

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.15464 of 2017

Date of Decision: 29.05.2019

Mukesh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms.Anu Chatrath, Sr.Advocate, with
Mr.M.M.Panday, Advocate, for the petitioner.

Mr.Gaurav Jindal, Addl.A.G.Haryana.

RITU BAHRI, J.

Petitioner is praying for issuance of a writ of Certiorari quashing the order dated 07.04.2017 (P-11) issued by respondent No.2 vide which the services of the petitioner have been terminated w.e.f. 03.03.2017 and also quashing the order dated 07.04.2017 (P-12) issued by respondent No.3 relieving him on the grounds that he does not fulfill the condition of experience and also quashing the proceedings of the committee dated 23.08.2016 (P-18).

The brief facts of the case are that the petitioner worked as Shift Attendant under KV Sub Station, HVPNL Fatehabad on contract basis from 01.08.2009 to 23.08.2009. Thereafter, petitioner worked as Instructor in Electrical Engineering in Manohar Memorial Polytechnic, Fatehabad (Haryana) from 24.08.2009 to 14.06.2010. Then he worked as Shift Supervisor on contract basis from 17.06.2010 to 05.06.2011 under KV Sub

Colly.).

The Industrial Training Institute, Nathusari Chopta Society, District Sirsa issued notice dated 14.05.2011(Annexure P-4), inviting applications, for various posts including 1 post of Wireman Instructor, to be filled up on contract basis for a fixed honorarium of Rs.12,500/- per month. The applications were to be submitted in the office of Principal, ITI Nathusari Chopta upto 31.05.2011 till 4:00 p.m. The Selection Committee was constituted, which interviewed the candidates and prepared the merit list dated 07.06.2011. Petitioner who scored 42.68 marks on the basis of educational qualification and experience was also given 8 marks in the interview and as such, by securing 50.66 marks, he was placed at No.1 in the merit list by the selection committee and was appointed as such on DC Rate/Contract Basis. Copy of the merit/seniority list dated 07.06.2011 prepared by the selection committee has been annexed as Annexure P-5. The petitioner was conveyed the decision of the Section Committee and, accordingly, after due verification of his qualification and experience, the petitioner was asked to join as Wireman Instructor and accordingly, he joined on 09.06.2011 as per joining report Annexure P-6. After his joining, the Principal, ITI Nathusari Chopta (Sirsa) vide letter No.1007 dated 14.06.2011 (Annexure P-7) sent information to the Director, Industrial Training, Haryana, Chandigarh, regarding the joining of the selected candidates against various posts of Instructors including the joining of petitioner on the post of Wireman Instructor on 09.06.2011 and also sent copies of certificates of qualifications, experience and the agreement and affidavit executed by the candidates. Some of the instructors appointed on 6 months basis, after following proper procedure in Department of Industrial

Training, Haryana, apprehending their relieving on the expiry of 6 months, approached this Court for a direction to the respondents to allow them to continue all the regular selections are made by way of CWP No.5289 of 2007 titled as **Ashok Kumar and Others Vs. State of Haryana and others**, which was disposed of vide order dated 24.01.2008 by giving directions to the respondents to allow the petitioners to continue in service, subject to all terms and conditions which they had accepted by executing agreement dated 08.11.2006 (Annexure P-7). The State of Haryana went in SLP No.9230-9231 of 2009 titled **State of Haryana and others vs. Ashok Kumar and Others and SLP No.18074-18094 of 2009** in the Hon'ble Supreme Court against the order dated 24.01.2008 and the Apex Court disposed of the SLP vide order dated 21.01.2013 (Annexure P-8) with the observation that pursuance to the order dated 13.07.2011, a short affidavit has been filed by Joint Secretary to Government of Haryana, Industrial Training Department, wherein it has been stated that the Government is prepared to accommodate the eligible respondents numbering 258 who fulfill the requisite qualification as per rules on humanitarian ground in the Industrial Training Department against the vacant posts in case a direction is issued to that effect and it was opined that it would be in the interest of justice if the eligible respondents who fulfill the requisite qualification are accommodated and let the necessary action be taken by the State within a period of three months.

Order of Hon'ble Supreme Court (Annexure P-8) has not been complied with and respondent filed various contempt Petitions i.e. Contempt Petition(C) No.298-299/2013 and Contempt Petition No.514-523 of 2013 in

dated 25.07.2014, respondent-State submitted that process with regard to regularization of service of 214 persons is in progress and it will be completed within two weeks and thereafter vide order dated 08.08.2014, services of 226 persons were regularized on completion of three years of service. But service of the petitioner has not been regularized and he made an application under RTI Act to know the reasons for not regularizing his services. In response to the said application, it has been intimated by the respondent that **petitioner does not fulfill the condition of experience** and as such, he was made not eligible for regularization and a copy of the same was endorsed to him vide Annexure P-10. However, a letter dated 07.04.2017 (Annexure P-11) vide which it was informed that the Committee constituted for regularization of employees found that the petitioner does not fulfill the condition of experience due to which he is not eligible for regularization. Respondent No.2 vide this letter further directed the Principal that since he is appointing authority for the Contractual Instructor, he may terminate the contract of the employee as per Rules and intimate the Directorate. A copy of the letter dated 07.04.2017 is annexed as Annexure P-11. In pursuance of the letter dated 07.04.2017 of respondent No.2, contract of the petitioner w.e.f. 03.03.2017 was terminated and the petitioner was relieved on 07.04.2017 (Annexure P-12). On receiving the termination order, petitioner submitted representation dated 18.04.2017 (Annexure P-13) to the Principal Secretary, Skill Development and Industrial Training Department, Haryana, Chandigarh vide which he submitted that his selection was made under the Outsourcing Policy of Haryana Government dated 16.02.2009 was made on the basis of his two years electrician course from

