

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 207

Civil Writ Petition No.6927 of 2017
Date of Decision: January 20, 2020

Sunil Kumar & others

..... PETITIONER(S)

VERSUS

State of Haryana & others

..... RESPONDENT(S)

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CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
 HON'BLE MR. JUSTICE SANT PARKASH

. . .

PRESENT: - Mr. Shiv Kumar, Advocate, for the petitioners.

Ms. Shruti Jain Goyal, Deputy Advocate General,
Haryana.

Mr. Abhay Gupta, Advocate, for Mr. Amar Vivek,
Advocate, for respondent No.4.

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Sant Parkash, J

The petitioners are working on the post of Fireman as well as Driver with respondent No.4. They were appointed on contractual basis through service provider as per the policy of Government prevalent at that time. Now, after the enactment of Haryana Fire Service Act, 2009, the Haryana Government, Urban Local Bodies Department, vide notification dated 03.06.2016 (under challenge in this petition) has notified the Haryana Fire (Group C) Service Rules, 2016 (for short, '2016 Rules'), whereby qualification for the post of Fireman, which was re-designated as Fire

Operator, has been prescribed. The qualification for the post of Fire Operator and Driver is reproduced as under:-

Sr. No.	Designation of Posts		Academic qualifications, & Experience, if any for direct recruitment	Academic qualification and experience, if any for appointment other than by direct recruitment
1	2		3	4
xx	xxx		xxx	xxx
7	Fire Operator	(i)	10+2	By Transfer or Deputation
		(ii)	Heavy Motor Vehicle Driving License.	(i) 10+2
		(iii)	Hindi/Sanskrit upto Matric Standard or Higher Education;	(ii) Heavy Motor Vehicle Driving License.
		(iv)	Should have minimum physical standard i.e. Height – 5’7”, Weight 54 Kg. and Chest 32” (inches) unexpanded and 34” (inches) expanded (without clothes), Eye Sight 6/6 (without glasses) and 6/6 (with or without glasses after the age of 45 years).	(iii) Hindi/Sanskrit upto Matric Standard or Higher Education;
		(v)	Should not be color blind.	
8	xxx		xxx	Xxx
9	Driver	(i)	Matric	By Promotion :- (i) Matric
		(ii)	Should have a light vehicle valid driving Licence, at least three years old;	(ii) Should have a light vehicle valid driving Licence, at least three years old;
		(iii)	Should have passed the driving test, conducted by the Haryana Staff	(iv) Three years experience as

			Selection Commission;	Class IV posts.
		(iv)	Should not be color blind;	(iv) Hindi/Sanskrit upto matric standard or higher Education;
		(v)	Hindi/Sanskrit upto matric standard or higher Education.	(v) Should have passed the driving test conducted the department. (vi) Should not be colour blind. (vii) Should not be more than fifty years of age. By Transfer/ deputation. (i) Matric; (ii) Should have a light vehicle valid driving Licence, at least three years old; (iii) Three years experience as light vehicle driver; (iv) Hindi/ Sanskrit upto matric standard or higher Education. (v) Should not be colour blind; (vi) Should not be more than fifty years of age.

Respondent Nos.2 and 3 have filed a written statement
submitting that petitioners were never recruited and engaged against the

sanctioned posts under the 1982 Rules. Infact, they were appointed on contraual basis through out-sourcing agency after due advertisement as per the Government decision dated 18.07.2003 (Annexure R-3/1). The petitioners were never paid regular pay scale for the posts sanctioned under the aforesaid rules. Moreover, the services of petitioners have not been replaced with the incumbents of regular appointments in accordance with the provisions of 2016 Rules. Though the petitioners are ineligible as per 2016 Rules, still they have been given sufficient period of one year to complete the eligibility criteria of 2016 Rules for competing in regular appointments.

In the reply filed on behalf of respondent No.4, as per order issued by the Principal Secretary, Government of Haryana, Urban Local Bodies Department, vide memo No.14/28/2017 dated 01.03.2017, the post of Fireman and Driver Fire Brigade have been integrated/clubbed to the post of Fire Operator. Thus, a fresh tender was called upon by respondent No.4 and out-sourcing agency i.e. M/s Imperial Electrical & Allied Services, was directed to remove/withdraw the services of all Firemen and Drivers Fire Brigade engaged on 31.03.2017 vide office letter dated 21.03.2017. Meanwhile, this Court vide order dated 22.03.2017 in CWP No.1663 of 2016, ordered status-quo regarding services of petitioners and it was directed to maintain the services of petitioners till an alternative arrangement through out-source was made. Further, vide order dated 28.03.2017 passed in CWP No.3567 of 2017, this Court directed the respondents not to proceed to fill up the posts through out-sourcing or contract until further orders.

Heard learned counsel for the parties and perused the record.

It is pertinent to mention here that this Court, vide order dated 03.04.2017 directed this petition to be heard with CWP No.5840 of

2017. A specific plea has been taken on behalf of the respondents that the said petition has been disposed of by this Court, therefore, this petition stands automatically segregated. CWP No.5840 of 2017 pertained to regularization of services wherein the instant petition, challenge is to the vires of notification dated 03.06.2016.

The contentions of learned counsel for the petitioners revolve around the fact that on account of passing of notification dated 03.06.2016, the petitioners have been rendered ineligible for the posts of Fire Operators and Drivers on account of enhanced qualification.

Admittedly, the petitioners were appointed on adhoc/contract basis through service provider M/s Imperial Electrical & Allied Services, and therefore, they have got no locus to challenge the Rules framed by the Government for the posts of Fire Operators and Drivers, which stand merged. As per 1982 Rules, the qualification for the post of Fireman, was matriculate passed basis course in Elementary Fire Fighting of Haryana State Fire Fighting Institute (for the post of Fireman) and that of Drivers, was Matriculation with driving license of heavy vehicle with 5 years experience of driving heavy vehicle. However, as per new notification dated 03.06.2016, the qualification of 10+2 and heavy motor vehicle driving license is mandatory for the post of Fire Operator and for the post of Driver, qualification is Matric and a light vehicle valid driving licence at least 3 years old.

It is the specific stand of respondents No.2 and 3 in the reply filed that the present petitioners have been given sufficient period of one year to complete the eligibility criteria of 2016 Rules for competing in the regular appointments.

The petitioners are the ad-hoc employees and they cannot be allowed to dictate as to how and in what manner the Government Department should work. It is the prerogative of the Government to frame the Rules and to specify the qualification as per the requirement of the post.

The petitioners are not squarely covered as per the due requirements of the said policy for regularizing the services of Group-C and Group-D and therefore, they have no legal right to challenge the notification.

In the light of what has been discussed above, there is no merit in the instant petition and the same is hereby dismissed.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

January 20, 2020
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No