

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

LPA No.465-2018 (O&M)

Date of Decision: 10.05.2018

State of Haryana & others

... Appellants

Versus

Baljit Singh Sudan (now deceased) through L.Rs.

... Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Deepak Balyan, Additional Advocate General, Haryana.

Ms. Alka Chatrath, Advocate for the caveator/respondent.

...

TEJINDER SINGH DHINDSA, J.

CM-1248-LPA-2018:

1. The instant application has been filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 149 days that has occurred in filing the accompanying appeal.

2. Learned State counsel would submit that delay has occurred during the course of processing the case file as opinion was to be sought from the concerned Law Officer and thereafter, the grounds of appeal were to be drafted and got approved.

3. We find that these are routine grounds being taken seeking condonation of delay.

4. Prayer for condonation of delay is accordingly declined.

5. Application is dismissed.

Main case:

1. The instant intra Court appeal has been preferred under Clause X of the Letter Patent Act against the judgement dated 12.09.2017 passed by the learned Single Judge and whereby the order dated 16.10.2006 rejecting the claim of the respondent (since deceased and now represented by his legal representatives) for regularization has been set aside. Respondent (since deceased) has been held to be deemed to be regularized in service as Social Studies Master w.e.f. 01.10.2003 with all consequential benefits but the arrears have been restricted to a period of 38 months prior to the date of filing of the writ petition.

2. Learned State counsel has argued that the respondent did not fulfil the requisite educational qualifications prescribed for the post under the Haryana School Education (Group 'C') Service Rules, 1998 and as such, there was no infirmity in the order dated 16.10.2006, whereby his claim for regularization in service was rejected. It has been argued that the learned Single Judge has overlooked the vital aspect that the statutory Rules applicable and to be taken into consideration were in relation to point of time when the benefit of regularization was to be considered. Reliance in this regard is placed upon judgment of the Apex Court in **Deepak Aggarwal and another Versus State of Uttar Pradesh and others (2011) 6 SCC 725**. Yet another submission raised is that the impugned judgement has also not taken into consideration the effect of the Instructions dated 03.11.1983 that had been appended along with the written statement placed on record and which prescribed a certain subject combination towards essential

educational qualifications for purposes of appointment to the post of Social Studies Master. Learned State counsel would submit that essential qualifications for the post were to be reckoned as on date the case of regularization of the respondent and since the respondent did not possess the requisite qualifications as on 01.10.2003 i.e. the relevant date under the regularization Policy framed by the State Government, the requisite relief could not have been granted by the writ Court.

3. Learned State counsel has been heard at length and pleadings on record have been perused.

4. Brief factual matrix would require notice.

5. Respondent possesses a graduate degree obtained from the University of Bombay in the year 1989 in English medium. Thereafter, he acquired the qualification of M.A. History and B.Ed. in the year 1991 and 1996 respectively from the same University. In pursuance to an advertisement dated 19.08.1997 issued by the State Government, respondent applied for the post of Social Studies Master and having successfully negotiated the selection process, was issued appointment letter dated 20.10.1997. The appointment, however, was on contractual basis and for 89 days.

6. At the stage of initial engagement of the respondent as Social Studies Master, the Punjab Education Service Class III (School Cadre) Service Rules, 1955 (in short 'the 1955 Rules') held the field. Under the 1955 statutory Rules, the qualifications prescribed for the post of Social Studies Master were:

“B.A./M.A., B.T./S.S.T.”

7. The 1955 Rules came to be replaced by the Haryana School Education (Group 'C') Service Rules, 1998 and wherein the following qualifications were laid down for appointment as Social Studies Master by way of direct recruitment:

<i>i) B.A. with B.T./B.Ed from a recognized University OR B.A. Education (4 years course) from a recognized university;</i>
<i>ii) in addition to English in B.A. or B.A. Education a combination of at least two subjects out of the following: i) History ii) Political Science iii) Economics iv) Sociology vi) Public Administration</i>
<i>iii) Knowledge of Hindi upto Matric standard.”</i>

8. State Government framed a regularization Policy dated 01.10.2003 and the relevant extract of Clause 2 thereof read as follows:

“that only such daily wage employees who have completed three years service on group 'C' post on 30.09.2003 and were in service on 30.09.2003 shall be regularized against their respective group 'C' post, provided they fulfil the requisite qualifications and were originally appointed against vacant post.....”

