

CWP No.28332 of 2013

Gurpreet Kaur
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high court

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

CWP No.28332 of 2013

Date of Decision: 11.09.2017

Harinderjit Singh Malli

....Petitioner

Versus

State of Punjab and another

....Respondents

CWP No.28334 of 2013

Kamaljit Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

CWP No.28336 of 2013

Guramer Pal Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CWP No.28338 of 2013

Geetu Sharma

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. M.K. Dogra, Advocate
for the petitioner.

Mr. Navdeep Chhabra, D.A.G., Punjab.

DAYA CHAUDHARY, J. (ORAL)

By this judgment of mine, four Civil Writ Petitions bearing

CWP No.28332 of 2013, 28334 of 2013, 28336 of 2013 and 28338 of 2013

shall be disposed of as the same impugned order dated 23.04.2013 (Annexure P-9) passed by respondent No.2 has been challenged in all the said petitions, whereby, the request for regularization has been declined. However, for the sake of convenience, the facts are being derived from ***CWP No.28332 of 2013***.

Said order has been challenged by contending that the order is not only illegal, unlawful but arbitrary as well and the petitioner is entitled for regularization as per policy of the State Government from the date he has completed three years of service on contract basis. Moreover, the same benefit has already been granted to other similarly situated employees.

A prayer has also been made for issuance of direction to the respondents to treat the petitioner as regularized from the date, he became eligible for the same.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was appointed on the post of Radiographer in pursuance of public notice dated 06.06.2006 published for filling up various posts including 115 posts of Radiographer which were to be filled up on contract basis on a fixed salary. Said selection was challenged by some of the candidates, who were not successful in the selection by way of filing ***CWP No.12288 of 2010*** and other connected matters, which were decided by this Court on 15.10.2012. However, during pendency of said petitions, the cases of all Radiographers were considered for regularization in view of policy framed by State Government. However, the case of the petitioner was kept pending due to pendency of writ petitions as his selection was also under challenge, whereas, other similarly situated persons were regularized in the month of June, 2011. A representation was also made by the

petitioner but he was informed by the respondents that his case shall be considered only after the decision of writ petitions pending regarding his selection. After disposal of all writ petitions on 15.10.2012, the petitioner along with other similarly situated persons moved a representation for regularization of their services as per policy of State Government having completed three years' service on contract basis.

The claim of the petitioner was rejected vide order dated 23.04.2013 (Annexure P-9), which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the impugned order is patently illegal, arbitrary, unjustified and also discriminatory being violative of Articles 14 and 16 of the Constitution of India. Learned counsel also submits that other similarly situated persons have been regularized and the case of the petitioner was kept pending only on the ground that the writ petitions were pending wherein his selection was challenged. Learned counsel further submits that the impugned order has been passed without any application of mind by giving the reason that the petitioner cannot be regularized from back date.

Learned counsel for the respondents has not disputed the facts but opposes the submissions made by learned counsel for the petitioner on the ground that process for regularization of services of contractual employees was completed on 30.06.2011. The services of the petitioner were not regularized as his selection was under challenge. It is also the submission made by learned State counsel that his case was not covered under Government Instructions dated 18.03.2011 as these instructions were one time measure and were valid for six months. The case of the petitioner

was considered in view of instructions dated 18.03.2011 and his claim was rightly rejected by passing a speaking order.

Heard the arguments of learned counsel for the parties and have also perused the impugned order dated 23.04.2013 (Annexure P-9) as well as other documents on the file.

Facts relating to appointment of the petitioner on the post of Radiographer on contract basis and thereafter, regularization of other similarly situated employees on completion of three years' service are not disputed. It is also not disputed that the petitioner was not regularized and his case was kept pending because of pendency of writ petitions as his selection was under challenge. It is also not disputed that the representations filed by the petitioner and other similarly situated persons were considered and it was informed that his case shall be considered after decision of writ petitions where the selection was under challenge. Those petitions were disposed of vide order dated 15.10.2012 and thereafter, the petitioner moved a representation to the respondents for regularization of his services as per policy of the State Government from the date he has completed three years of service on contract basis. However, the claim of the petitioner was rejected. It is also not disputed that the petitioner had completed three years of service and was fully eligible and entitled to be regularized like other similarly situated employees. Petitioner along with others filed **CWP No.2680 of 2013** with a prayer to direct the respondents to regularize their services from the date of attaining eligibility as per policy of the State Government. Said petition was disposed of with a direction to respondent No.2 to consider and decide the representation of the petitioner and others. In pursuance of said direction, the services of the petitioner and

other persons were regularized from the month of March 2013 and not from the date other similarly situated persons were regularized. The claim of the petitioner was rejected vide order dated 23.04.2013.

Right to be considered for regularization is a fundamental right, especially when the other similarly situated persons have been regularized. To reject the claim of the petitioner is also violative of Article 21 of the Constitution of India i.e the right to livelihood. When the petitioner was qualified and was fulfilling all conditions for regularization, then denial of regularization by the respondents is highly arbitrary and violative of Article 14 of the Constitution of India. The claim of the petitioner has not been considered for regularization from the date other similarly situated persons have been regularized because of pendency of the writ petitions. Merely because of pendency of writ petitions, the litigant should not be put to suffer for no fault on his part. Right to livelihood is a constitutionally protected right and in case, there was no writ petition to challenge his selection, the petitioner would have been regularized along with other similarly situated persons.

Not only the similarly situated persons have been regularized but juniors to the petitioner have also been regularized. The claim of the petitioner has wrongly been rejected and the impugned order has been passed without any application of mind.

In view of facts as mentioned above and especially in the light of fact that similarly situated persons and even juniors to the petitioner have also been regularized, whereas, the claim of the petitioner has been rejected only on the ground that his selection was under challenge and writ petitions were pending, cannot be accepted as the petitioner had a better and prior

right for being considered for regularization at least from the date, his juniors have been regularized. The moment, the persons junior to the petitioner have been regularized, there cannot be any distinction with regard to claim of regularization.

Accordingly, all the four writ petitions bearing **CWP Nos.28332 of 2013, 28334 of 2013, 28336 of 2013** and **28338 of 2013** are allowed and the impugned order dated 23.04.2013 (Annexure P-9), in all said writ petitions, is set aside. However, the petitioners in all petitions are directed to be regularized on the post of Radiographer from the date their juniors have been regularized. Respondents are directed to consider the case of the petitioners for regularization within a period of two months from the date of receipt of certified copy of the order. The petitioner shall also be entitled for all consequential benefits.

11.09.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No