

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-5662-2014

Date of decision : 31.10.2017

Jai Pal Kaushik and others

... Petitioners

Versus

The State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Gurminder Singh, SeniorAdvocate
with Mr.Jitender Singh, Advocate
for the petitioners.

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

AMOL RATTAN SINGH, J.(ORAL)

By this petition, the petitioners are seeking a writ of mandamus that they be regularised as Junior Programmers-cum- Computer Operators with effect from 01.10.2003, they having worked on contractual basis as Junior Programmers first as employees sent by the Haryana State Electronics Development Corporation Limited (hereinafter referred to as 'HARTRON') with effect from the year 1993 and thereafter, having been appointed in a contractual capacity by the respondent Government itself, with effect from 10.06.1997.

Mr. Gurminder Singh, learned senior counsel appearing for the petitioners, points to the fact that 23 posts of Junior Programmers were actually sanctioned by the Government in the scale of Rs.1200-2040 with effect from 01.05.2001 and such posts actually continued to exist till

15.05.2006, on which date 13 such posts were abolished and in their place 13 posts of Data Entry Operators, in the same pay scale, were created.

The petitioners were thereafter regularized in the service as Data Entry Operators with effect from 15.06.2006, in pursuance to the orders Annexure P-17. (Though the order shows a higher pay scale of Rs.3050-4590/-, that is stated to be the revised pay scale for the pre-revised scale of Rs.1200-2040). The services of the petitioners were in fact regularized vide the aforesaid orders in terms of the policy dated 01.10.2003, as stated in the said order itself.

The contention is that the petitioners having worked since the year 1997 even with the respondent Government, they were actually entitled to be regularized with effect from 01.10.2003 in terms of the aforesaid policy of the Government, a copy of which is annexed as Annexure P-16 with the petition.

The petitioners are stated to have made various representations to the respondents in that regard, copies of some of which are shown to be annexed as Annexures P-20 to P-24, dating back to the year 2008 (Annexure P-21).

The respondents however, upon information being sought under the RTI Act 2005, informed the petitioners that their applications (representations) were not considered in view of the Government letter dated 15.05.2006. A copy of the aforesaid communication is annexed as Annexure P-22 with the present writ petition.

The Government "letter" dated 15.05.2006 is actually seen to be an order dated 12.05.2006, endorsed on 15.05.2016 (the endorsement number being the same as referred to in Annexure P-22). That is in fact the

order by which permission was granted by respondent no.1 for regularization of 13 data entry operators “from the date of creation of the posts”.

Hence learned senior counsel submits that the posts of the petitioners as Junior Programers, which they had been working on, actually existed even as regularly sanctioned post with effect from 01.05.2001, and those posts having been abolished only on 12.05.2006 vide the order Annexure P-18 itself, substituted by an equal number of posts of Data Entry Operators, the petitioners actually deserve to be regularized with effect from 01.10.2003, as has also been done by the Department of Transport in respect of similarly placed persons. Those persons were regularized with effect from 01.10.2003 on posts of Clerks, they having earlier worked as Junior Programmers, initially having been sent to the Department of Transport by the HARTRON as were the petitioners.

Learned counsel points to the order Annexure P-24 dated 28.06.2006, passed by the Transport Commissioner, Haryana, to that effect.

Consequently, in the opinion of this Court, the petitioners actually have a right to have been regularized with effect from 01.10.2003 (uptil when regularization policies were regularly being issued by the respondent State prior to the judgment of the Supreme Court in *The Secretary, State of Karnataka and others vs. Uma Devi and others, (2006) 4 SCC 1*), they in any case having been regularized with effect from 15.06.2006.

The only hitch in allowing this writ petition in toto, is with regard to possible rights having been created in other employees as regards seniority, for the long period that the petitioners did not approach this Court

between 12.06./15.06.2006 till 2014, when this writ petition was filed, though obviously such rights would only be with regard to the period between 01.10.2003 to 15.06.2006.

Learned senior counsel, on instructions, submits that as a matter of fact the petitioners are even willing to not agitate the question of seniority with effect from 01.10.2003, if that is coming in their way for grant of regularization with effect from that date, with this Court having observed that it would be the only hitch in not allowing this petition.

That being so, this petition is allowed to the extent that the services of the petitioners would be regularized with effect from 01.10.2003, whether as Junior Programmers or as Data Entry Operators, in the same pay scale as has already been granted to them with effect from 15.06.2006, without changing their seniority.

Thus the benefits which would now flow to the petitioners upon the regularization of their services with effect from 01.10.2003, would be in terms of grant of higher standard / ACP scales/ pensionary benefits etc., with arrears of emoluments to be given to them restricted to a period prior to 38 months from the date of filing of the petition.

It is clarified that even though notionally granted financial benefits are often not taken by the respondents to count towards pensionary benefits, however, in the aforesaid circumstances, the petitioners not being at fault, with their posts having being abolished and recreated on the same day (12.05.2006) with a different nomenclature, they would be deemed to be in active regular service with effect from 01.10.2003 to 15.06.2006, with that period to count towards their pension and other retirement benefits also, taking it that they have been regularized in the pay scale of Rs.3050-4590

with effect from 01.10.2003.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

October 31, 2017.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No