

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.6432 of 2015

Date of Decision: 16.07.2018

Pawan Kumar

.....Petitioner

Vs.

State of Haryana and ors.

.....Respondents

CWP No.6440 of 2015

Dudhnath Ram

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Surender Pal, Advocate, for the petitioner.

Mr.Kiran Pal Singh, AAG, Haryana.

Mr.R.N.Lohan, Advocate, for respondents No.3 and 4.

RITU BAHRI, J. (ORAL)

This common judgment shall dispose of above mentioned two writ petitions common questions of law and facts are involved. The facts are taken from CWP No.6432 of 2015.

Petitioner is seeking quashing the action of the respondents (Annexure P-4) not to regularize the services of the petitioner in the light of the Policy decisions dated 07.03.1996 (Annexure P-1), policy decision dated 29.07.2011 (Annexure P-2) and policy decision dated 20.06.2014 (Annexure P-3) and further seeking directions to the respondents to

regularize the service of the petitioner on his post of Sweeper (Safai Karmi) in the light of the Policy decisions (P-1), (P-2) and (P-3) and petitioner be granted all consequential benefits.

The petitioner was appointed by the Hindu Kanya Mahavidyalya Jind (A Govt. Aided College) on daily wages basis in accordance with law on 15.12.1988 as a Safai Karmi (Sweeper) against a post having full work load and since then he is continuing and performing his duties and responsibilities which are assigned to him by the college administration. On 07.03.1996 the Government of Haryana issued a policy taking decision (Annexure P-1) for regularization of work-charged/Casual/Daily--Rated employees who had completed five year service on 31st January, 1996 and were in service on 31st January, 1996 shall be regularized provided that they worked for a minimum period of 240 days in each year and the break in service in any year is not more than one month at a time. The petitioner preferred an application dated 10.08.1998 to the respondent No.3 requesting for regularization of his services as per Policy decision (Annexure P-1) but the same has not been considered by the respondents as he was eligible as per the said policy decision. Thereafter, Government of Haryana issued a Policy vide Gazette Notification dated 29.07.2011 (Annexure P-2) as onetime measure on humanitarian ground for regularization of the Group C and D employees appointed/engaged on Adhoc/contract/work charged/daily wages and part time who have completed minimum period of 10 years of service as on 10.04.2006. Petitioner being fully eligible, moved a representation dated 24.02.2012 to the respondent authorities for

regularization of his services since he had completed more than 10 years of service as on 10.04.2006 and he was fully entitled for regularization in the light of the policy decision dated 29.07.2011 (Annexure P-2) but the respondent-College did not take action. Thereafter, petitioner had approached to this Court by way filing a CWP No.21613 of 2014 and the same was disposed vide order dated 17.10.2014 (Annexure P-4) of by giving directions to the respondents to look into and decide the representation.

By way of present writ petition, petitioner is seeking regularization of his services in view of the policy decisions Annexure P-1 to P-3. The petitioner submits that respondents are not considering his case despite the the fact that his colleague namely Kamla (Peon) who retired in the year 2006 was regularized.

On notice, reply has been filed by respondent No.3 stating therein that Hindu Kanya Mahavidyalya is a private institution and is not under the control of the respondents No.1 and 2. Rather the Hindu Kanya Mahavidyalya, Jind is under the Governing Body and the answering respondent is the president. It is also pertinent that the petitioner has not been appointed against the aided post and is being paid salary from the fund of management of the college and there is no policy of regularization of the employee of the Hindu Kanya Mahavidyalya. It has been further submitted that judgment relied upon by the petitioners are not applicable to the facts and circumstances of the present case as the instructions/policies of regularization relied upon by the petitioner are not

instructions/policies of regularization relied upon by the petitioner are not applicable on the answering respondent institute which is a private institution and there is no provision/policy of regularization in the Hindu Kanya Mahavidyalaya, Jind.

