

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

Date of decision: 22.07.2019

CWP No.20330 of 2013 (O&M)

Satish Kumar

....Petitioner

Versus

State of Haryana and others

....Respondents

CWP No.21627 of 2013 (O&M)

Jai Kishan

....Petitioner

Versus

State of Haryana and others

....Respondents

CWP No.21464 of 2013

Jai Pal and others

....Petitioners

Versus

State of Haryana and others

....Respondents

CWP No.24887 of 2013 (O&M)

Jai Parkash

....Petitioner

Versus

State of Haryana and others

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Sunil K. Bhardwaj, Advocate for the petitioner(s).

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J.

CMs

Applications for preponement of date of hearing are allowed. Main cases are taken up for hearing today itself.

Main cases

This order shall decide CWP Nos.20330, 21627, 21464, and 24887 of 2013 as common point is in issue in all the aforementioned cases.

2. Prayer in the writ petitions is for quashing the impugned order (Annexure P/8) whereby the petitioners' prayer for regularisation on completion of 2 years of service from the date of their appointment in terms of instructions dated 28.07.1994 was dismissed. Prayer is also for the issuance of a writ of mandamus for directing the respondents to regularise the services of the petitioners on completion of 2 years of service from the date of appointment and to release all consequential benefits along with interest.

3. Brief facts of the case leading to the writ petitions are that the petitioners were appointed as conductors on contractual basis through employment exchange by the General Manager Haryana Roadways, Gurugram vide appointment letter Annexure P/1 dated 08.06.1993 w.e.f. 07.06.1993 on fixed salary of ₹1400/- per month. Claim of the petitioners is for regularisation on completion of 2 years of service in terms of policy decision Annexure P/2 dated 28.07.1994 especially in view of juniors of the petitioners having been regularised under the aforementioned policy. It is claimed that although policy Annexure P/2 dated 28.07.1994 was withdrawn vide communication Annexure P/3 dated 17.11.1995 the petitioners had already completed 2 years of service but were regularised only on 03.08.1998 vide order Annexure P/4.

4. Reliance has been placed on the decision of a Coordinate Bench of this Court in CWP No. 4743 of 1998 in case titled as **Uggar Sain etc. versus State of Haryana and others** and connected CWP No. 16076 of 1998 as also CWP No.14111 of 2001 titled as **Pardeep Kumar and others versus State of Haryana of others**, CWP No.18401 of 2009, CWP No. 9912 of 2012 and CWP No. 14928 of 2012. It has further been averred in paragraph No.13 of the writ petitions that CWP No.24670 of 2012 filed by the

petitioners was disposed of by directing the respondents to regularise the services of the petitioners on completion of 2 years of service from the date of appointment but still the respondents rejected the claim of the petitioners vide order Annexure P/8 dated 17.04.2013.

5. For ready reference, relevant details of the petitioners in aforementioned writ petitions are given below:

Sr. No.	CWP No.	Date and post of contractual appointment	Date of regularization	Claim for regularization on the basis of instructions w.e.f.	Legal Notice	Impugned Order
1.	20330 of 2013	On 07.06.1993 as Conductor	03.08.1998 (Annexure P/4)	June 1995 (on completion of two years from the date of appointment)	15.05.2012 (Annexure P/7)	17.04.2013 (Annexure P/8)
2.	21627 of 2013	-do-	-do-	-do-	-do-	12.02.2013 (Annexure P/8)
3.	21464 of 2013	-do-	-do-	-do-	-do-	06.12.2012 (Annexure P/8)
4.	24887 of 2013	-do-	-do-	-do-	-do-	20.11.2012 (Annexure P/8)

However for the sake of brevity, facts of CWP No.20330 of 2013 are being referred to for the purpose of deciding the aforementioned cases.

6. In short, the grievance of the petitioner is that although he had been appointed on contractual basis vide order Annexure P/1 dated 08.06.1993 and was entitled to regularisation in terms of policy Annexure P/2 dated 28.07.1994 on completion of 2 years of service, he was not regularised allegedly on account of policy Annexure P/2 dated 28.07.1994 having been withdrawn vide letter Annexure P/3 dated 17.11.1995 even though he had completed 2 years in terms of policy of instructions Annexure P/2 dated 28.07.1994 prior to withdrawal of the said policy vide Annexure P/3 dated 17.11.1995 and he was regularised only with effect from 01.08.1998 vide order Annexure P/4 dated 03.08.1998 on completion of two years of service

on contractual basis as a result of which the petitioner suffered financially by getting fixed salary of ₹1400/- per month whereas his counterparts were getting regular pay scale. Reference has been made to the decision in CWP No.4743 of 1998 and CWP No. 16076 of 1998 as well as CWP No.14111 of 2001 attached along with writ petition as Annexure P/5 and P/6 respectively decided on 18.12.2001 and 18.05.2009 respectively.