9. Concededly, such Policy came to be amended on 10.02.2004 and as per amendment, it was stipulated that the employees to be regularized must fulfill the requisite qualifications ***on the date of engagement or on 30.09.2003.***

10. What clearly flows from the amendment dated 10.02.2004 in the regularization Policy dated 01.10.2003 is that if an employee fulfilled the requisite qualifications on the date of engagement even then he was to be considered for regularization in service subject to fulfillment of other terms and conditions of the Policy.

11. Concededly, initial engagement of the respondent on contractual basis was on 20.10.1997 i.e. at a stage when Punjab Education Service Class III (School Cadre) Service Rules, 1955 held the field and the subsequent 1998 Service Rules had not even been notified.

12. No exception, as such, can be taken to the findings recorded by the learned Single Judge holding the respondent (since deceased) to be eligible under the regularization Policy framed by the State dated 01.10.2003 and as amended on 10.02.2004.

13. We find that the reliance placed by learned State counsel upon the Instructions dated 22.11.1983 (appended as Annexure R-1/R-2 along with written statement filed to the writ petition) is wholly misplaced.

14. In this regard, learned Single Judge has taken note of the fact that in the year 1991 certain candidates had applied for the post of Social Studies Master but were not considered for the said post on the ground that they did not have the necessary subject combination at the graduate level. Such situation had led to the filing of **CWP-1402-1995** titled as **Dharamvir and others Versus State of Haryana** and in which the contention raised by the petitioners therein had been upheld that qualifications prescribed in the advertisement was contrary to the statutory rules i.e. the then existing 1955 Rules.

15. It would also be apposite to note that the respondent therein had also filed **CWP-19925-2001** titled as **Baljit Singh Versus State of Haryana** seeking quashing of advertisement No.9/99, whereby post of Social Studies Master was sought to be filled up on the ground that those who had already been working on the said post had not been given any

relaxation in the qualifications prescribed under the 1998 Rules in comparison to the earlier prevalent Rules 1955. Such writ petition had been disposed of by a Division Bench of this Court on 21.12.2001 in the following terms:

“Notice of motion to the respondents, Shri Rajbir Sehrawat, Assistant Advocate General, Haryana accepts notice.

We have heard the learned counsel for the parties and with their assistance gone through the record of this case and we are of the opinion that the present writ petition can be disposed of at this stage without taking written statement of the respondent.

The present writ petition is disposed of in terms of order dated 29.11.2001 passed in Civil Writ Petition no.6339 of 2000, Tek Chand and others versus State of Haryana and others.”

16. The consequence of such directions was that the stringent qualifications prescribed under the 1998 Rules were held to be not applicable in the case of such employees who were already working on contractual/ad hoc basis in the Department as Social Studies Master as their qualifications were in consonance with the earlier prevalent 1955 Rules.

17. We are in complete agreement with the view taken by learned Single Judge that the same principle would apply even at the stage of consideration of regularization of such ad hoc/contractual employees in the year 2003 and who otherwise fulfilled the requisite qualifications prescribed at the time of their initial engagement under the 1955 Rules.

18. We may also observe that even though the dictum laid down by the Apex Court in **Deepak Aggarwal's case (supra)** was that statutory rules prevalent on the date of recruitment should prevail and not the Rules as on the date of initial engagement but in the present case the issue with regard to

regularization had to be dealt with in the light of the specific regularization Policy dated 01.10.2003 framed by the State Government and as amended from time to time.

19. In our considered view, the impugned judgment dated 12.09.2017 passed by learned Single Judge has been rendered in due appreciation of the terms and conditions of the regularization Policy dated 01.10.2003 and as amended on 10.02.2004 and by taking into account the qualifications possessed by the respondent (since deceased) under the Punjab Education Service Class III (School Cadre) Service Rules, 1955.

20. In view of the discussion above, we do not find any merit in the appeal.

21. Accordingly, the instant appeal is dismissed on merits as well as on the ground of delay.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

10.05.2018

harjeet

- | | | |
|-----|----------------------------|--------|
| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |