services relates to the instructions dated 01.10.2003, by which others identically placed as him were regularised and more pertinently, his selection process was after due advertisement. Further, it was not that this petition, filed in the year 2007, was belated, because he has been litigating for his right earlier also, by having filed CWP no.19925 of 2001.

Hence, in my opinion, even the ratio of the judgment in *Uma Devis'* case would not come in the petitioners' way, in the aforesaid circumstances.

23. Consequently, this petition is allowed and the petitioner (now represented by his LRs), would be deemed to have been regularized in service as an S.S. Master w.e.f. 01.10.2003, with all consequential benefits flowing therefrom, but with actual arrears to be restricted to a period of 38 months

prior to the date of filing of the writ petition.

It is however made clear that the petitioner having approached this Court in the year 2007, claiming regularization w.e.f. 01.10.2003 and 10 years having gone by thereafter, none of the LRs of the petitioner would be entitled to appointment on compassionate basis, even though the petitioner would be deemed to have been regularized w.e.f. 01.10.2003. However, eligible legal heirs of the petitioner would be entitled to financial assistance in terms of the rules prevalent at the time of his death, i.e. the Haryana (Compassionate Assistance to the Dependents of Deceased Government Employees) Rules, 2006.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

September 12, 2017.

Davinder Kumar/dinesh

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No