7. The petitioner served legal notice Annexure P/7 dated 15.05.2012 but the same evinced no response, whereupon the petitioner filed CWP No.13634 of 2012 which was disposed of by directing the respondents to consider and decide the Legal Notice Annexure P/7 dated 15.05.2012 pursuant to which impugned order Annexure P/8 dated 17.04.2013 was passed rejecting the claim of the petitioner on account of non-availability of vacancy prior to his regularisation with effect from 01.08.1998 in the Charkhi Dadri Depot.

8. At the very outset, it needs noticing that although the petitioner was regularised vide order Annexure P/4 dated 03.08.1998 with effect from 01.08.1998 yet the petitioner maintained a stoic silence and did not agitate his grievance with regard to claim for regularisation with effect from a date prior to the date on which he had been regularized till serving of legal notice Annexure P/7 dated 15.05.2012. In other words for a period of 14 years the petitioner kept silent. Same is the position in all the other cases.

9. Reliance on the decision as has been placed by the petitioner is in the case of employees who were vigilant and approached the Court well in time i.e. RSA No.3213 of 2005 and CWP No.12697 of 1997 which were decided on 07.03.2006 and 22.11.1997 respectively. The petitioner has also

relied upon Annexure P/12 dated 29.09.1995 allegedly regularising juniors vide order dated 29.09.1995.

10. In the reply filed on behalf of respondent No.3, it has been contended that as per policy Annexure P/2 dated 28.07.1994, a driver / conductor who had completed 2 years of service on contractual basis was to be regularised against vacancy. The petitioner did not fulfill the conditions stipulated in the policy Annexure P/2 dated 28.07.1994 which was later on withdrawn by the government vide letter Annexure P/3 dated 17.11.1995, therefore was regularised vide order Annexure P/4 dated 03.08.1998 w.e.f. 01.08.1998 in terms of the policy Annexure R-1 dated 23.03.1998. A perusal of policy Annexure R-1 dated 23.03.1998 reveals agreement between the Management of Haryana Roadways Workers Union dated 16.06.1994 to regularise drivers and conductors who had completed 2 years of contractual service against the available vacant post was revoked on 08.01.1998. Therefore, only those employees who become eligible during the period 16.06.1994 till the revocation of agreement dated 08.01.1998 were to be regularised in service subject to availability of vacant post and on their fulfilling the requisite qualifications. Therefore, all drivers and conductors working and completing 2 years of contractual service during the period 16.06.1994 to 07.01.1998 were to be regularised against available vacant post subject to fulfillment of other conditions stipulated in the instructions Annexure R-1. It has also been mentioned that during the period 01.02.1994 to 08.06.1998, the petitioner had been issued ten warnings besides his service was censured vide order No.5991/TC1 dated 15.03.1999. Moreover, recovery of different amounts had been imposed vide order dated 03.08.1998, 28.07.1998, 08.06.1998 and 03.08.1998. Reply further mentions that as per

comments received from the General Manager, Haryana Roadways, Dadri as per the norms of buses there was no vacancy of conductor, therefore, the petitioner remained on contract basis and became eligible for regularisation only w.e.f. 01.08.1998. Consequently, the petitioner was regularised vide order Annexure P/4 dated 03.06.1998 w.e.f. 01.08.1998 in view of Policy Annexure R-1 dated 23.08.1998. Reply further mentions that although plea had been taken that juniors had been regularised but no names had been mentioned, besides, the petitioner was not entitled to regularisation in terms of policy dated 28.07.1994 on account of non-availability of vacant post. Although it has been claimed that conductors junior to the petitioner had been regularised vide order Annexure P/12 dated 29.09.1995 yet perusal of Annexure P/11 reveals that the conductors who have been regularised vide order Annexure P/12 dated 29.09.1995 i.e. Ram Pal, Phool Singh, Chand Singh Ranvir Singh and Ram Bhaj are shown at Sr. Nos.1 to 5 of order Annexure P/11 dated 27.10.1993 as against the petitioners whose names find mention at Serial Nos. 9, 15, 10, 12 and 11 respectively in order Annexure P/11 dated 27.10.1993 whereby contractual engagement of conductors appointed from 01.10.1993 to 28.02.1994 was increased on the conditions mentioned in the said communication.

