

CWP No. 14210 of 2001 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 14210 of 2001 (O&M)

Date of decision : July 17, 2018

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Subhash Chander and others

.....Petitioners

Versus

State of Haryana and otehrs

.....Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sanjiv Gupta, Advocate for the petitioners.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

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RITU BAHRI, J.

C.M No. 13426 of 2012

C.M is allowed as prayed for.

C.M No. 14717 of 2016

C.M is allowed as prayed for.

CWP No. 14210 of 2001

The petitioners are praying for the issuance of a writ of mandamus directing the respondents to treat the petitioners as regular employees right from the date the petitioners completed two years of service as per Annexure P-1 with further prayer for issuance of directions

to the respondents to grant them the salary/wages being paid to the regular employees under the well established doctrine of "*Equal Pay for Equal Work*"

The names of the petitioners were sponsored through the Employment Exchange and they were appointed as Drivers on contract basis on a fixed salary of Rs.1800/- p.m right from the date of appointment shown in letter (Annexure P-1) As per a circular letter issued on 28.7.1994 (Annexure P-2) by respondent no.2-The Transport Commissioner, State of Haryana, Chandigarh, all drivers who had completed two years of service were to be regularized. In compliance with the Transport Commissioner, Haryana, Chandigarh letter No. 1224-1245/A-2/E-3 dated 23.3.1998, the services of the contractual basis drivers (mentioned in Annexure P-3) who had fulfilled the conditions mentioned in the H.Q letter under reference were regularized with immediate effect in the pay scale of Rs.4000-100-4800-EB-100-6000 plus 50 special pay plus usual allowances sanctioned by the Haryana Government from time to time (Annexure P-3). Petitioner no.2 Dinesh Kumar was regularized w.e.f 7.8.2000 vide (Annexure P-4). A legal notice was sent by the petitioners on 17.5.2001 (Annexure P-5) seeking benefit of regularization after completing 2 years of service. Hence, the petition was filed.

On notice, the stand taken by the respondents in the reply was that as per the agreement dated 16.6.1994 between work Union of Transport Department and Management, and on the basis of the agreement, a policy was framed vide Transport Commissioner letter dated 23.3.1998 circulated to all concerned and by this policy, it was agreed upon that the services of those drivers and Conductors who are on contractual basis may be

regularized who had completed two years of service between 16.6.1994 to 8.1.1998 subject to the availability of the posts and fulfilling the requisite eligibility. On the basis of this policy, the services of the petitioners except petitioner no.2 were regularized w.e.f 19.5.1998. The services of the petitioner no.2 could not be regularized w.e.f 19.5.1998 as a disciplinary proceeding was pending against him and after finalization of the disciplinary proceedings, the services of petitioner no.2 were regularized on 9.8.2000 after consideration. It was further stated in paragraph 5 of the reply that a circular dated 28.7.1994 (Annexure P-2) was issued but that was withdrawn vide Transport Commissioner, Haryana Chandigarh letter dated 17.11.1995 (Annexure R-2) and later on a policy Annexure R-1 was issued and on the basis of the policy, the services of the petitioners were regularized. The case of petitioner no.2 was considered as per policy but a charge sheet was pending against him and after its finalization on 18.7.2000, his case was reconsidered and the services of petitioner no.2 was also regularized on 9.8.2000. Copy of the disciplinary proceedings/charge sheet was annexed as Annexure R-3 and Annexure R-4.

As per the reply filed by the State, they have again referred to the policy dated 23.3.1998 (Annexure R-1), whereby a decision was taken for regularization of the services of the drivers working on contract basis. They have placed on record letter dated 17.11.1995 (Annexure R-2) whereby the circular dated 28.7.1994 (Annexure P-2) was withdrawn. It was further clarified that letter dated 5.7.2010 was issued with regard to regularization of services of Conductors of Haryana Roadways associated during strike period in the year 1979 and this letter will not be applicable in the case of the petitioners.

