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

DATE OF DECISION : 03.05.2019

1. CWP No. 3175 OF 2015

Tilak Raj

...Petitioner

versus

State of Punjab and others

...Respondents

2. CWP No. 3455 OF 2015

Paramjit Singh

...Petitioner

versus

State of Punjab and others

...Respondents

3. CWP NO. 3464 OF 2015

Surinder Singh

...Petitioner

versus

State of Punjab and others

...Respondents

4. CWP No. 3536 OF 2015

Darshan Singh

...Petitioner

versus

State of Punjab and others

...Respondents

5. CWP No. 3537 OF 2015

Shashi Kapoor

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Pawan Kumar Goklaney, Advocate
for the petitioner(s).

Mr. Abhay Pal Singh, AAG, Punjab.

None for respondents No. 2 to 5.

ARUN MONGA, J.

1. This order shall dispose of all the above mentioned petitions as common facts and law is involved. For brevity, facts are being taken from Civil

Writ Petition No. 3175 of 2015.

2. The petitioner, herein, was engaged in service on daily wages basis as Helper on 01.10.1993. He was later promoted to the post of Electrician on 10.05.2013 but continued to work on daily wages, despite promotion. The petitioner has rendered continuous service of more than 20 years since his initial appointment. Yet, he was non-suited for grant of benefit of regularization on the ground that he did not possess the requisite qualification i.e. matric with two years of relevant trade certificate.

3. Compliance of regularization policy dated 18.03.2011 (Annexure P-6) is what is being sought. The policy envisaged the following:-

“(1) The requisite number of posts be created in the Departments for regularizing the services of daily wage/work charged employees who completed 10 years of service upto 12/2006 and against these posts the employees working on daily wage/work charged basis should be regularized who fulfill the terms and conditions and are also qualified and eligible in all respects.

(A) The regularization will be effective from the date of the issue of the orders. The persons who are so regularized shall not be given the benefit of the past service (notional or otherwise). However, if in any department, the employees are kept by way of direct recruitment on the same cadre and on the same date by following the constitutional scheme of appointment, then in that even the persons who are being regularized under the present policy will be junior to the persons who have been taken directly.

(B) On regularization the employees will be given the initial of the basis pay of their cadre.

(C) The reservation policy at the time of regularization will be followed strictly.

(D) New Contributory Pension Scheme shall be applicable to the employees so regularized.

(E) *The decision given by the Hon'ble Supreme Court of India in Uma Devi's case will be implemented in toto.*”

4. In the written statement filed on behalf of the respondents, the stand taken primarily is that since the petitioner lacks the requisite qualification, therefore, in accordance with the policy parameters, *ibid*, the petitioner is not entitled for grant of regularization. It is although conceded position that the petitioner has undergone one year course in the relevant field against prescribed course of two years, as reflected from his course certificate (Annexure P-2).

5. Having heard learned counsel for parties and on perusal of the pleadings, I am of the opinion that the contest herein is no more *res integra*, in view of the judgments on the point rendered by Hon'ble the Supreme Court of India.

6. Learned counsel for the petitioner has relied on a judgment of the Apex Court in case titled as ***Bhagwati Prasad and others Versus Delhi State Mineral Development Corporation; 1990 AIR (SC) 371***, the relevant portion is extracted herein below :-

“6. The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the

appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation."

7. Learned counsel for the petitioner contends that the above position of law, as enunciated by the Apex Court, has been duly followed from time to time. To buttress his arguments, he has relied upon the judgments of this Court rendered in **CWP No. 5366 of 1996** titled as **Balvir Singh Versus The State of Punjab and others**, **CWP No. 14160 of 1997** titled as **Sham Singh and others Versus State of Punjab** and **CWP No. 23430 of 2012** titled as **Jagpal Singh Versus State of Punjab and others** (Annexures 12, 13 and 14, respectively)

8. In a recent judgment dated 08.02.2017 rendered by this Court in **CWP No. 21251 of 2014** titled as **Nasib Singh and others Versus The State of Punjab and others**, the above question of law was discussed and the following order was passed:-

*"5. Admittedly, the petitioners herein have been working on the post of Pump Operators for over 20 years. To date, their work and conduct has been satisfactory and there is no complaint whatsoever regarding the same. They have gained enough experience in this regard which would stand on equal footing, if compared with the employees possessing certificate of I.T.I. Having regard to the length of service and the fact that the qualification was not concealed by the petitioners, while seeking employment and there was no complaint with regard to their work and conduct, the dictum of the Hon'ble Apex Court in **Bhagwati Prasad Versus Delhi State Mineral Development Corporation**,*

1990 (1) RSJ 255 will come to the rescue of the petitioners herein in which the Hon'ble Bench held that the petitioners have a right to continue on the post of Pump Operators having regard to the fact that they have gained enough experience on the said post.

6. *Furthermore, the judgment rendered in **Jagpal Singh's case supra**), in which direction has been issued to regularize the service of the petitioner therein as Pump Operator, came to be challenged in **LPA No. 113 of 2015 titled State of Punjab and others Versus Jagpal Singh decided on 3.3.2015**. The Hon'ble Division Bench upheld the order so passed by the learned Single Judge.*

7. *Therefore, relying upon the judgments referred to above, the writ petition is allowed and it is held that the petitioners who have gained enough experience as Pump Operators cannot be denied regularization. The only ground for non consideration is that they do not have the requisite qualifications, but as noticed above, their experience is equivalent to any certificate that they might have obtained.*

8. *Consequently, the writ petition is allowed, impugned order dated 31.8.2012 (Annexure P/5) is set aside and the respondents are directed to consider the case of the petitioners for regularization in the light of what has been observed above and in the light of the fact that similar relief has already been granted to the similarly situated employees in the writ petitions disposed of by this Court, referred to above."*

9. Relying on judgments, *ibid*, learned counsel for the petitioner contends that in view of the work experience and continuous unblemished service record of the petitioner, the non-grant of benefit on the ground that the petitioner did not possess two years Diploma, since he instead had only one year course certificate, loses significance. The petitioner is deemed to have acquired the relevant expertise by virtue of his work experience and therefore, no such diploma certificate is required.

10. I am in agreement of the argument convessed by learned counsel for the petitioners. In the premise, the respondents are directed to consider the petitioner for regularization w.e.f. the date when his counter parts were granted the benefit vide order dated 18.03.2011 (Annexure P-6). The petitioner would also be entitled to grant of pecuniary benefits which are confined to 38 months prior to filing of the writ petition along with interest at the rate of 6% per annum.

11. Let the needful be done within three months from the receipt of this order.

12. The petitions are allowed, in the light of above observations.

(ARUN MONGA)
JUDGE

3rd May, 2019
shabha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No