

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

CWP-21681-2018 (O&M)
Date of Decision:-30.09.2020

Mohd. Mehraj Zaidi

..... Petitioner

Versus

Haryana Human Rights Commission and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Ashok Sharma Nabhewala and Ms. Gauri Sharma,
Advocates for the petitioner.

Mr. S.P. Arora, Advocate for the respondents.

SANJAY KUMAR, J. (Oral):

The petitioner was appointed as a Clerk in the service of the Haryana Human Rights Commission (for short, 'the Commission') for a period of 6 months on contract basis with consolidated pay, *vide* order dated 24.12.2012 (Annexure P-2). His services were extended thereafter from time to time. He, along with similarly situated temporary employees, was

granted the minimum of the pay scale, *vide* office order dated 08.09.2014 (Annexure P-6). Consequent upon the decision taken by the Commission on 06.07.2016, his services as a Clerk were regularized w.e.f. 06.07.2016, *vide* order dated 01.08.2016 (Annexure P-11). This was again affirmed through office order dated 23.08.2016 (Annexure P-12) in relation to the petitioner and 8 other temporary employees, whose services were also regularized.

However, by show-cause notice dated 03.02.2017 (Annexure P-14), the Registrar (Law & Legal) of the Commission called upon the petitioner to explain as to why the order of regularization of his services should not be recalled. The basis for this show-cause notice was the objection raised by the Government of Haryana that the Commission had no right to regularize its temporary employees. Thereafter, by order dated 15.02.2017 (Annexure P-15), the Registrar (Judicial) of the Commission informed the petitioner that as he had not submitted his reply to the show-cause notice dated 03.02.2017 (Annexure P-14), the Acting Chairperson of the Commission was pleased to de-regularize his services as a Clerk w.e.f. 14.02.2017. In consequence, office order dated 20.02.2017 (Annexure P-16) was issued reverting the petitioner back to the position of a Clerk on contract basis. Aggrieved thereby, the petitioner filed the present writ petition. He sought a consequential direction to the Commission to reinstate him in service with all benefits.

The Commission filed a written statement through its Secretary. Therein, he claimed that the petitioner had left the job on 11.08.2017 and abandoned employment. He stated that the regularization of the petitioner's

services was effected on the strength of the instructions dated 18.06.2014, 07.07.2014 and 16.06.2016 issued by the Government of Haryana. However, the said instructions were challenged before this Court in ***CWP-17206-2014***, titled '***Yogesh Tyagi and another Vs. State of Haryana***'. This writ petition was decided on 31.05.2018, quashing the aforesaid instructions. The matter is presently under consideration before the Supreme Court in ***SLP (C) No.31566 of 2018***, titled '***State of Haryana and others Vs. Yogesh Tyagi***', and by order dated 26.11.2018, the Supreme Court directed *status quo* to be maintained. The Secretary further stated that there was delay on the part of the petitioner, as he chose to challenge the order dated 15.02.2017 (Annexure P-15) after a gap of 1½ years, i.e., on 20.08.2018. He asserted that the impugned de-regularization order dated 15.02.2017 (Annexure P-15) had not been passed by the Registrar (Law & Legal) but by the Acting Chairperson of the Commission. He pointed out that the petitioner could not secure selection when recruitment was undertaken to fill up the 3 sanctioned posts of Clerk. It is on this basis that the Secretary justified the action taken against the petitioner and prayed for dismissal of the writ petition.

In his replication to the aforesaid written statement, the petitioner agreed that he continued in service up to 11.08.2017. According to him, the Acting Chairperson of the Commission called him on that day and told him that his services were no longer required. He asserted that he repeatedly approached the Acting Chairperson thereafter, but except for oral

assurances that he would be taken back into service nothing was done. He therefore denied the allegation that he had abandoned employment. As regards the aspect of delay, he stated that as he was continued in service till 11.08.2017 and was hopeful of relief being extended to him, he did not assail the presently impugned de-regularization order but as he was not allowed to join duty after 11.08.2017, he approached this Court on 20.05.2018. He stated that after his de-regularization, only 1 post was advertised against which 3 people were appointed. He further stated that there were 10 sanctioned posts of Clerk in the Commission and that he had every right to be continued in service. He relied on the case of Simmi Nayyar, Private Secretary, whose services were also de-regularized at the same time but who was reinstated in service with all consequential benefits pursuant to the order passed by this Court in *CWP-1700-2018* filed by her.

Mr. Ashok Sharma Nabhwala, learned counsel, would point out that the regularization of the petitioner's services was undertaken by the Commission but the de-regularization of his services was effected upon the unilateral decision of the Acting Chairperson. He would contend that this was not in keeping with the statutory scheme of the Protection of Human Rights Act, 1993 (for short, 'the Act of 1993'). As this aspect required examination, Mr. S.P. Arora, learned counsel for the Commission, was asked to produce the record to determine as to whether the decision with regard to de-regularization of the petitioner's services was taken by the Commission or whether it was unilaterally taken by the Acting Chairperson alone. Thereupon, the Registrar (Law & Legal) of the Commission filed a

short reply, stating that the initial decision with regard to regularization of the petitioner's services, along with others, was taken by the Commission on 06.07.2016. A copy of the Minutes of the meeting held on 06.07.2016 (Annexure R-9) was placed on record. He further stated that as per the records, the order dated 15.02.2017 (Annexure P-15) with regard to de-regularization of the petitioner's services was passed unilaterally by the then Acting Chairperson, while discharging the functions of a Chairperson. He admitted that the said decision was not taken by the Commission. He again stated that the petitioner himself left the job without informing the Commission and stopped coming to the office from 11.08.2017. He asserted that the petitioner had voluntarily abandoned his job.

