

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

CWP-3984-2010 (O&M)
Date of decision : 13.09.2019

Mohan Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: None for the petitioner.

Ms. Anju Arora, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for quashing of show-cause notice dated 01.02.2010 (Annexure P-26) and final order dated 03.03.2010 (Annexure P-28), whereby, the order of promotion of the petitioner as Surveyor has been rescinded terming it as an illegal promotion and consequential reversion of the petitioner to the post of "Pump Operator" on daily basis.

There is no assistance on behalf of the petitioner, however, it has been averred in the petition that the petitioner was appointed as Pump Operator on daily-wage basis on 01.05.1990 and worked as such without any break till 30.07.2003. There also exists the post of Surveyor in the respondent-Department which is a scale higher than the post of Pump Operator. The requisite qualification for the post of Surveyor is Diploma in the trade of Surveyor. As the petitioner fulfilled the requisite qualification

for the post of Surveyor and certain posts were lying vacant, he submitted representation dated 19.08.2002 (Annexure P-4) seeking promotion to the post of Surveyor against a vacant post. The said representation was recommended and forwarded to the Sub Divisional Engineer who further forwarded the same to Executive Engineer, respondent No.5 vide Annexure P-5. The Executive Engineer further forwarded the representation of the petitioner to respondent No.3 vide memo dated 28.08.2002 (Annexure P-6). Meanwhile, the Superintending Engineer, Public Health Circle, Hoshiarpur, wrote to respondent No.3 vide memo dated 27.05.2003 (Annexure P-7), and requested that two posts of Surveyor and two posts of Surveyor Khalasi be transferred for a period of two months to the Public Health (RWS) Divisional Talwara for start of a new project. Pursuant thereto, respondent No.3 passed order dated 30.07.2003 (Annexure P-8), whereby, the petitioner was promoted to the post of Surveyor on purely temporary basis. Thus, with the joining of the petitioner as Surveyor, he became a regular employee of the department as all the requisite formalities for appointment as a regular employee were got completed including the medical examination. While working as Surveyor, the petitioner submitted a representation dated 03.11.2003 (Annexure P-10) to respondent No.2 seeking transfer from Talwara to Ludhiana, which was ultimately accepted and vide order dated 16.12.2003 (Annexure P-12), he was transferred to Ludhiana against the regular sanctioned post of Surveyor. However, the petitioner was shocked to receive order dated 23.01.2004 (Annexure P-13), whereby, the order of promotion of the petitioner dated 30.07.2003 were withdrawn. Aggrieved

against order dated 23.01.2004 (Annexure P-13), the petitioner preferred CWP-2094-2004, which was dismissed as withdrawn on the assurance of respondent-authorities to consider the claim of the petitioner independently vide order dated 24.05.2004. The case of the petitioner was reconsidered and upon giving up of claim by one Amrik Singh, Pump Operator, who was Senior to the petitioner and possessing eligibility for the post of Surveyor, the petitioner vide order dated 15.06.2004 (Annexure P-17). However, again the petitioner was reverted from the post of Surveyor vide order dated 09.02.2005 (Annexure P-18). The petitioner again laid challenge to the impugned action of the respondents by filing CWP-3169-2005. The writ petition came to be allowed vide order dated 28.05.2007 (Annexure P-20), and the respondent-State withdrew the impugned order dated 09.02.2005 (Annexure P-18) with liberty to pass a fresh order. Thereafter, vide order dated 16.02.2009 (Annexure P-22), the petitioner was permitted to continue as Surveyor. The petitioner was shocked to receive a show cause notice dated 01.02.2010 (Annexure P-26), whereby, his promotion was termed as illegal on the ground that the petitioner was a Daily Wage Pump Operator and as such could not have been considered for promotion. The petitioner submitted his reply on 18.02.2010 (Annexure P-27). Ultimately, vide impugned order dated 03.03.2010, the order of promotion of the petitioner dated 30.07.2003 was rescinded and he was ordered to be reverted back to his original trade of Pump Operator.

On the other hand, learned State counsel submits that the order of promotion of the petitioner to the post of Surveyor was patently wrong on

administrative ground as there were no rules in vogue at that time under which a person working on daily wage basis could be promoted to a regular post. As per policy dated 23.01.2001, regularization could be done subject to availability of vacant sanctioned positions. The department prepared a seniority list based upon which the daily-wage employees were regularized against available sanctioned posts. Under this policy, the daily-wagers up to the seniority of 616 could be regularized, whereas the petitioner stood at seniority No.845. Therefore, his services could not be regularized under the policy.

Heard.

The admitted facts of the case are that the petitioner was appointed as a Pump Operator on daily-wage basis on 01.05.1990. While continuing as such, he was promoted to the post of Surveyor on 'regular basis' vide order dated 30.07.2003. The said promotion was subsequently withdrawn but the reversion order was set aside by this Court with a direction to the respondents to pass a speaking order. In pursuance thereof, the petitioner was again promoted as Surveyor. Ultimately, the petitioner now stands reverted vide impugned order dated 03.03.2010 on the ground that while working as daily-wager Pump Operator, he could not have been promoted as Surveyor on regular basis.

While working as Pump Operator, the petitioner moved an representation dated 19.08.2002 (Annexure P-4) seeking promotion to the post of Surveyor against a vacant post having possessed the requisite qualification and other eligibility conditions. As there was requirement of

two numbers of Surveyors in a new project, the name of the petitioner was forwarded to the Superintending Engineer (Monitoring) Public Health Department, Patiala, by the Executive Engineer Public Health (GW), Division Ludhiana, for regular promotion post of Surveyor even though the petitioner, being a daily-wager, was not eligible for the same. This action of the respondent-authorities in accepting the prayer of the petitioner for promotion against a regular post of Surveyor was patently wrong as he was not a regular government employee by then. Merely on the basis of fulfilling the eligibility criteria, a daily-wager cannot lay claim for promotion to a regular post. The petitioner was not even a regular employee in the cadre of Pump Operators. The subsequent speaking order dated 16.01.2009 (Annexure P-22) is also patently wrong as even if an employee fulfills the qualifications for the certain post, being daily-wager, he cannot be promoted in a higher grade against a regular promotion. Regular promotions are meant for regular employees only. As per policy dated 23.01.2001, regularization could be done subject to availability of vacant sanctioned positions. As per the seniority list prepared by the department the petitioner stood at seniority No.845, whereas, the daily-wagers only up to the seniority of 616 could be regularized. Therefore, his services could not be regularized under the policy. It is also to be noticed that one Balwinder Singh, Pump Operator, seniority No.846, who has been cited by the petitioner has already been de-regularized vide order dated 06.10.2009 and as such, he has been posted as Pump Operator on daily-wage basis.

In this view of the matter, this Court feels that the instant

petition sans merits and is accordingly, dismissed.

13.09.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No