

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

CWP No. 14068 of 2016

Date of decision : 26.09.2018

Hoshiar Singh

...Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sudhir Aggarwal, Advocate
for the petitioners.

Mr. Kiran Pal Singh, A.A.G. Haryana

RITU BAHRI, J.

In the present civil writ petition, the petitioner is seeking setting aside of order dated 19.08.2015 (Annexure P-9) passed by respondent No. 3 whereby representation of the petitioner claiming regularization of his services w.e.f 31.01.1996 and not w.e.f 20.12.2010 was rejected

Petitioner, who is a physically handicapped person, as per handicap certificate (Annexure P-1), was appointed as Announcer on 21.12.1988 on ad hoc basis in Hisar Depot for three months, on compassionate grounds, against the post reserved for handicapped category. The copy of appointment letter is dated 21.12.1988 (Annexure P-2). There was a break in his service on 27.7.1989. He was re-engaged on 3.8.1989 on daily wages, as per appointment letter (Annexure P-3). The petitioner then approached this Court by filing CWP No. 6609-1990 seeking regularization of his services. The writ petition was disposed of, vide order dated 07.05.1990 with liberty to make representation to be decided by the

authorities within a period of six months. However, the representation of the petitioner was rejected, vide order dated 27.11.1997 without any speaking order. The petitioner again approached this Court by filing CWP No. 18770 of 1997, which was decided on 19.05.2010 directing the authorities to consider his case within six months.

Thereafter, the respondents, vide order dated 20.12.2010 (Annexure P-5) granted benefit of regularization to the petitioner w.e.f 20.12.2010 instead of 31.01.1996. The petitioner then send legal notice to the respondents on 10.06.2015 seeking regularization of his services w.e.f 31.03.1996 (Annexure P-8 colly). The respondents gave reply dated 19.08.2015 (Annexure P-9) to the legal notice declining the request of the petitioner on the ground that under the previous policies, the post of announcer was reserved for blind handicap category. Hence the present writ petition.

On notice, a reply has been filed on behalf of respondent Nos. 1 to 3 taking a stand that the post of announcer was reserved for blind persons and was not meant or reserved for Handicapped candidates, as per Haryana Government notification dated 17.07.1998. It has further been admitted that the petitioner fulfills the conditions contained in regularization policies dated 07.03.1996/18.03.1996 (Annexure R-2 and R-3) but the post was not reserved for handicapped candidates and thus, the services of the petitioner were not regularized. Reference has been made to order dated 15.11.2010 (Annexure R-6) whereby the case of the petitioner was considered and it was observed that the post of announcer was reserved for blind. Moreover, the petitioner was appointed as Announcer on daily wages without following the constitutional process or requirement. The case of the

petitioner/employee is considered and it was found that the petitioner is appointed on sympathetic ground being handicapped and his appointment was not made under any constitutional scheme. So, he was not found fit for regularization.

Learned counsel for the petitioner submits that the impugned order is liable to be set aside, as the the petitioner was fully qualified to be regularized under the policy dated 07.03.1996, as he had completed 05 years in service on 31.01.1996 and was in service on 31.03.1996. Further the requirement of 05 years service was reduced to three years service, as per policy dated 18.03.1996.

On the other, learned State counsel has argued that since under the previous policies dated 07.03.1996/18.03.1996, the post of announcer was reserved for blind handicap category only, therefore, the services of the petitioner were not regularized w.e.f 31.03.1996.

Heard learned counsel for the parties

The only question for consideration before this Court is that whether the services of the petitioner can be regularized, in view of policies dated 07.03.1996/18.03.1996 (Annexure R-2 and R-3) as he fulfills all the conditions contained in these policies.

