

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

1. LPA No.907 of 2016

Date of Decision:- March 28, 2017

The State of Haryana & Ors.

...Appellants

VERSUS

Subhash Chand & Ors.

....Respondents

2. LPA No.1049 of 2016

State of Haryana & Ors.

...Appellants

VERSUS

Sanjeev Sharma & Ors.

....Respondents

3. LPA No.933 of 2016

State of Haryana & Ors.

...Appellants

VERSUS

Harcharan Singh & Ors.

....Respondents

4. LPA No.956 of 2016

State of Haryana & Ors.

...Appellants

VERSUS

Ajesh Kumar & Ors.

....Respondents

5. LPA No.993 of 2016

State of Haryana & Ors.

...Appellants

VERSUS

Sanjeev Bagga & Ors.

...Respondents.

6. LPA No.1190 of 2016

State of Haryana & Ors.

...Appellants

VERSUS

Ranbir Singh

....Respondent

7. LPA No.1358 of 2016

State of Haryana & Ors.

...Appellants

VERSUS

Prem Chand

....Respondent

8. LPA No.375 of 2017

State of Haryana & Ors.

...Appellants

VERSUS

Sri Bhagwan & Ors.

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. R.D.Sharma, D.A.G. Haryana &
Mr. Deepak Balyan, Addl. AG Haryana for the Appellants.

Mr. Ravinder Malik (Ravi) & Mr. J.S.Maani, Advocates
for the Respondents.

SUDIP AHLUWALIA, J.

These Letters Patent Appeals are directed against the judgment passed by the Ld. Single Judge in CWP No.5926 of 2013 on 17.11.2015 and the other connected Writ Petitions. In those Writ Petitions, the prayer of the present Respondents/Petitioners was for quashing of the impugned Order dated 26.10.2012 (Annexure P-23) passed by the Appellant No. 1, whereby the claim of

the Writ Petitioners for regularizing their services with effect from 1.2.1996 on Grade 'C' post was rejected, and a direction was sought by them in accordance with the Regularization Policies dated 7.3.1996 (Annexure P-1) and 18.3.1996 (Annexure P-2), which were in operation at the relevant time, and also in view of decision in the earlier Writ Petitions in which identical claims had been allowed.

2) It was the case of the Writ Petitioners/Respondents that they had been engaged as Water Pump Operators/Assistant Pump Operators on daily wages basis on different dates between the years 1989 to 1992. Thereafter, On the basis of policy dated 18.03.1996, the cases of all the petitioners were considered and their services were regularized w.e.f. 01.02.1996. However, they were not regularized as Water Pump Operators/Assistant Pump Operators, which is a Class-III post (Grade 'C' post), but as Pump Attendants – a Class-IV post. The petitioners protested against such action on the part of the respondents and when their protests remained un-responded, they approached this Court through C. W. P. No. 15992 of 1999, which was admitted for regular hearing. While the writ petition of the petitioners was pending, the respondents favorably considered the representations of identically placed employees and vide order dated 22.04.2011, granted them relief, as was being claimed by the petitioners. Appending therewith the order dated 22.04.2011, the petitioners moved an application in the pending writ petition filed by them and prayed for disposal of the same by directing the respondents to consider their claim in the light of order dated 22.04.2011 passed in the case of identically placed persons. This Court favourably considered the prayer made by the petitioners and vide order dated 22.03.2012, disposed of the writ petition with a direction to respondent no. 1 therein to consider the claim of the petitioners in the light of the order dated 22.04.2011. In compliance with the

aforesaid order of this Court, the claim of the petitioners was considered, but rejected. It was mentioned that the Government had re-considered the relief granted to the identically placed persons through order dated 22.04.2011 and had withdrawn the same. Consequently, the respondents had filed their Writ Petitions impugning the rejection of their representations.

3) Their claims were opposed on behalf of the State Authorities/Appellants simply on the ground as noted in the impugned judgment -

“The only reason given by the respondents in the counter filed to the writ petition for not regularizing the services of the petitioners as Water Pump Operators/Assistant Pump Operators, but as Pump Attendants, is that the petitioners were not possessing the qualification of ITI.”

4) The Ld. Single Judge was however, not convinced with such objection, since two Division Benches of this Court had earlier considered and answered the question raised in favour of the previous Writ Petitioners. The relevant decisions were pronounced in '**Abdul Kayyum and another Vs. State of Haryana and others'** (CWP No.18974 of 1998) on 16.9.2000 and '**Tej Parkash Gaur and another Vs. State of Haryana and others'** (CWP No.19708 of 1998) decided on 14.9.1998. In both these cases, the objection raised on behalf of State to regularization of services of the Writ Petitioners on Class III post of Water Pump Operator Grade-II/Assistant Pump Operator, on the ground that they were not possessing the requisite qualification to be eligible for appointment to those posts was rejected by this Court, since it was found that the Writ Petitioners were matriculates and had been working continuously for five years on the post of WPO-II/APO on the dates when their cases for regularization were considered. In fact, the Writ Petitioners had been inducted into services of the Respondent

designated as Assistant Pump Operator) on daily wages, but their services were later on regularized only against the post of Pump Attendant, which is a Class IV post. This Court therefore, held that since five years' experience was required only in relation to those incumbents who did not have ITI's certificates provided that they were otherwise literate and having actually worked as Water Pump Operators Grade-II for a period exceeding five years, since their induction as Daily Wager, they had become eligible for appointment. The aforesaid two decisions of this Court have since attained finality and claim of the present Writ Petitioners/Respondents is squarely covered by the same. However, a new ground has been raised before us in these appeals -

“.....there is no averment in the writ petition that within the sanctioned posts as available there were specific vacancies. The order dated 22.04.2011, vide which 10 posts of WPO-II and 1 post of work munshi was created, on the strength of which the Petitioners/Respondents were claiming regularization on group “C” post, was also withdrawn by the Government vide order dated 12.10.2012. Unless and until, there are sanctioned posts of Group “C”, the Court cannot direct the State to create posts for the purpose of regularization of the Petitioners.”

5) We are however, not convinced by this new ground which for some inexplicable reason was not raised before the Ld. Single Judge. At any rate, we may observe that sanctioning of posts by the Competent Authority is essentially a ministerial exercise for which the decision has to be taken by the concerned Department itself after considering the actual necessity for sanction/creation of the posts. In the present case, admittedly the Writ Petitioners had been performing all the prescribed duties of Water Pump Operators II/Assistant Pump Operators notwithstanding that they initially might have lacked in the qualifications. But when even that impediment stood removed by virtue of their having acquired the

eligibility by way of having put in five years or more of work towards the requisite experience, there can be no justification to not regularize their appointments in accordance with the actual nature of duties being performed by them. Instead they were regularized against lower posts of Water Pump Attendants which pertained to group 'D' service. So in the given circumstances, what is now required is not actual creation of new sanctioned group 'C' posts of Water Pump Operators II/Assistant Pump Operators, but merely 'conversion of group 'D' posts against which, the Writ Petitioners have been regularized to group 'C' posts, to which they have been found entitled.

6) We therefore, find no ground to interfere with the decision pronounced by the Ld. Single Judge. Consequently, these appeals are dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

March 28, 2017

AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***