

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

CWP No. 4380 of 2017

Date of decision : 22.01.2020

Nishu

.... Petitioner

Versus

Haryana Power Generation Corporation & Ors.

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. D. S. Chahal, Advocate for the petitioner.

Ms. Chhavi Sharma, Advocate for the respondents.

B S Walia J.,

1. Prayer in the petition under Article 226/227 of the Constitution of India is for the issuance of a writ of Mandamus to direct the respondents to change the post of the petitioner from peon to Operator – 1 or Foreman Grade –II (Group C) for Electronics and Communication Trade as per her qualifications.
2. Brief facts of the case leading to the filing of the writ petition are that the Haryana Government acquired land for the setting up of a Thermal Power Project at Village Khedar, district Hissar and issued guidelines, Annexure P/1 vide memo No. 12/03/2007 – 3 Power dated 5th/06th July 2007 for giving employment to land oustees. Applications for employment were invited from all land oustees whose land had been acquired to setup the Thermal Power Plant. The petitioner also applied for the same by submitting an application form in the year 2007. The Deputy Commissioner Hissar on 24.05.2011 supplied a list of 133 land oustees who had contributed 2 acres of land or more. The name of the petitioner's family also finds mention in the aforementioned list. Out of total of 133 applicants, 123 applicants were eligible to be appointed while 10 applicants including the petitioner were under age as

employment was approved by the Chief Minister Haryana Vide Annexure P/3. Pursuant thereto candidates were given appointment as per the scheme.

3. The petitioner who was then underage was given an assurance vide Annexure P/4 dated 26.07.2011 that she would be considered for employment on her attaining the age of 18 years. The petitioner in the meantime joined a 3 years diploma course in Electronics and Communication Engineering in 2011. The petitioner attained the age of 18 years on 06.07.2013 and sought extension vide Annexure P/5 of one year for appointment so that she could complete her 3 years diploma course. In response thereto respondent No. 2 vide Annexure P/6 dated 13.01.2014 granted extension for one year. During the diploma course the petitioner underwent training and was awarded certificate Annexure P/7 in Industrial Automation and Control Systems. The respondents also provided one month inplant training to the petitioner in “Power Plant Familiarisation” in July 2013 and issued her certificate Annexure P/8.

4. The petitioner appeared in the final semester examination of three-year diploma course in Electronics and Communication Engineering conducted by HSBET in May 2014 and on 06.06.2014 Kalpana Chawla Institute of Engineering and Technology Chkanwas District Hissar certified vide Annexure P/9 that the petitioner had appeared in the final examination of 3 years diploma in Electronics and Communication Engineering. Pursuant thereto the petitioner informed the respondents vide Annexure P/10 dated 16.06.2014 along with supplying copies of certificates Annexure P/7, P/8 and P/9 that she had completed 3 years diploma in Electronics and Communication Engineering although the result was yet to be declared.

5. That in response thereto the respondents offered the post of peon to the petitioner on 23.06.2014. Petitioner requested the respondents to take a 3 years diploma into consideration while providing employment vide request letter Annexure P/11.

6. That the result of the petitioner of the 3 Years Diploma in Electronics and Communication Engineering was declared on 15.07.2014 and the petitioner secured 76% marks. The petitioner obtained original detailed marks from Kalpana Chawla Institute Annexure P/12 on 18.07.2014 and submitted the same to the respondent department. The respondents asked the petitioner to submit all original certificates of her educational qualifications to the Department which direction the petitioner complied with whereafter the respondents vide Annexure P/13 dated 23.07.2014 posted the petitioner as peon.

7. That the respondents rejected the petitioners request Annexure P/11 vide letter Annexure P/14 dated 08.08.2014 on the ground that post of peon was given as per assurance by considering her educational qualification as 10th class.

8. That the petitioner made several representations to the respondents for changing her post by taking into consideration her qualification of 3 years diploma in Electronics and Communication Engineering. However the request of the petitioner Annexure P/15 dated 20.10.2014 was rejected vide Annexure P/16 dated 15.12.2014 by stating that it was not feasible to change the post of the petitioner as she did not possess the qualifications on the date of appointment.

9. Ld. counsel for the petitioner contended that the respondents had themselves granted extension to the petitioner to complete her 3 years diploma besides had provided one month inplant training in “Power Plant Familiarisation”, that pursuant to the directions by the High Court in CWP No. 6669 of 2017 the respondents by taking into account the qualifications of petitioner Sunil Kumar in said petition changed his post from peon to LDC as per his qualifications. Likewise pursuant to filing of CWP No. 24221 of 2015 the respondents reviewed the claim of another land oustee, Chander Pal and changed his post from peon to LDC, that 93 oustees from whom land was acquired for setting up thermal power plant at Jharli, District Jhajjar who were matriculates were admitted by the respondents in ITI’s and were paid monthly stipend and later were appointed to Group C posts in relevant trade on completion of ITI course, thereby the petitioner was discriminated upon even though she had studied at her own expense and never claimed any stipend from the respondents, that right from the day of her appointment the petitioner had been assigned and was performing the duties of Computer Operator cum Clerk whereas she was being paid salary of peon, the petitioner was qualified and eligible to be appointed as Operator –1 or Foreman Grade-II before she was made to join as peon, that the respondents were aware of her having appeared in the three-year diploma course and of the result of the same being awaited, that as per policy of Government of Haryana for Rehabilitation and Resettlement of Landowners – Land Acquisition Oustees – Annexure P-18 in case of dependents being minor or deciding to take up employment after completion of studies, actual employment was permitted to be deferred in such cases for up to a period of 5 years.