The petitioners have placed on record judgment passed by this Court in CWP No.14111 of 2001 (Annexure P-6), titled, '**Pardeep Kumar and others vs. The State of Haryana and others**' decided on 18.5.2009 and judgment passed in CWP No. 18401 of 2009 (Annexure P-7) titled, '**Mukesh Kumar vs. The State of Haryana and others**' decided on 10.1.2012, whereby, the benefit of regularization has been given to similarly situated employees after completion of two years of service, despite the fact that the policy of 28.7.1994 (Annexure P-2) was withdrawn by the policy of 17.11.1995 (Annexure R-2)

Counsel for the State has further informed that an LPA has been filed against judgment in the case of **Mukesh Kumar vs. The State of Haryana and Others** (CWP No. 18401 of 2009) decided on 10.1.2012 (Annexure P-7). LPA No.2012 of 2012, titled, '**State of Haryana vs. Mukesh Kumar**', was admitted and operation of the impugned order was stayed till further orders. While issuing notice of motion, it has been observed that Mukesh Kumar had worked on contract basis intermittently and his services were terminated from time to time and his case is not covered by the judgment passed in the case of **Pardeep Kumar and others (supra)**.

Heard counsel for the parties and gone through the records of the case. The appointment and regularization of the petitioners has already been done. At the outset, this Court proceeds to go through the judgment in the case of **Mukesh Kumar's case (supra)**. A perusal of this judgment shows that the petitioner along with twelve others was appointed on contractual basis on 1.5.1993. After appointment of the petitioner on 1.5.1993, he joined on 5.5.1993 and his services were terminated on

30.9.1993. Thereafter he was appointed on contract basis on 1.1.1994 and continued as such till termination on 29.9.1994. After that he was again appointed on contract basis on 8.10.1994 and hence the petitioner was not in continuous service for two years. In ***Pardeep Kumar and others' case (supra)***, seven petitioners approached this Court by filing CWP No.14111 of 2001 which was allowed by this Court vide order dated 18.5.2009 (Annexure P-8) granting the relief of regularization w.e.f 1.5.1995 as per the Policy dated 28.7.1994 (Annexure P-1) according to which on completion of two years of service on contract basis, the employees were held entitled to regularization of service. Against the said judgment, State of Haryana preferred **LPA No.91 of 2010** titled 'State of Haryana and others vs. Pardeep Kumar and others' which was dismissed by a Division Bench of this Court vide judgment dated 25.1.2010. In compliance with the said judgment, services of the petitioners in CWP No. 14111 of 2001 were regularized w.e.f 1.5.1995 and order of regularization has been passed by the respondent on 11.5.2001.

However, as per the judgment in ***Pardeep Kumar's case (supra)***, the petitioners were appointed as Conductors on contractual basis w.e.f 1.5.1993 and their services had been regularized w.e.f 8.1.1998. Hence from the year 1993 to 1998, they were working regularly without any break with the Department. They were seeking regularization as per policy dated 28.7.1994 (Annexure P-2). This policy has been considered in a judgment of this Court in ***RSA No. 3213 of 2005*** decided on **7.3.2006** titled, '***State of Haryana vs. Ram Chander***'. While dismissing the RSA, it was observed that as per the agreement between the department and the employees union, it has been decided to regularize the services of all such

drivers/conductors, who had completed two years of service against vacancies available under the prescribed norms. Hence it was held that the withdrawal of the policy would not have the effect of obliterating the petitioners' rights and the above said RSA was dismissed. Following the above said view passed in judgment in ***RSA No. 3213 of 2005*** and the fact that on 1.5.1995, vacancies were available and the petitioners had a right to be regularized after completing two years of service, ***Pardeep Kumar's case (supra)*** was disposed of directing the respondents to consider the case of regularization of services of the petitioners as on 1.5.1995 with all consequential benefits. This judgment has been upheld by this Court as the LPA No.91 of 2010 filed against this judgment was dismissed by a Division Bench of this Court vide judgment dated 25.1.2010. The ratio of the judgment passed in CWP No. 14111 of 2001 is directly applicable to the facts of the present case. After regularization of the services of the petitioners, vide orders (Annexures P-3 & P-4), the writ petition was filed immediately in 2001 without any delay. The Department could not regularize the services as per the Instructions dated 23.3.1998 (Annexure R-1) on the plea that the earlier instructions dated 28.7.1994 (Annexure P-2) had been withdrawn on 17.11.1995 (Annexure R-2). The case of the petitioners is squarely covered by the judgment in the case of ***Pardeep Kumar and others (supra)*** (Annexure P-6). Since the LPA against the said judgment has been dismissed, the petitioners have a right to be regularized w.e.f the date they have completed two years at par with other employees who were appointed with them.

Consequently, this writ petition is disposed of with a direction to the respondents to consider the cases of regularization of services of the

petitioners as on 1.5.1995. The petitioners shall also be entitled to consequential benefits. The needful be done within a period of three months from the date of receipt of a certified copy of this order.

July 17, 2018

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No