In the present case, it is not disputed between the parties that the petitioner was fully eligible for regularization of his service, as per policies dated 07.03.1996/18.03.1996 (Annexure R-2 and R-3) but the only hurdle for not regularizing his service was that the post of announcer was reserved for blind handicap category only. However, the petitioner has no role to play for reserving this post for physically handicap person. He is working on the post of Announcer since 1988. Further in the policies dated

07.03.1996/18.03.1996(Annexure R-2 and R-3), there is nowhere mentioned that which post is reserved for which category. The only requirement was that the employee who have completed five years of service on 31.01.1996 and were in service on 31.01.1996, their services shall be regularized provided that they have worked for a minimum period of 240 days. Further the requirement of 05 years service was reduced to three years service, as per policy dated 18.03.1996 (Annexure R-3). The petitioner who is a physically handicapped person, as per handicap certificate (Annexure P-1), has to come to this Court twice seeking regularization of his services and finally his services has been regularized w.e.f 20.12.2010 and not w.e.f 31.03.1996 only on the sole ground that the post of announcer was reserved for blind handicap category only. The amendment dated 30.08.2010 made in the Government notification for recruitment of Group 'D' employees, the eligibility for the post of Announcer was modified to the extent of Blind as well as Orthopedic Handicapped candidates, in terms of policy dated 07.03.1996. However, for this modification, the petitioner cannot suffer being 100% physically handicapped. It is not the case of the respondents that as per policies dated 07.03.1996/18.03.1996 (Annexure R-2 and R-3), the petitioner does not have the requisite experience.

Reference at this stage can be made to judgment of Hon'ble the Supreme Court judgment in ***Malathi Das (Retd.) Now. P.B. Mahishy and others V/s. Suresh and others, 2014(2) CLR 168*** wherein it has been held that the parity has to be maintained while regularizing the services of Group D employees since similarly situated employees have been regularized. In paragraph 8, it has been observed as under:-

*“8. It is not in dispute that the original batch of employees who had filed writ petition Nos. 33541-571/1998 on the basis of which the writ petitions filed by the respondents herein (W.P. Nos. 39117-176/1999) were allowed by the order dated 15.12.1999 have been regularized. It is also not in dispute that out of the 445 employees who had filed writ petition Nos.39117-176/1999, by separate government orders, the service of 161, 64 and 55 employees have been regularized in three batches. The records placed before the Court would indicate that 7 other persons have been regularized during the pendency of the present appeal. In a situation where a Scheme had been framed on 29.12.2005 to give effect to the order of the High Court dated 15.12.1999 passed in the writ petitions filed by the respondents herein and many of the similarly situated persons have been regularized pursuant thereto the action of the appellants in not granting regularization to the present respondents cannot appear to be sound or justified. The fact that the regularization of 55 employees, similarly situated to the present respondents, was made on 18.04.2006 i.e. after the decision of this Court in **Umadevi (supra)** is also not in serious dispute though Shri Bhat, learned senior counsel for the appellants, has tried to contend that the said regularizations were made prior to the decision in **Umadevi (supra)**. The date of the order of regularization of the 55 persons i.e. 18.4.2006 will leave no doubt or ambiguity in the matter. In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularization on the date of the decision in **Umadevi (supra)** is required to be dealt with in accordance with the conditions stipulated in para 53 of **Umadevi (supra)** inasmuch as the claims of the respondent employees can well be decided on principles of parity. Similarly placed employees having been regularized by the State and in case of some of them such regularization being after the decision in **Umadevi (supra)** we are of the view that the stand taken by the appellants in refusing regularization to the respondents cannot be*

*countenanced. However, as the said stand of the appellants stem from their perception and understanding of the decision in **Umadevi (supra)** we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty bound to regularize the services of the respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order.*

In the present case, the services of similarly situated employees have already been regularized, in view of policies dated 07.03.1996/18.03.1996 (Annexure R-2 and R-3) and thus, the services of the petitioner should also have been regularized in view of policies dated 07.03.1996/18.03.1996 (Annexure R-2 and R-3).

In view of the discussion made above, the present writ petition is allowed and order dated 19.08.2015 (Annexure P-9) passed by respondent No. 3 is set aside and the respondents are directed to regularize the services of the petitioner against the post of Announcer w.e.f 31.01.1996, in view of policies dated 07.03.1996/18.03.1996 (Annexure R-2 and R-3). The petitioner is entitled to all consequential benefits.

26.09.2018

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No