11. Learned counsel has not referred to any material to show on what basis the conductors whose names find mention at serial Nos.1 to 8 of order Annexure P/11 are junior to the petitioners whose names find mention at serial number below the serial number of the aforementioned conductors. Be that as it may, the petitioners could not be regularised in terms of policy Annexure P/2 dated 28.07.1994 on account of non-availability of vacancy. However, that is one aspect of the matter. Another aspect which needs

noticing is that the petitioner was regularised in service vide order Annexure P/4 dated 03.08.1998 w.e.f. 01.08.1998 in terms of policy Annexure R-1 dated 23.03.1998. Neither has the petitioner challenged the instructions Annexure R-1 dated 23.03.1998 nor did the petitioner challenge his regularisation vide order Annexure P/4 dated 03.08.1998 and seek regularisation with effect from earlier date on completion of 2 years of service from the date of joining in 1993 and it is only after a lapse of 14 years that the petitioner served Legal Notice Annexure P/7 dated 15.05.2012 and thereafter, filed CWP No.13634 of 2012 which was disposed of by directing the respondents to consider and decide the legal notice which as has been noted above was rejected vide order Annexure P/8.

12. The claim of the petitioner is badly hit by delays and laches. No details of the persons allegedly junior to the petitioner and how the same are claimed to be junior than the petitioner have been given nor the alleged juniors have been made a party to the writ petition. Even if entitled to, accepting the claim of the petitioner at this stage would unsettle the settled position as has been prevailing since 03.01.1998. Besides the plea as has been raised by the petitioner in the writ petition qua juniors having been regularised was not taken up in the legal notice by mentioning the names of the so-called juniors.

13. Moreover, a Coordinate Bench of this Court in CWP No.1705 of 2014 in case titled as **Ram Niwas and others versus State of Haryana and others** dismissed claim for regularisation with effect from date earlier than the date assigned to the petitioner in the said case on ground of delay and laches on account of not invoking the jurisdiction of the Court for a period of close to 10 years by relying upon the decision of the Division Bench

of this Court in LPA No.1662 of 2015 in case titled as **Sukhbir Singh and others versus State of Haryana and others** decided on 31.08.2016. Relevant extract of the decision in **Sukhbir Singh's** case (supra) is reproduced as under :

“7. The fact that the appellants took no steps to claim the benefit of Government policy of 1979 for over 12 years is not in dispute. They cannot take the benefit of Jaimal Singh's case (supra) as the writ petitioners in that case had approached this Court in the year 1998 while the appellants remained fence-sitters. Even as per Jaimal Singh's case, there was no cutoff date for the purpose of regularization of services. Much was to depend upon as to how many posts were sanctioned in a depot. All the writ petitioners of that case were not made regular w.e.f. 01.04.1987.

8. Assuming that the appellants are similarly placed yet they lost their right as neither such claim was put up before the competent authority nor they approached any other forum within a reasonable period. In this view of the matter, the rejection of their claim by learned Single Judge on the ground of delay and laches calls for no interference by this Court.”

14. In view of the position as noted above, it is crystal clear that the petitioners were not regularised in terms of policy Annexure P/2 dated 28.07.1994 on completion of 2 years of service on contractual basis on account of non-availability of vacant posts and came to be regularised only vide order Annexure P/4 dated 03.08.1998 with effect from 01.08.1998 in view of the subsequent policy instructions Annexure R-1 dated 23.07.1998. Neither the instructions Annexure R-1 have been challenged nor have the persons allegedly claimed to be junior to the petitioners been impleaded as respondents nor have details been given of how persons claimed to be junior to the petitioners are in fact junior to the petitioners. Besides, the writ petitions suffer from delay and laches on account of the petitioners having maintained a stoic silence for a period of close to 14 years from the date of accrual of cause of action on regularisation vide Annexure P/8 dated

03.08.1998 w.e.f. 01.08.1998 and having agitated the grievance for the first time vide Legal notice Annexure P/7 dated 15.05.2012.

15. Accordingly finding no merit in the writ petitions, the same are dismissed.

July 22, 2019

ps

(B.S. WALIA)

JUDGE

Whether speaking / reasoned: Yes / No

Whether reportable : Yes / No