

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-639-2017
Date of decision: 05.09.2018

Surinder Kumar

...Petitioner

V/s.

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Sansar Kundu, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Yashdeep Nain, Advocate with
Mr. Kuldeep Tiwari, Advocate
for respondent No. 3.

RITU BAHRI, J. (Oral).

The petitioner is seeking writ of certiorari for setting aside the order dated 16.09.2015 (Annexure P-10) whereby the petitioner has not been regularized and further direction to the respondents to regularize the petitioner w.e.f. 01.04.2003 the date by which 22 similarly situated employees have been regularized in compliance of order dated 07.10.2002 passed in CWP No. 16056 of 2002.

In December 1996, there was a strike of regular Sweepers working in various Municipal Council in Haryana State. The respondents in order to cope up with the urgency of work and the sanitation in the Haryana State, decided to make fresh appointment of Sweepers against the regular vacancies available with each Municipal Council in the Districts and a notice was issued through panchayats by giving wide publicity and

accordingly the petitioner was appointed as Sweeper vide appointment letter dated 03.01.1997 (Annexure P-1). Vide letter dated 07.02.1997 (Annexure P-2), respondent No. 2-Deputy Commissioner issued a letter to respondent No. 3-Executive Officer Municipal Council, Thanesar, District Kurukshetra to regularize the services of above said sanitation staff which were appointed during strike period (Annexure P-2). Another letter dated 13.05.1997 (Annexure P-3) was sent for regularizing the services of employees who were appointed during strike period. The petitioner alongwith other employees served a legal notice on 04.02.2002 that they have completed 5 years of service and their services have not been regularized. Vide letter dated 11.03.2002 (Annexure P-4) respondent No. 2 directed respondent No. 3 to take final decision on the legal notice. Respondent No. 3 vide letter dated 04.03.2002 (Annexure P-5) informed that the matter is under consideration. Subsequently the petitioner came to know under RTI Act vide letter dated 11.08.2010 (Annexure P-7) that the reasons for not regularizing the services of those employees was that their services were not good and further as per the list (Annexure P-8), it was stated that employees did not fulfill the requisite condition issued by the Government. The petitioner then filed **CWP-15784-2010 Surinder Kumar V/s. State of Haryana and others** which was disposed of on 25.05.2015 (Annexure P-9) by giving direction to respondent No. 3 to decide the claim of the petitioner within two months.

The petitioner is seeking parity in view of the judgment passed in **CWP-9080-2010 Mohinder Kumar and others V/s. State of Haryana and others**, allowed on 04.05.2016 (Annexure P-11), whereby the services of the similarly situated employees have been regularized. The respondents

are not disputing the above said fact that the petitioner was employed during strike period and the order passed in ***CWP-15784-2010 Surinder Kumar V/s. State of Haryana and others***, They, however, reiterate that the claim of the petitioner was not covered as per the regularization policy dated 01.10.2003. As per the policy, the daily wagers who had been engaged before 31.01.1996 and have completed three years service on Group C and Group D posts on 30.09.2003 have been regularized. After the judgment of Supreme Court in ***Secretary State of Karnataka V/s. Uma Devi and others (2006) 4 SCC 1*** there was no policy of regularizing the services of the petitioner. The claim of the petitioner is not covered under the policy dated 29.07.2011 since the petitioner was appointed in December 1997 and he did not complete 10 years of service on or before 10.04.2006 and hence the case of the petitioner is not covered under the above said policy/instruction. The respondents have not denied that as per the judgment passed by this Court in the case of ***CWP-9080-2010 Mohinder Kumar and others V/s. State of Haryana and others*** (Annexure P-11), similarly situated Sweepers who were working in Municipal Council during strike period have been regularized. A perusal of the judgement (Annexure P-11) shows that even those Sweepers were appointed on 03.01.1997, 28.12.1996, 30.12.1996 and 01.01.1997 respectively. The writ petition was allowed by making reference of the Supreme Court judgment in ***High Court of M.P. Through Registrar and others V/s. Satya Narayan Jhavar, 2001(7) SCC 161*** where it was held that if in the initial appointment, there is a condition of probation, and after a permissible period of probation, if the probation is not extended, the inference is that the officer concerned is deemed to have been confirmed after expiry of the maximum period of probation in case before

its expiry the order of termination has not been passed. In the present case, as per appointment letter dated 03.01.1997 (Annexure P-1), the work and conduct of the petitioner was to be observed for 15 days and if it is found satisfactory, his services were to be regularized. As per the condition of appointment, the petitioner had to be regularized and keeping in view the Supreme Court judgment in *Malathi Das (Retd.) Now. P.B. Mahishy and others V/s. Suresh and others, 2014(2) CLR 168* the parity has to be maintained while regularizing the services of Group D employees since similarly situated employees have been regularized.

The writ petition is allowed by giving direction to the respondents to pass appropriate order at par with the similarly situated employees alongwith consequential benefits with 6% interest per annum from the date of filing of this writ petition.

(RITU BAHRI)
JUDGE

05.09. 2018

Divyanshi

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No