10. Ld. counsel for the respondents on the other hand contended that assurance was given to the petitioner on account of her being underage vide letter Annexure R-1 dated 26.07.2011 that she would be provided suitable employment on the basis of her educational qualifications as per clause 3 (iv) of the memorandum approved by the government, Annexure R-2 dated 30.01.2012 at the time of attaining the age of 18 years and further she was allowed extension of one year joining time while making it clear that no further extension would be given beyond said period of one year, the petitioner had not submitted proof of having completed the 3 diploma course before issuance of appointment letter as peon vide memorandum dated 23.06.2014 and she further accepted the appointment without any protest, that the provisional certificate Annexure P/2 had been issued after 06.07.2014 i.e. after expiry of one year extension time given to the petitioner therefore her claim had been rightly rejected and she was given appointment as per the qualifications possessed by her as on said date, that the case of Sunil Kumar relied upon by the petitioner was distinguishable as he was eligible for the post of LDC as he possessed the requisite qualifications for his appointment on said post.

11. I have considered the submissions of Ld. counsel and for the reasoning given hereunder am of the view that the writ petition is liable to be allowed. Admittedly vide annexure P/4 dated 26.07.2011 the petitioner was given an assurance that she would be provided suitable employment on the basis of educational qualification on attaining the age of 18 years. On request vide annexure P/5 for relaxation in joining after one year on account of the petitioner having enrolled as a student of Electronics and Communication Engineering and being in the Final Year of the three-year diploma course she

wished to complete the diploma before joining HP GCL, the respondent's vide annexure P/6 dated 13.01.2014 acceded to the request dated 12.08.2013 by granting an extension in joining time for one year upto 06.07.2014 with period of extension of one year being counted from the date of petitioner attaining the age of 18 years i.e. 06.07.2013 and further that she would be considered for employment as per terms of memorandum dated 26.07.2011 i.e. Annexure P-4. Although period of one year was to expire on 06.07.2014 and despite having granted extension of 1 year for joining employment on the request of the petitioner that she was in her final year of three-year diploma course, the respondents before expiry of one year issued appointment letter dated 23.06.2014 although rightfully the decision on claim and issuance of appointment orders ought to have been after 06.07.2014 and that too after permitting the petitioner to submit her result of 3 years diploma in Electronics and Communication Engineering particularly when as per policy Annexure P-18 for Rehabilitation and Resettlement of Landowners – Land Acquisition Oustees issued by the Government of Haryana in the Revenue and Disaster Management Department Landowners are allowed to defer their actual employment where the aspirant is a minor or decides to take up employment after completion of his/ her studies up to a period of 5 Years. Relevant extract of the same is reproduced as under : –

“ vi) While the landowners are expected to submit their claim applications for jobs within a period of 6 months of the announcement of the award, there may be some isolated cases where the defendant may be a minor or decides to take up employment only after completion of his/ her studies. The erstwhile landowners would be allowed to defer their actual employment in such cases up to period of 5 years from the

date of award. In such cases, the claim of the erstwhile landowners applicant would be processed and the letter of entitlement would be issued by the concerned Department.”

Besides 93 land oustees who were matriculates and whose land was acquired for setting up of thermal power plant at Jharli, district Jhajjar, were admitted by the respondents in ITI's against monthly stipend as is evident from Annexure P-17 and said decision was approved by the Chief Minister vide diary No. 80 dated 14.01.2014 and such land oustees were appointed to Group C posts in the relevant trade on completion of ITI course whereas the petitioner did the requisite course of 3 years diploma in Electronics and Computer Engineering on her own without taking any stipend and for which she was given one-year extension on the basis of a representation annexure P-5. Once assurance was given to the petitioner of giving her appointment commensurate to her qualifications on her attaining the age of 18 years whereafter on her request that she was in her final year of three-year diploma course in Electronics and Computer Engineering petitioner was given one-year extension in joining time it was incumbent upon the respondents to have considered the petitioners claim for appointment on the basis of qualifications possessed by her after 06.07.2014 and that too by taking into account the result of the three-year diploma in Electronics and Computer Engineering provisionally declared on 18.07.2014 otherwise the very purpose for the respondents to have granted extension of one year stands defeated on the petitioner request to enable her to complete her 3 years diploma course. Moreover **policy annexure P18** issued by none else than the Haryana government though in a different department permits deferring of taking up of employment for a period of 5 years from the date of award. In the

circumstances the writ petition is allowed. Respondents are directed to consider the claim of the petitioner for appointment to a suitable class III post commensurate with the qualifications possessed by i.e. three-year diploma in Electronics and Computer Engineering w.e.f. 18.07.2014 and to issue her appointment letter for a suitable class III post in case she fulfils the qualifications for the same within a period of 3 months from the date of receipt of certified copy of order. Petitioner shall also be entitled to difference of pay on the post of peon and class III to be paid to her within the stipulated period of time as mentioned above failing which the same would be payable along with interest @ 6% per annum w.e.f. the date of entitlement till date of payment.

22.01.2020
DP &S

(B.S. Walia)
Judge

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.