

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

LPA-638-2018 (O&M)

Date of Decision: 10.05.2018

The State of Haryana & others

... Appellants

Versus

Parmod Kumar & others

... 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.

Mr. J.S. Manipur, Advocate for the respondents/caveator.

...

TEJINDER SINGH DHINDSA, J.

CM-1732 and 1735-2018:

Prayer in these two applications is for condonation of delay of 29 days in filing and 62 days in re-filing the accompanying appeal.

The only justification put forth in the applications is that delay has occurred on account of processing of the case file and such delay was not deliberate or intentional.

We do not find the same to be a good ground to condone the delay.

Applications are dismissed.

Main case:

State of Haryana, Forest Department has preferred the instant

Letters Patent Appeal under Clause X of the Letters Patent assailing judgment dated 20.11.2017 passed by learned Single Judge and whereby respondent/Parmod Kumar has been directed to be treated to have been regularized on the post of Mali (falling within group 'D' service) and on the basis thereof, his case to be considered for promotion to the post of Forest Guard.

Learned State counsel has argued that under the Haryana Forest Department (Group 'D') Service Rules, 1998, there are 10 different categories of cadre posts and in which the post of Labourer does not find a mention. Since service of the respondent had been regularized w.e.f. 01.10.2003 as Labourer, he was not eligible to be promoted to the post of Forest Guard under the statutory Service Rules governing service. Further argued that the directions issued by learned Single Judge to treat the respondent to be regularized in the cadre of 'Mali' cannot sustain as in such an eventuality a Pandora's box would be opened inasmuch as apart from the respondent, 194 other Labourers had also been regularized w.e.f. 01.10.2003. It is contended that other similarly situated employees would also now raise similar claim. Counsel has further urged that learned Single Judge has over looked an affidavit of Sh. S.N. Roy, Principal Secretary to Government of Haryana, Department of Forest and Wild Life that had been filed during the course of proceedings before the writ Court and in which it had been clarified that Rules qua the 195 Labourers regularized w.e.f. 01.10.2003 are yet to be finalized and as such, such Labourers including the respondent herein were to be taken as part of a diminishing cadre.

It has also been argued that the respondent had been granted

benefit of Assured Career Progression Scheme as per ACP Rules, 2008 and 2016 and under such circumstances, the directions issued by the writ Court to consider the respondent for promotion to the post of Forest Guard cannot sustain.

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

Two material facts which are not in dispute may be noticed at the very outset.

Respondent was granted benefit of regularization as a Labourer (Group 'D') w.e.f. 01.10.2003 in terms of office order dated 16.10.2006 passed by the Deputy Conservator Forest (Yamuna Nagar). Other employees who had joined service on Group 'D' post between 25.01.2008 and 29.01.2008 i.e. much later in point of time to the date of regularization of respondent to a Group 'D' post already stand promoted as Forest Guard.

We find that appended along with the writ petition at Annexure P-2 was a communication issued from the office of the Principal Chief Conservator of Forest, Haryana, Panchkula on the subject-“Instructions regarding the workmen regularized in Group 'D'. As per such document, it was clearly stipulated that till such time service Rules of Labourer category are not framed, they may be given all the facilities as given to Group 'D' employees. ***Their services be considered under the same Service Rules which are for the Group 'D' i.e. Mali in the Department.***

Learned State counsel does not dispute the contents of the documents that had been placed on record at Annexure P-2 before the writ Court.

In our considered view, the decision contained in the document afore noticed negates the stand taken on behalf of the State that respondent could not have been considered for promotion to the post of Forest Guard under the Haryana Forest Department (Group 'D') Service Rules, 1998.

The argument raised by learned State counsel that there are other employees who are similarly situated and who would also now raise an identical claim is of no relevance. It is the respondent herein who had chosen to agitate his claim by invoking the extraordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution of India. It is such claim that has been adjudicated upon and the writ petition has been allowed in terms of impugned judgment dated 20.11.2017 passed by learned Single Judge. Relief sought and granted in favour of the respondent cannot be negated only on the basis that there may be other employees who are similarly situated and may also raise a similar claim.

As regards the respondent having been released the benefit under the Assured Career Progression Scheme, the same would rather support the case of the respondent as regards claim for promotion. Suffice it to observe that the Assured Career Progression Scheme was framed by the State with an objective to alleviate stagnation in service qua an employee who has to his credit regular satisfactory service and has not been granted promotion inspite of being eligible to be so considered for want of clear vacancies or otherwise. The very fact that the respondent had been granted ACP benefit in itself indicates that he was holding a regular cadre post.

We find that the directions issued by the learned Single Judge while granting benefit to the respondent are also in consonance with the

dictum laid down by the Apex Court in **Dr. O.Z. Hussain Vs. Union of India and others, AIR 1990 SC 311** and wherein it had been held that the promotion is a normal incidence of service and the State Government in the capacity of a welfare State towards promoting efficiency in public service is obligated to provide promotional avenues in every cadre of service.

In view of the discussion herein above, we find no merit in the instant appeal.

Accordingly, the same is dismissed on merits as well on the ground of delay.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

10.05.2018

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