

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

**Civil Writ Petition No.24397 of 2012
Decided on : 24.11.2017**

Balwan Singh and others

... Petitioners

Versus

The State of Haryana and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Raman B. Garg, Advocate for the petitioners.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. Sandhawalia, J. (Oral)

The petitioners seek quashing of the order dated 25.09.2012 (Annexure P-6) passed by Civil Surgeon, Jind, whereby request of petitioner No.1-Balwan Singh for regularization has been declined on the ground that services were purely temporary on seasonal basis and keeping in view the same representation dated 07.04.2012 (Annexure P-4) has been rejected.

Challenge has also been raised to the communication dated 12.11.2012 (Annexure P-7/T) issued by the Director Public Health (Malaria), wherein it was noticed that the posts of field workers and spray workers had been put in diminishing cadre vide communication dated 18.08.2004. Similarly, the Civil Surgeon, Jind on 16.11.2012 (Annexure P-8), keeping in view the said fact also disposed off the representations and contempt notice, which had been served on the same ground that the posts have been abolished and, therefore, there is no vacant posts.

Counsel for the petitioner has vehemently submitted that the policy dated 07.05.1991 (Annexure P-1) had been formulated in pursuance of the orders passed by this Court, whereby a scheme had to be prepared for Spray Workers. It is submitted that the petitioners were in service between

periods from 1977 to 1988, as per the table in paragraph No.2 and, therefore, they were senior most and were liable to be regularized as such.

A perusal of the policy dated 07.05.1991 (Annexure P-1) would go on to show that a seniority list had to be prepared, keeping in view the service for a minimum period of four and half months in a year and having worked for every year for the said period without break. The base line for the seniority was to be the year of 1988. The relevant portion reads as under:-

“A joint seniority list of Seasonal Sanitary Supervisor/Sawasth Sahayak of spray operation will be prepared. Their seniority will be determined on the basis of their initial appointment. Their length of service would be counted in the manner that if the worker even has employed for four and half month in a year and has worked for every year for the said period without break. If the initial date of appointment of some workers is the same then inter-se seniority would be according to the age. The base line for the seniority will be the year 1988.”

The defence of the State as such is that a joint seniority list was prepared up to 2012 and names of the petitioners were shown at various serial numbers according to their total working days with the department and not from the date of their first engagement. Reliance was placed upon the decision dated 18.08.2004 (Annexure R-1), whereby on account of abolition of the two posts, there were no vacant posts and therefore, there was no right as such of the petitioners for regularization against the said posts. It is categorically averred that after abolition of the posts and vide communication dated 12.11.2012 no person out of seniority list had been adjusted against the said sanctioned posts

especially when these were abolished. Reference has been made to Annexure R-1 to show that for the post of Swasthya Sahayak there were 290 posts, out of which 40 posts had been abolished and 250 posts had been put in the diminishing cadre. Similarly, out of 289 posts of Field Workers, 250 posts had been put in the diminishing cadre and 39 posts were abolished.

The State has relied upon two judgments of this Court passed in **CWP No.20452 of 2012 'Yad Ram Vs. State of Haryana and others'** and other connected cases decided on 07.12.2012, to submit that the same issue came up for consideration, whereby the letter dated 18.08.2004 was subject matter of challenge. Accordingly, the Coordinate Bench by relying upon the judgment passed in **CWP No.2393 of 2012 'Lal Chand and others Vs. State of Haryana and others'** dismissed the writ petition by noticing the observations made in the said case. The observations read as under:-

“In the light of the facts that specific averment has been made by the respondents in their reply that since the year 2000, there was a complete ban imposed on filling up the post of regular appointment. Therefore, against the post of Swasthya Sahayak, none has been appointed on regular basis. The assertion thus of the counsel for the writ petitioners that some persons were appointed in the year 2004-05 and 2006 cannot be accepted. Further, in the light of the policy decision of the Govt. of Haryana dated 18.08.2004 (Annexure R-2) wherein posts of Swasthya Sahayak and Field Workers on which the petitioners are claiming appointment on regular basis form part of the diminishing cadre, the claim for regularization of the petitioners cannot be accepted. The moment a vacancy becomes available, on the incumbent of

the said posts relinquishing charge thereof, the post is deemed to have been abolished. There is thus no question of regularization the services of the petitioners against those posts.”

The said view has thereafter been followed in **CWP No.14784 of 1997 'Ishwar Dass and others Vs. State of Haryana and another'** decided on 29.07.2016 and **CWP No.3107 of 1995 'Puran Chand and others Vs. State of Haryana and others'** and another connected case decided on 03.08.2016.

The contention of the counsel for the petitioners as such while referring to the information got under the Right to Information Act, 2005 dated 13.03.2009 (Annexure P-11/T) that persons were regularized after 18.08.2004 would also be of no consequence as there is no specific pleadings made that any persons junior to the petitioners, as per the seniority list of the 1991 instructions had been regularized and the petitioners being senior as such have been discriminated against.

Resultantly, keeping in view the above reasoning and the fact that the said posts had been put in diminishing cadre, the petitioners right for regularization on account of the decision of the Government in view of the decision dated 18.08.2004 cannot be sustained.

The writ petition is, accordingly, dismissed.

NOVEMBER 24, 2017

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

*Whether speaking/reasoned:
Whether Reportable:*

*Yes/No
Yes/No*