In a separate written statement, respondents No.1 and 2 submit that while passing order Annexure P-5, respondent No.3 has clarified that the petitioner was appointed on the post of Sweeper against the un-aided post and has been paid salary from the fund of management of the college. There is no policy of regularization of the employee of the college. He was not appointed on any regular or sanctioned post. They have no permanent sanctioned post from Government for the Sweeper and it is managed by the College on its own. The services of the petitioner was engaged by private respondent management of college i.e. Hindu Kanya Mahavidyalaya, Jind to whom the State Govt. Provides grant-in aid assistance to the extent of 95% of deficit only in respect of salary of the employees working against sanctioned post and the services working under Govt. Aided Colleges are governed under Haryana Affiliated Colleges (Security of Services) Rules, 2006. It is further submitted in the reply that the petitioner worked against unsanctioned post in the respondent-College and the services of the petitioner had been engaged by the respondent Private Management of College at their own level and the salary of the petitioner had been drawing from the consolidated fund maintained by the College of management itself and there is no involvement of Govt. grant-in-aid assistance. Subsequently, vide memo dated 05.08.2003 (Annexure R-1) all the Govt. Aided Colleges situated in

the State of Haryana were directed that some Govt. Aided Colleges Principal/Management are making appointment Teaching/Non-Teaching Staff against unmentioned post, resultantly unnecessarily communications/correspondence is being received. Therefore, all the Govt. Aided Colleges are directed not to appoint any person against unmentioned post, otherwise State/Department will not be responsible and it was also mentioned that Management of College should itself dispose of the matter pertaining to unmentioned post.

After perusal of the judgment referred (Annexure P-4) shows that petitioner approached the respondent-authorities by way of representation dated 24.02.2012 (Annexure P-6), but the same is also pending decision. This writ petition has been disposed of by giving directions to the respondent No.3 to look into the representation (Annexure P-6) and decide the same at an early date by passing an appropriate order but the services of the petitioner has not been regularized. The Division Bench Judgment in the case of Rajesh Kakkar and another Vs. State of Haryana and others passed in CWP No.9397 of 2004(Annexure P-6) has observed that only such ad-hoc, contractual employees who have completed three year service on 30th September, 2003 and were in service on that date should be made regular if the break in service of an ad-hoc, contractually employed person has been caused for the fault attributable to him, such brake period should be condoned unless it is of an extra ordinary longer period i.e. not more than six months. However, if the brake in service has been caused due to fault of the employee like abandonment of employment, the government may not

Condon the same if the period of such break is more than a period of 30 days. Since the petitioner has completed 3 years of service. This period of 3 years is a fair precept to the sufficiency of reasonable period of which a workman should have worked as work charge/daily rated before raising such a claim. Admittedly the work exists, the state is incurring the expenditure quite close to the expenditure which the state would incur in the event they are called upon to regularize the services of the petitioners. Furthermore, there is no dispute that the petitioners are discharging similar duties functions, work for the same hours and they possess essential qualifications prescribed for appointment to the posts which there regular counter-parts are possession. The writ petition was allowed. The direction was given to consider the claim of the petitioner for regularization. The stand taken by the respondent in the present case, in the replies filed by respondents No.1 and 2 separately and by respondent that petitioner has worked on the post of Sweeper against the un-aided post and has been paid salary by the management from their own fund.

Since, the petitioner is continuing to work in the said department, this fact has not been specifically mentioned in the reply of respondents and the junior of the petitioner i.e. Kamla (peon) who retired in the year 2006 was regularized and one Amit (Sweeper) who is very much junior to the petitioner has been regularized in the year 2014 and hundreds of juniors to the petitioner have been regularized by various Government departments and Govt. Aided colleges w.e.f. 07.03.1996, the case of the petitioner cannot be rejected simply on the ground that the post

management of the college. The Division Bench judgment in the case of Rajesh Kakkar (Supra) has held that the case of daily wage Group C and Group D employees, only those daily wage employees shall be regularized who had been engaged before 31.01.1996 provided they fulfill the other conditions. In the present case, petitioner was engaged on 15.12.1988 as a Safai Karmi (Sweeper) against a post having full work load and his junior employee to the petitioner has been regularized in the year 2014 and hundreds of juniors to the petitioner have been regularized by various Government departments and Govt. Aided colleges w.e.f. 07.03.1996, the same benefit should be granted to the petitioner. A reference can be made to the judgment of Hon'ble Supreme Court in the case of Malathi Das (Retd.) Now P.B. Mahishy & Ors. Vs. Suresh & Ors. passed in CIVIL APPEAL NO.3338 OF 2014 whereby, a similarly situated employee can be given benefit of regularization on the ground of parity.

In view of the above, the both the writ petitions are allowed by giving directions to the respondents to consider the case of the petitioners and regularize the services of the petitioners from the date of their juniors with all consequential benefits within a period of two months from the date of receipt of a copy of this order order. No order as to costs.

(RITU BAHRI)
JUDGE

16.07.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No