Perusal of Annexure R-9 demonstrates that the decision as to the regularization of the services of the petitioner and others was taken by the then Chairperson along with the 2 Members and all three of them signed the Minutes in relation thereto. In this regard, it may be noted that Section 2 (1) (n) of the Act of 1993 defines the 'State Commission' to mean the State Human Rights Commission constituted under Section 21 thereof. In turn, Section 21 provides that the State Government may constitute the State Human Rights Commission consisting of a Chairperson, who has been a Chief Justice or a Judge of a High Court; one Member who is or has been a Judge of a High Court or a District Judge, with at least 7 years experience as such; and one Member appointed from amongst persons having knowledge of or practical experience in matters relating to human rights.

Section 27 of the Act of 1993 deals with Officers and other staff of the State Commission. It states that the State Government shall make available to the Commission an Officer not below the rank of Secretary to the State Government who would be the Secretary of the Commission and such police and investigative staff, as may be necessary for efficient performance of the functions of the Commission. Sub-section (2) of Section 27 states that, subject to such rules as may be made by the State Government in this behalf, the 'Commission' may appoint such other administrative, technical and scientific staff as it may consider necessary. Significantly, the provision does not state that the Commission cannot make regular appointments, albeit subject to the the rules, if any.

It is the admitted position that the appointment of the petitioner and others on temporary basis in the year 2012 was made by the Commission in exercise of power under Section 27 (2) of the Act of 1993. Similarly, regularization of their services at the meeting of the Commission held on 06.07.2016 is also traceable to exercise of this power.

The then Chairperson of the Commission, viz., Mr. Justice Vijender Jain, demitted office in August, 2016, and in exercise of power conferred by Section 25 (1) of the Act of 1993, the Governor of Haryana assigned the additional charge of 'Acting Chairperson' to the Member, Mr. Justice Harjinder Singh Bhalla, *vide* order dated 10.08.2016. Therefore, after 10.08.2016, the Commission comprised the Acting Chairperson, Mr. Justice Harjinder Singh Bhalla, and Mr. J.S. Ahlawat, Member. That being so, any decision to be taken by the Commission, as a body, required

both these persons to be party thereto. Admittedly, the decision to de-regularize the services of the petitioner and others was not taken by the Commission as a body but was unilaterally taken by the Acting Chairperson alone. This was clearly not in keeping with the statutory scheme, as the earlier decisions with regard to appointment and regularization of the services of these people, under Section 27 (2) of the Act of 1993, were attributable to the Commission as a body. Any decision to the contrary or in review of the earlier decision necessarily had to be taken by the existing Commission of both Members and not by the Acting Chairperson alone. Significantly, both of them were signatories to the decision taken on 06.07.2016 to regularize the services of the petitioner and the others.

Mr. S.P. Arora, learned counsel, would argue that the petitioner is not entitled to seek regularization of his services as on date, as the validity of the policy is still *sub judice* before the Supreme Court. It may however be noted that at the time when the petitioner's services were regularized, the said policy was in force. As matters stand, there is a *status quo* order covering the field. Therefore, pendency of the SLP before the Supreme Court on this issue does not have a direct impact on the present adjudication. The decision of the Supreme Court, as and when it comes, would impact the petitioner and all the others who are presently protected by the *status quo* order passed by the Supreme Court. Be that as it may.

Further, the contention of Mr. S.P. Arora, learned counsel, that the petitioner voluntarily abandoned employment in August, 2017, is also not borne out. Admittedly, the Commission never issued any notice to the

petitioner if he voluntarily failed to attend duties from August, 2017. According to the petitioner, he was asked not to attend to his duties by the Acting Chairperson and the same remained the situation despite his repeated requests. Though this aspect was raised by the petitioner only in his replication, the Commission did not produce any material in support of its claim that it was the petitioner himself who stopped coming to work. Even if the petitioner was treated as a contractual employee at that stage, the Commission should have initiated necessary measures if he was guilty of unauthorized absence. Admittedly, it did not do so. This failure on its part supports the petitioner's contention that he was prevented from attending duties. The contention in this regard is therefore rejected.

Further, this Court does not find any delay worth the name in the petitioner availing his legal remedy against the de-regularization of his services. Even according to the Commission, he remained in service till August, 2017. According to him, he was assured of relief being given to him and he remained hopeful till he was shown the door.

On the above analysis, this Court holds that the unilateral action of the Acting Chairperson in de-regularizing the services of the petitioner cannot be countenanced. The Acting Chairperson could not have unilaterally overturned the decision taken by the Commission as a body, a decision to which he was a party along with the other existing Member.

The order dated 15.02.2017 (Annexure P-15) de-regularizing the petitioner's services is accordingly set aside. However, as the petitioner admittedly did not render any service to the Commission from 11.08.2017

till date, he shall not be entitled to any actual monetary benefits for this period. He would only be entitled to count the said period notionally for the purpose of seniority, attendant and retirement benefits.

Needless to state, regularization of the petitioner's services shall be subject to the final decision in the pending SLP before the Supreme Court as regards the regularization policy. It would be open to the Commission to take appropriate steps at that stage, if warranted, in accordance with due procedure.

The writ petition is allowed to the extent indicated above.

In the circumstances, there shall be no order as to costs.

(SANJAY KUMAR)
JUDGE

September 30, 2020.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.