

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 2256 of 2015(O&M)

Reserved on : 26.11.2018

Pronounced on : 04.12.2018

Sunil Kumar Gupta

.....Petitioner

Versus

Haryana Tourism Corporation and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Abha Rathore, Advocate
for the petitioner.

Mr. J.S. Bedi, Advocate
for the respondent.

ARUN MONGA, J(ORAL)

The present writ petition has been filed for issuance of a writ, order or direction in the nature of certiorari for setting aside the order dated 09.12.2014 (Annexure P-16) vide which the claim of the petitioner for grant of pay scale of Electrician, as against Helper Electrician, was rejected by respondent No.1- Haryana Tourism Corporation.

2. Facts of the case succinctly are that the petitioner was initially appointed as an Electrician, on daily wages in the year 1986. He continued to work in that capacity till 04.11.1988 when his services were regularized as Helper Electrician vide Annexure P-1 and not as Electrician as he did not possess the requisite I.T.I. qualification though was having an I.T.I. Certificate for Fitter Electric (Motor Winding Wiring Maintenance of Machine). To secure the requisite qualification, the petitioner appeared for the I.T.I. Electrician diploma

examination, after taking NOC from the Respondent No. 2 (Annexure P-3) and qualified with 62% marks in the year 1994-95. Thereafter, the petitioner vide his letter P-4 requested respondent No.1 to designate him as Electrician but no action was taken on his said request/letter. Petitioner yet again represented vide his letter dated 23.10.1997 (Annexure P-5) making the same request. Meanwhile, a similarly placed Helper Electrician, namely Satyabir Singh, who too did not possess I.T.I. Diploma initially, applied for NOC for pursuing the required course and on clearing so made similar representation for granting the designation and pay scale of Electrician. On being denied the said request, Sh. Satyabir Singh filed civil suit which eventually culminated into RSA No.2163 of 2007 before this Court. This Court, vide judgment dated 02.05.2012 (Annexure P-6) allowed the RSA and restored the trial court decree granted in favour of Satyabir Singh which was reversed by the first Appellate Court. Resultantly, it was declared that Satyabir Singh was entitled to the scale for the post of Electrician and was ordered accordingly by this Court.

3. As the petitioner and aforementioned Satyabir Singh are similarly placed, the petitioner on learning of this, made representation (Annexure P-8) to Respondent No. 1 referring to the judgment mentioned above (Annexure P-6) but again no action was taken. As no action was taken, the petitioner then sent a reminder dated 16.05.2013 (Annexure P-10) which was forwarded by Respondent No. 1 to Respondent No. 2, but no action was taken on the same. Another letter dated 20.07.2013 (Annexure P-13) was sent and again nothing materialized. During this time, Divisional Manager of HTC i.e. Respondent No.2 sent various letters to MD of HTC i.e. Respondent No.1 herein viz dated 27.12.2013, 9.05.2014, 25.08.2014 and 17.10.2014 (Annexure P-15 Colly) . The letters are couched as reminders stating that petitioner passed his ITI course in

1995 and the same is equivalent to 2 years regular ITI course and the same is recognised by the National Council of Education and that the petitioner had done the said course after prior permission from the department. Finally Respondent No. 1 rejected the request vide impugned order dated 09.12.2014 regarding the grant of designation and pay scale as Electrician to petitioner on the ground that technical scale has been withdrawn retrospectively due to Haryana (Abolition of Distinction of Pay Scale between Technical and Non Technical Posts) Act, 2014.

4. Learned counsel for the petitioner contends that the impugned order has been passed without giving due credence to the fact that the petitioner had/has the requisite qualification since 1994-95 and he had been working w.e.f 13.07.1986 till date, for the past 32 years, as an electrician. Even though, respondent No.1 in its record has throughout treated him as Helper Electrician. She further points out that the said contention of the petitioner has remained uncontroverted till date.

