

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

CWP-6292-2015

Date of Decision: March 06, 2020

Shri Bhagwan

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Animesh Kumar, Advocate,
for Mr. Ramesh Goyat, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana,
for the respondents.

RITU BAHRI, J. (ORAL)

Precise grievance of the petitioner in this petition, filed under Article 226 of the Constitution, is that despite having regularised his services as a 'Labourer' in the respondent Forest Department, Haryana, there is no provision in the Haryana Forest Department (Group-D) Service Rules, 1998 (hereinafter referred to as 'the 1998 Rules'), to provide promotional avenues for the said post, as are available to other similarly situated Group-D employees.

Facts of the case required to be noticed are that the petitioner was initially engaged as a Labourer on daily wages, in the year 1990, in the respondent Forest Department, Haryana. His services were regularised w.e.f. 01.02.1996, vide order dated 10.04.2003 (Annexure P-1), in terms of

regularisation policies dated 07.03.1996 and 18.03.1996, issued by the State of Haryana, and since then he is working as such.

The conditions of service of Group-D employees working in the respondent Forest Department are governed by the 1998 Rules. Rule 3 of the 1998 Rules (Annexure P-3) provides that the 'Service' shall comprise the posts shown in Appendix 'A' attached to these rules. And, proviso to Rule 3 gives an inherent right to the Government to make additions to, or reductions in, the number of such posts or to create new posts with different designations and scales of pay, either permanently or temporarily. Rule 9 of the 1998 Rules further entails the method of recruitment of various Group-D posts. Appendix 'A' attached to the 1998 Rules contains Group-D posts with different designations, i.e. Daftri, Jamadar Peon, Peon, Head Mali, Mali, Chowkidar, Tractor Cleaner, Sweeper, Orderly and Bulk Watcher. But, the post of 'Labourer' is not included in Appendix 'A'.

It is claimed that alongwith the petitioner number of other daily wagers, who were engaged for the job of Labourer, were also regularised. However, certain persons were regularised as 'Mali' and some of them were regularised as Labourer. In this regard, example of one Siri Bhagwan son of Maman Ram has been cited, who was also working on daily wages, but his services were regularised as Mali, vide order dated 15.06.1998 (Annexure P-2). It is further averred that even those Labourers who were junior to the petitioner and whose services were regularised as Mali, were even further promoted to the post of Forest Guard, vide orders

dated 05.06.2006 and 07.12.2012 (Annexure P-4 Colly). It has also been stated that espousing the cause of the petitioner and other similarly situated employees, the Mazdoor Unions of the Forest Department met with the higher authorities and considering their demands, vide letter No. E-IV/309, dated 04.10.2010 and Memo. No. E-IV/829, dated 13.12.2010, reference was sent to the Government for framing service rules for Labourers. Thereafter, this matter was again taken up in a meeting held on 08.08.2014, under the Chairmanship of then Forest & Environment Minister, Haryana, and the minutes of the said meeting have been placed on record as Annexure P-5. However, the Government has not taken any decision so far. The petitioner even got served a legal notice, dated 16.12.2013 (Annexure P-6). But to no avail. Hence, this petition.

In the written statement filed on behalf of respondent Nos. 2 and 3, the stand taken is that the post and nature of duties of 'Mali' and 'Labourer' are not comparable and totally different. For the post of 'Mali', a person is required to have specific working experience of three years in a Private or Government Nursery, whereas no such technical experience is required for a Labourer because they are easily found everywhere. Thus, they cannot be further promoted. It has further been stated that the appointments on the post of Labourer in Group-D category are totally temporary and after retirement of the incumbent, the sanction is lapsed automatically, in terms of Memo. dated 18.03.2013, issued by the Finance Department, Haryana. It has been admitted that a proposal for framing

service rules for those persons who are working as Labourer, was sent to the Government, which is pending consideration.

I have heard learned counsel for the parties and perused the paper book.

The respondents have taken a specific stand that the posts of Mali and Labourer are not comparable posts and the nature of duties being performed by them are different. For the discharging the duties of Mali, experience and knowledge is required, whereas for a Labourer there is no such requirement. Furthermore, appointments for the post of Labourer are totally temporary and these posts have been sanctioned till the retirement of an incumbent and the post will be lapsed automatically thereafter. Reference in this regard has been made to a letter dated 18.03.2013, issued by the Finance Department Haryana.

During the course of arguments, learned State Counsel has also pointed out that Assured Career Progression Scheme is also available in the State of Haryana, which has been framed with the sole object that the employees will get at least three financial up-gradations during entire career. It also seeks to ensure that no Government employee stagnates without any financial up-gradation even if there are no promotional avenues available to them.

On a specific query made, learned counsel for the petitioner has not been able to produce any material showing that the posts of Mali and Labourer were ever equated or the nature of duties and responsibilities being performed by them are same.

If a person is appointed as a Mali by way of an advertisement with requisite experience then he would have certainly a right to further promotion. But in the case of a Labourer the position is different, inasmuch as, Labourers are generally required to do menial work, which do not entail much skill or experience.

In view of above, no direction can be issued at this stage by this Court directing the respondents to make provisions in exercise of power available under proviso to Rule 3 of the 1998 Rules, which gives an inherent right to the Government to make additions to, or reductions in, the number of such posts or to create new posts with different designations and scales of pay, either permanently or temporarily, and to prescribe promotional avenues for persons who are working as Labourers in the respondent Forest Department, Haryana, like the petitioner. However, considering the fact that the matter regarding framing of service rules for Labourers is pending consideration with the Government since 2010, it would be expedient and appreciable if a final decision in the matter, is taken within six months from receipt of a certified copy of this order.

Writ petition is disposed of accordingly.

(RITU BAHRI)
JUDGE

March 06, 2020

Pk Kapoor

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO