

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15801-2016 (O&M)
Date of Decision: 06.11.2019

Rishi Pal

... Petitioner

vs.

Union of India and Ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashwani Bhardwaj, Advocate
for the petitioner.

Mr. Alankar Narula, Advocate for
Mr. Prateek Gupta, Advocate
for the respondent(s)-UOI.

ARUN MONGA, J.(ORAL)

CM-4405-CWP-2018

For the reasons stated in the application, the same is allowed.

Annexures P-9 to P-12 are taken on record, subject to all just exceptions.

CWP-15801-2016

Inter alia issuance of a writ in the nature of *mandamus* has been sought by the petitioner commanding the respondents to regularize his services in compliance of the regularization policy/instructions issued from time to time by Government of India, more particularly, dated 10.09.1993, 07.06.1988 and 08.04.1991 contained at Annexures P-9 to P-11 respectively.

2. In the return filed by the respondents, the claim of the petitioner has been refuted on the ground that at the time of his original

appointment on 01.08.1990, his age was 30 years and 5 months against the prescribed maximum age limit of 30 years.

3. Petitioner was appointed as 'Syce' in a stud farm maintained by respondent no.3 which is under the ultimate control of respondent No.2 i.e. Director General, R.V.S. Ministry of Defence, Government of India. The applicability of the instructions, *ibid*, therefore, is not denied. The other stand taken in the return is that minimum qualification for the said post is matriculation and as a special measure, the same too was waived off for those employees who were not over age as a one time measure. However, in the case of petitioner, though he is matriculate and possessed the required educational qualification, but relaxation of five months of age was not granted on the ground that in the year 1990 as he was over age. Notwithstanding that, he has been in uninterrupted service and as on today has put in 29 years of service. The fact that the petitioner has been in continuous service ever since is reflective of the fact that nature of his job is perennial.

4. I have heard the rival contentions of learned counsels and have conjointly perused the pleadings alongwith the relevant record appended thereto.

5. Conceded position that emerges from perusal of the return filed by the respondents is that the case of the petitioner was recommended to the Ministry of Defence seeking waiver of the conditions qua his age as a one time measure on compassionate ground vide letter dated 21.02.2014 but since no formal response was ever received, therefore, regularization of the petitioner has been kept at abeyance.

6. In fact, the petitioner had on earlier occasion also knocked at

the doors of this Court and filed the writ petition which was disposed of with a direction to the respondents to pass a speaking order. Pursuant thereto, order dated 24.03.2015, impugned herein, was passed. A perusal of the said order would reveal that even though the claim of the petitioner has been conceded on merits and in the impugned order itself, it is stated that his case was duly recommended to Ministry of Defence but owing to lack of response qua one time waiver of the age criteria in the case of the petitioner, his name was not included in the list of daily wager (having temporary status) to be regularized. Accordingly, the speaking order observes that as and when the decision by the Ministry of Defence is conveyed, the competent authority would take further action in accordance with law.

7. I am unable to persuade myself to sustain the reasoning in the speaking order.

8. The stand of the respondents that petitioner was over age by 05 months flies in the face of their own conduct in having waived off the condition of minimum qualification of matriculation on one hand while on the other, the petitioner concededly being matriculate yet his case for regularization has not been processed despite his having rendered 29 years of uninterrupted service on the specious plea that he was over age by 05 months at the time of initial recruitment.

9. Even otherwise, the said objection of his being over age by 05 months at the time of his original recruitment is not sustainable in view of the regularization instructions contained at Annexures P-9 to P-11. None of these instructions envisage that services of the daily wager who is serving on temporary basis, though, uninterruptedly are not to be regularized on the

ground of his being over age at the time of recruitment.

10. The letter and spirit of the said instructions dated 07.06.1988 (Annexure P-10) are very clear that as long as the following guidelines are met, a casual worker on daily wage basis is entitled for regularization:-

“(i) Persons on daily wages should not be recruited for work of regular nature.

(ii) Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is note of full-time nature, for which regular port cannot be created.

(iii) The work by the presently being done by regular staff should be reassessed by the administrative departments concerned for output and productivity, so that the work being done by the casual workers could be entrusted to the regular employee. The departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.

(iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowances for work of 8 hours a day.

(v) In cases where the work done by the casual worker is different from the work done by the regular employees, the casual worker may be paid only the minimum wages notified by the Ministry of labour or the state government/Union territory administrations, whichever is higher, as per the minimum wages act, 1948. However, if you department is already paying daily wages at a

higher rate, the practice could be continued with the approval of its financial adviser.

(vi) The casual workers make given 1 paid weekly off after 6 days of continuous work.

(vii) The payment of the casual workers may be restricted only to the days on which they actually perform duty under the government with a paid weekly off as mentioned at (vi) above. They will, however, in addition, be paid for a national holiday, if it falls on the working day for the casual workers.

(viii) In case where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.

(ix) Where work of more than 1 type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multifunctional portion may be created for handling these items of work with the concerns of the Ministry of Finance.

(x) The regularisation of the service of the casual work and will continue to be governed by this department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper limit for the relevant post.

(xi) If you department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of personnel and

training.”

11. A perusal of the above would reveal that if the above parameters are met with, regularization is a matter of right. The petitioner is stated to full fill all the above conditions and in any case, the impugned order, vide which his case of regularization has been rejected, does not indicate if he was/is lacking in any of the above parameters.

12. As already noted above, the ostensible ground of keeping the regularization at abeyance is that the decision on relaxation of his age by 05 months at the time of recruitment is awaited from Ministry of Defence. That being not the essential condition for granting regularization, the impugned order is liable to be set aside. Writ petition is, accordingly, allowed with a direction to the respondents to accord the benefit of regularization to the petitioner in accordance with regularization instructions contained at Annexures P-9 to P-11 with effect from the date 26.12.2014 when his case was recommended by respondent No.2 to the Ministry of Defence seeking one time relaxation of 05 months on the petitioner's age at the time of his original recruitment on 01.08.1990. The case of the petitioner be processed within a period of 03 months from the date of receipt of certified copy of this order and consequential pecuniary benefits shall also be given to the petitioner alongwith with interest @ 7 % per annum.

06.11.2019
smriti

(ARUN MONGA)
JUDGE

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