

Sr. No. 213

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

**CWP No.26481 of 2013 (O&M)
Date of Decision: 21.01.2019**

Mohammed

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ramesh Goyat, Advocate,
for the petitioner.

Mr. Sunil Kumar Vashisht, DAG, Haryana.

ARUN MONGA, J.

Present petition has been filed seeking issuance of a writ in the nature of mandamus to direct the respondents to regularize the services of the petitioner appointed as 'Mali' (Gardener) on daily wage basis initially on 10.03.1988 in view of Instructions issued by the Government of Haryana vide Circular dated 03.08.2011 (Annexure P-4). Vide said Circular, a Policy decision was taken to regularize the services of Group 'C' and Group 'D' employees/workers who were engaged on daily wage basis and part time basis. It covered the workers who had not less than 10 years of continuous work as on 10.04.2004 and were still in service.

2. Succinctly, the facts of the case are that the petitioner continued to work as 'Mali' from 10.03.1988 up to 02.01.1995 when

his services were terminated. It led to proceedings before the Labour Court which culminated in award dated 07.01.2001 in favour of the petitioner. Pursuant thereto, petitioner was reinstated with continuity of service and 50% of backwages. Respondent No.2/School challenged the award before this Court by way of a writ petition. However, vide order dated 08.04.2003, the same was dismissed as withdrawn and the petitioner thus, has been continuing in his service ever since.

3. The Government of Haryana issued Circular/Notifications from time to time particularly in the years, 1993, 1996 and 2003. Prior to Circular dated 03.08.2011 (Annexure P-4) vide which the services of daily wage basis workers/employees who had completed 3 years of service as on the specific dates therein were regularized. On an earlier occasion, the petitioner approached this Court vide CWP No.9277 of 2005, for compliance of the regularization policy of the Government, particularly the policy decision dated 07.03.1996 as he had completed 3 years of service as on 31.01.1996. The said writ petition was disposed of by this Court vide order dated 31.05.2005 with a direction to respondent/School to consider the case of the petitioner and decide his representation by passing a speaking order. In compliance thereof, the order dated 13.08.2005 (Annexure P-3) was passed rejecting the claim of the petitioner on the ground that post of a 'Labourer' who maintains lawns and forestry is not a sanctioned post.

4. After rejection of the claim of the petitioner vide order

dated 13.08.2005, the petitioner continued to work on daily wage basis and once again represented to the respondent to grant him regularization when the policy decision/Circular dated 03.08.2011 was notified by the Government of Haryana.

5. Vide Circular dated 6/50/2007-1 GSI dated 03.08.2011 the Government of Haryana again issued Instructions regarding regularization of those Group 'C' and 'D' employees appointed/engaged on adhoc/contract/work charged/daily wages and part time basis who had completed 10 years of service as on 10.04.2006 and were still in service.

6. Learned counsel for the petitioner contends that other similarly situated persons whose joining dates are July, 1989 and January, 1990 have been regularized w.e.f. 01.01.1996. He further contends that sanctioned post of 'Mali' is still vacant as one employee, namely, Fakir Chand Verma who has retired on 31.10.2013 on attaining the age of superannuation.

7. Per contra, the stand taken by respondent No.2/School in its reply is that no post of Class-IV employee exists in the institution for which an illiterate person may be considered for regularization and that petitioner being an illiterate person cannot be considered for regularization.

8. The other ground taken by the respondent is that as per "the Service Rules of Class-IV employees of Moti Lal Nehru School of Sports, Rai, 1998" which are applicable for granting regularization, the petitioner is not entitled to be considered for regularization being illiterate.

9. Another ground taken in the reply by respondent No.2-School is that petitioner is not entitled to seek regularization on the basis of parity as the post of 'Mali' is a diminishing Cadre as per the 1998 Rules, *ibid*.

10. I have gone through the pleadings and the record appended thereto by the respective parties and have heard the rival contentions by learned counsel for both the parties.

11. Learned counsel for the petitioner contends that almost all the juniors to the petitioner have been regularized by the respondent-School vide various Regularization Policies as per the RTI information dated 04.10.2016 supplied to the petitioner (Annexure P-7). He further contends that respondent has taken an oppressive view qua the petitioner. Respondent-School has extracted work from the petitioner for the past 30 years on the post of Mali. The post of Mali can be treated diminishing after retirement of the petitioner. Moreover, there are many other Class-IV vacancies such as 02 posts of Syce, 04 posts of Peon, 02 posts of Groundsman are available with the respondent-School.

12. Learned counsel for the petitioner places reliance on the judgment passed by this Court in CWP No.15342 of 2012 decided on 15.12.2014 in which this Court has held that the State cannot take a stand that the posts are not available where they have extracted work from the petitioner for many years.

13. He further states that the respondent-School itself has regularized services of about 19 illiterate employees against Class-IV posts. Even the respondent has appointed one Smt.

Kaushalaya Devi (illiterate person) in the year 1999 after coming into force of aforesaid Rules under Ex-Gratia. There are no such instructions or Rules which provide relaxation of qualification under Ex-Gratia Scheme.

14. Learned counsel also relies on the judgment passed in case titled as **Surjit Kaur Vs. State of Punjab and others, reported as 2015 (5) SLR 149** in which this Court has held that if an employee's services are utilized for more than 3 decades then such a plea of the respondents about non-availability of post can hardly be accepted.

15. The petitioner was appointed in the year 1988 prior to enforcement of aforesaid Rules. Secondly the respondent-School has regularized services of many juniors employee after granting them relaxation of qualification. Even in the year 1999 after enforcement of aforesaid Rules, the respondent has appointed one Smt. Kaushalaya Devi under Ex-gratia Scheme granting her relaxation of educational qualification.

16. I am of the opinion that respondents ought to have considered the case of the petitioner on humanitarian ground which is very purpose of the Regularization Policies brought from time to time particularly notified by Circular dated 03.08.2011 (Annexure P-4). It is conceded position that petitioner had been recruited on daily wage basis on 10.03.1988 and has been working ever since as 'Mali'. The respondent is not justified now to contend that qualifications prescribed for the post of 'Mali' and other Class-IV is that the appointee must be able to read and write Hindi and

since the petitioner is complete illiterate, cannot read or write Hindi, therefore, he is not entitled to seek regularization. This contention is not tenable in law. Reliance on the Service Rules, 1998 which were notified by respondent No.2 is completely misplaced as the same cannot be made applicable retrospectively particularly in view of the fact that not only similarly situated but the persons who are junior to the petitioner have been given the benefit of regularization as is clearly reflected from the RTI information (Annexure P-7) which has not been factually denied by the respondents.

17. I am in complete agreement with the judgment passed by Coordinate Bench of this Court in CWP No.15342 of 2012 decided on 15.12.2014 as has been observed hereinbelow:

“Concededly, the petitioner had been working as a Class-IV employee since 1984 and his last 11 years of service was as a driver. If that be so, then the petitioner cannot be denied the benefit of regularization on the ground that posts were not available since the respondents have extracted work from the petitioner for all these years. The respondents have also not given any specific reply to the assertion of the petitioner that similarly situated employees were granted the benefit of regularization.”

18. The case of the petitioner is totally covered by the above observations of this Court.

19. In view of the observations as noted above, the present writ petition is allowed with directions to the respondents to consider the case of the petitioner for regularization subject, however, to the condition that the consequential monetary benefits

be confined to 38 months' prior to filing of the present writ petition to be paid with interest @ 6% per annum.

20. Let the needful be done within a period of two months from today.

21. Petition is allowed in the aforesaid terms.

21.01.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No