

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

CWP No.27739 of 2013 (O&M)

Date of Decision: May 10, 2017

Kashmir Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amarjit Singh, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, Addl. AG Punjab.

JAISHREE THAKUR, J.

The petitioner herein prays for quashing of order dated 25.04.2012, by which the claim for regularization of his services against the post of Pump Operator has been rejected with a further prayer for regularization from the date his juniors have been regularized and for consequential benefits.

2. In brief, the facts are that the petitioner was appointed as Electrician on daily wages w.e.f. 01.07.1988 to 31.08.1988 and after that he worked as Mali-cum-Chowkidar/ Petrol Man from September, 1988 to August, 1990. Since 01.09.1990, he has been working as a Pump Operator on daily wages as Class-III employee and getting a salary of Rs.9785/- per

month. The services of the petitioner were regularized vide letter dated 01.10.2009, but the matter was re-considered on that date itself, on the ground that when he was regularized, his Class-IV service was included in Class-III service. The Punjab Govt. framed a policy dated 18.03.2011 for regularization of services of daily wage and work-charge employees, who had completed 10 years' service on muster-roll basis. The petitioner made a representation for regularization of his services as a Pump Operator, since he had worked without a break for more than 23 years and a Pump Operator from 1990 onwards. A writ petition was filed seeking regularization, which was disposed of by giving a direction to the respondents to pass a speaking order. Since no orders were passed, a contempt petition was filed and during the pendency of the contempt petition, the representation of the petitioner was decided, rejecting his claim. The contempt petition was therefore disposed of, giving liberty to challenge the said orders. Hence, the instant writ petition.

3. It is argued that initially services of the petitioner were regularized by order dated 01.10.2009, but the letter was withdrawn. Persons junior to him have been regularized, ignoring his claim. It is argued that once he was considered for regularization, his claim could not be rejected by the impugned order, primarily on the ground that he does not have the necessary qualification for being appointed as a Pump Operator. Learned counsel for the petitioner contends that a similar matter came up for hearing in CWP No.5366 of 1996 titled as ***“Balvir Singh vs. The State of Punjab and others”***, decided on 08.07.1996, CWP No.14160 of 1997 titled as ***“Sham Singh and others vs. State of Punjab and others”***, decided on

05.05.2006 and lately in CWP No.23430 of 2012 titled as “**Jaspal Singh vs. State of Punjab and others**”, decided on 08.09.2014, wherein, co-ordinate Benches had directed the respondents-State to consider the case of the petitioners for regularization and to grant them benefits from the date of their entitlement with all consequential benefits.

4. Per contra, Ms. Amarjit Kaur Khurana, learned Addl. AG Punjab submits that since the petitioner did not have the requisite qualification of Matric with ITI certificate, as provided under the Rules, therefore, his services could not be regularized as a Pump Operator.

5. I have heard learned counsel for the parties and with their assistance, perused the record of the case and the judgments relied upon by learned counsel for the petitioner.

6. It is not in dispute that the petitioner herein has been working as a Pump Operator on daily wage basis w.e.f. 01.09.1990, as reflected in the impugned order itself. The only reason for not regularizing his services is on account of the fact that the petitioner has only passed the higher secondary and does not possess any technical qualification i.e. ITI diploma course and as per the decision taken, only those daily wagers are to be regularized for the post of Pump Operator, who possess the required qualification. Admittedly, as on date, the petitioner has almost 27 years of service and the experience of having worked as a Pump Operator. To date, there is no complaint regarding his work or conduct and by virtue of having discharged the duties of a Pump Operator, he has gained enough experience in this regard, which would allow him to stand on a equal footing, as compared to those employees, who are possessing the certificate of ITI.

Having regard to the length of service and the fact that the qualification was not concealed by the petitioner and there being no compliant with regard to his work and conduct, the dictum of the Hon'ble Supreme Court in ***“Bhagwati Prasad vs. Delhi State Mineral Development Corporation”***, 1990(1) RSJ 255 will come to the rescue of the petitioner herein, wherein, it has been held by the Hon'ble Supreme Court that the petitioners have a right to continue on the post of Pump Operator, having regard to the fact that they have gained enough experience on the said post.

7. Furthermore, the judgment rendered in **Jagpal Singh's case (supra)**, in which direction has been issued to regularize the service of the petitioner therein as Pump Operator, came to be challenged in **LPA No. 113 of 2015** titled as **“State of Punjab and others vs Jagpal Singh”** decided on **3.3.2015**. The Hon'ble Division Bench upheld the order so passed by the learned Single Judge.

8. Therefore, relying upon the judgments referred to above, the writ petition is allowed and it is held that the petitioner who has gained enough experience as a Pump Operator cannot be denied regularization. The only ground for non consideration is that he does not have the requisite qualification, but as noticed above, his experience is equivalent to any certificate that he might have obtained.

9. Consequently, the writ petition is allowed, impugned order dated 25.04.2015 (Annexure P-5) is set aside and the respondents are directed to consider the case of the petitioner for regularization in the light of what has been observed above and in the light of the fact that similar

relief has already been granted to the similarly situated employees in the writ petitions disposed of by this Court, referred to above. The petitioner herein would be entitled to grant of benefits in consonance with when his juniors have been regularized, with all consequential benefits. Let the needful be done positively within three months from the date of receipt of a certified copy of this order.

May 10, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No