Learned counsel also contends that the said statute relied by respondents has no applicability on the case of the petitioner as they cannot take advantage of their own wrong by not having granted the benefit when it was actually due. Particularly in view of the fact, that similarly situated persons have been granted relief vide judgment rendered by this Court in the case of “**Satyabir Singh Vs Haryana Tourism Corporation and others**” in RSA No.2163 of 2010, decided on 04.05.2012. The relevant portion thereof is extracted hereinbelow:-

"On a pointed query having been put to the counsel appearing for respondents no.1 & 2 it could not be disputed that even though, the trade of such employees be it Helper A.C. Mechanic, A.C. Operator, Helper Electrician being different but prior to acquisition of I.T.I qualification the scale admissible was Rs.750-940 and upon

acquiring the I.T.I qualification the scale of Rs.950-1500 had been released in favour of Sh. Jagat Singh, A.C. Mechanic and Rajbir Singh, defendant-respondent no.3. As such, it is clear that discrimination against the present appellant in so far as the denial of the pay scale of the post of Electrician with effect from the date he acquired the I.T.I qualification was writ large. On the basis of parity itself the appellant was entitled to be designated on the post of Electrician as also for the grant of pay scale for such post with effect from the date he acquired the I.T.I qualification.

The plea of estoppel raised on behalf of respondent-Corporation is wholly devoid of merit. An employee may have been informed that he is being granted permission to acquire higher qualifications but he would not be entitled to claim any financial benefits in respect thereof but such a stipulation at the hands of an employer and that too at the hands of a Welfare State cannot estop an employee from claiming his fundamental right to the pay scale for the post for which he has been found entitled to and has in fact discharged the duties. There can be no waiver of such right".

Learned counsel further contends that the above said judgment of this Court has since attained finality as the same has been implemented as is reflected from Annexure P-7 which is an order passed by the Managing Director of respondent No.1. She further contends that another judgment rendered by the Division Bench of this Court reported as ***State of Haryana Vs. Subhash Chand, 2017(4) SCT 199***. The relevant para of the said is extracted hereinbelow for ready reference:-

“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".

Learned counsel for the petitioner contends that in the present case, petitioner has been working as Electrician for the past 32 years. And therefore, as per the ratio (supra) he is entitled to payment and designation as electrician in accordance with actual nature of duties being performed by him. Learned counsel for the petitioner fairly contends that the petitioner is not pressing for the consequential benefits prior to 20.7.2013 when he last made a request for grant of pay scale of Electrician, even though, he had been working as Helper Electrician w.e.f 05.11.1998.

5. *Per contra*, learned counsel for the respondent-Corporation contends that in view of Section '3' of Haryana (Abolition of Distinction of Pay Scale between Technical and Non-Technical Posts) Act, 2014, the petitioner is not entitled to the benefit as claimed by him.

Further on a query of this Court posed to him that if the benefit had been granted to the petitioner at the relevant time when he admittedly became entitled to the same, could or can the said benefit be withdrawn in view of the proviso to Section 4 of the Act. No answer was given directly, though an antipathetic argument was advanced that the same is an academic issue since the petitioner has not been given the benefit, therefore, now he is not entitled to the same.

Learned counsel for respondents states that the petitioner could not have claimed parity with the persons who had been regularized as Electrician since the petitioner has merely been regularized on the post of Helper Electrician.

Learned counsel for the respondent also contends that there is an inordinate delay

on the part the petitioner as he sought regularization after 16 years of having obtained requisite qualification even though qualification or its year when obtained is not in dispute.

6. *Per contra*, learned counsel for the petitioner states that above said submissions are factually incorrect. The petitioner has been representing from 1996-97 onwards as reflected from representation Annexure P-4 and P-5. The filing/submission of the said representations have not been denied in the written statement.

7. I am of the view that its too late in the day to have an objection on the delay and the respondents cannot take advantage of their own wrong having denied the benefit to the petitioner when was actually due. Now to uphold the contention that the same is barred by an inordinate delay will be complete traversery of justice. Learned counsel for the petitioner, as it is fairly concedes that the petitioner is not pressing for the arrears prior to 2013 and therefore, the contention of the counsel for the respondents qua limitation has no substance. Accordingly, it is directed that the petitioner be granted the pay and designation of Electrician from the date when he last submitted his representation.

8. In these circumstances, the present writ petition is allowed and the respondents are directed to pay and designate the petitioner as Electrician with effect 17.03.2013 with all consequential benefits along with interest @ 9% per annum.

(ARUN MONGA)
JUDGE

04.12.2018

dkp

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