Engineering and experience of 1 year 9 months. The petitioner further submitted that since he has worked in the Department for 5 years and 10 months on the post of instructor and as such, he has a right to be regularized at par with his similarly situated employees who have been regularized at the time of statement given by the respondent State vide Annexure P-8. Petitioner had made representation i.e. Annexure P-15 and Annexure P-16. The petitioner has submitted his educational qualification with his representation which is as under:

1.	Electrician from Vocational Education (equivalent to ITI Electrician, as per Haryana Govt.Letter No.11/VT/Eligibility/102 dt.15.05.2008.	2 years
2	Diploma in Electrical Engg. (Lateral entry)	2 years
3.	Experience	1 year, 9 months
	Total experience	5 years 9 months.

Thereafter, petitioner was intimated information vide letter dated 07.04.2017 regarding regularization of contractual employees having completed 3 years of service. Hence, the present writ petition.

Learned counsel for the petitioner has argued that even if the case of the petitioner is not to be considered as per regularization policy dated 18.06.2014, the petitioner can be regularized keeping in view that the services of similarly situated instructors who have been regularized in compliance of the order dated 21.01.2013 (Annexure P-8) passed by the Supreme Court in SLP. A perusal of the order Annexure P-8 shows that statement was made by the Joint Secretary to Government of Haryana, Industrial Training Department that Department is ready to accommodate the eligible respondents numbering 258 who fulfill the requisite

qualification as per rules on humanitarian ground in the Industrial Training Department against the vacant posts in case a direction is issued to that effect. After giving the statements in the contempt petition, (Annexure P-8), statement made by the state that process of regularization of services of 214 persons is in progress and thereafter vide order dated 08.08.2014, services of 226 persons were regularized after completing of three years of services.

In the written statement, the abovesaid fact has not been denied and the respondents reiterated the order passed by the Supreme Court dated 21.01.2013 (Annexure R-2) and report of the Committee i.e. Annexure R-3 which have been placed on record wherein regularization of services of the petitioner has been rejected on the ground that he does not have a requisite experience. A perusal of R-III shows that the petitioner had joined as Wireman Instructor on 09.06.2011 with a qualification of 10th with Hindi, 10+2, BA, 3 years Diploma in electrical Engineering. Hence, total experience is 1 year and 10 months.

The respondents in the written statement have not denied the merit list Annexure P-5 in which petitioner Mukesh had got 50.66 marks and was at No.1 while calculating marks of 50.66, he was having one year experience and no marks were given to him. His case was never rejected for appointment on the ground of lack of experience. As per information under RTI Act (Annexure P-18), candidates who have been regularized had the experience of 3 years. The candidate No.4 Dinesh Saini had the experience of 7 years and one regularized with minimum experience for 2 years 6 months i.e. at Sr.No.3 Vinod Kumar and the petitioner having the experience of 1 year 10 months has been rejected for regularization. It is not

given notice to be relieved, he had completed his experience of 5 years. Hence, at the time of selection and at the time of relieving, he has completed 6 years of experience and he has got working in the department which was made him eligible for regularization.

It is not a case of the respondent that petitioner does not have the qualification as per Haryana Industrial and Vocational Education Department Field Officers (Group C) Service Rules, 1998. His case is only experience was not as per the prescribed norms. A reference can now be made of Haryana Industrial and Vocational Education Department Field Officers (Group C) Service Rules, 1998. As per these rules the qualifications regarding experience shall be relaxable to the extent of 50% at the discretion of the recruiting authority in case sufficient number of candidates are not available to fill up the vacancies and as per Appendix B of Notification, at the time of direct appointment to the post of Wireman/Electrician, the petitioner was required to make available experience not less than 5 years. Once, at the time of selection Annexure P-5, he was given 50.66 Marks and placed at No. 1 as per rules, the Selecting Authority had granted him relaxation for eligibility of experience at the time of appointment when he joined on 09.06.2011 itself and once relaxation was given to the petitioner who was kept at merit No.1 as per Annexure P-5 on 09.06.2011 after giving service of 5 years, his case for regularization cannot be rejected as he was not ineligible at the time of recruitment in 2011. The Committee ones selected the petitioner after giving him benefit at the initial stage, subsequently his case cannot be rejected on the ground that he is not eligible. A person once joins a service, his experience is to be taken from the date he has been working on contract basis.

In the present case from the date of joining till the date of relieving in 2017, he has given 5 years service and this experience cannot be annulled for regularizing him at par with other counter parts who have been regularized as per order of the Supreme Court (Annexure P-8).

In the result, present writ petition is allowed with a direction to the respondents to regularize the service of the petitioner at par with other candidates as reflected in Annexure P-18 with all consequential benefits.

(RITU BAHRI)
JUDGE

29.05.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No