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

CWP-13142-2003 (O&M)

Date of decision: April 28, 2022

Rajesh Kumar

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashwarya Bajaj, Advocate,
For the petitioner.

Mr. R.K.S. Brar, Additional A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition was filed in the year 2003, *inter alia*, for issuance of a writ in the nature of certiorari to quash the impugned order dated 17.01.2002 (Annexure P-10) vide which the claim of the petitioner for regularization on Class-III post, was rejected.

2. Learned counsel for the petitioner submits that petitioner was appointed as 'Pump Operator' on daily wage basis. Since the date of his initial appointment, he has been working on the post of Water Pump Operator-II. As per the policy dated 07.03.1996, all those daily rated employees, who have completed 5 years of service as on 31.01.1996 are entitled to be regularized in service. Vide letter dated 18.03.1996 (Annexure P-3), this condition of 5 years of service was reduced to 3 years. He submits that instead of regularizing the services of the petitioner on the post of 'Water Pump Operator' as per his entitlement, he was regularized on the post of Mali-cum-Chowkidar. Aggrieved by the action of the respondents, petitioner submitted a representation followed by legal notice but to no avail. Thereafter, petitioner filed CWP No.17933-2000, which was disposed

of directing the respondents to consider the representation/demand notice of the petitioner and decide the same by passing a speaking order. Vide impugned order dated 17.01.2002 (Annexure P-10), claim of the petitioner was rejected. Hence, the instant petition.

3. Petition was admitted on 06.12.2004.

4. When called out for hearing, learned counsel for the petitioner submits that case of the petitioner is covered by judgment dated 14.10.2021 rendered by this Court in CWP No.7370-1997 titled as '*Anil Kumar Mehta Vs. State of Haryana and others*'.

5. I have heard learned counsel for the parties and gone through the case file.

6. The argument of learned State counsel is that the petitioner was not working as 'Pump Operator' as has been stated in para 3 of parawise reply, which is reproduced hereinbelow is not acceptable.

"3. That the contents of Para No.3 of the petition are wrong and specifically denied to the effect that petitioner performed the duties of Water Pump Operator-II. The petitioner was employed as fitter collie on daily wages basis as a Class-IV establishment and worked as such upto 30/09/89. Thereafter he was employed as Mali cum Chowkidar on daily wages basis which is a class IV establishment and worked as such till the date of regularization of his service w.e.f. 01/02/1996. In the intervening period from 01/02/90 to 8/93 the designation of the petitioner seems to have been inadvertently written as Pump Operator-II but during all this period he was paid as class IV Estt. on daily wages basis. A copy of the Muster Roll for the month of 9/89, 10/89, 11/89, 1/90, 9/93, 10/93, 1/94, 2/94, 1/95, 2/95 and 1/96 are enclosed as Annexure R5 to 15. The pay was also accepted by him gladly without any protest. Neither petitioner has ever written to the Deptt. about his regularization as Water Pump Operator or his working as such. The petitioner was employed in Class-IV Estt. and he worked through out in Class IV Estt. and was accordingly regularized in Class-IV Estt. Taking of part of internal duties some times as water pump operator from any Mali cum Chowkidar does not change his status. Neither the

petitioner was eligible to be appointed as Water Pump Operator as he did not fulfill the qualification of the post of Water Pump Operator.”

7. In any case, the same also flies in the face of orders at Annexures P-1 and P-4, which are concededly the documents of department itself showing in no uncertain terms, that petitioner at the relevant time was working as Pump operator.

8. I may like to refer to my opinion rendered in Anil Kumar judgment, *ibid*, relevant whereof is reproduced herein below:

“17. Adverting now to the relevant part of the Government notification dated 11.05.1994 Annexure P-5, reproduced herein below:

“xxxx xxxx

But it has come to the notice of Government in some departments daily wagers are also working on class III posts such as clerks, steno-typist and drivers etc. The question whether such daily wagers should be regularized in group D or group C scale has been engaging the attention of Government for some time past and after careful consideration it has now been decided that the daily wagers who had completed five years’ service on 31.03.1993 should be regularized against their respective Class III posts provided they fulfil the requisite qualifications and were originally appointed on Class III posts and the posts are available. If the posts are not available they should be got created from the finance department or they should be regularized in Group D scale on compassionate ground like other daily wagers.” (emphasis supplied)

18. The above language of the notification, particularly the underlined text, shows that for the purpose of regularization, 31.03.1993 was the relevant date of possessing the requisite qualifications, fulfilling other conditions and the continuity of service. Further, it was/is a beneficent policy decision/notification to mitigate the hardship of the daily wagers. In view of this, and the absence of any thing contrary in the text of the notification, to my mind, it would be fair and reasonable to infer that the fulfilment of the conditions of requisite qualifications and experience for regularization were/are to be seen as on 31.03.1993.

19. In the context of the same policy decision/notification dated 11.05.1994 Annexure P-5 of the Haryana Government, the Apex Court noted in **Amrit Lal v. State of Haryana 1999 AIR (SCW) 4697 (supra)** that the qualification prescribed for the post of Water Pump Operator, Grade II is either possessing an ITI certificate or being literate and having minimum experience of five years.

XXX XXX XXX

23.XXX XXX XXX
In present proceedings, they cannot defend or justify the impugned order on the entirely new ground that the petitioner had given two experience certificates for working with two separate employers and also a doing diploma course simultaneously and that they were manipulated and fictitious.

24. In terms of Government of Haryana Notification dated 11.05.1994, the petitioner was eligible and entitled to be considered for regularisation as Water Pump Operator Grade II in group C as on 31.03.1993. To my mind, this vested right/claim cannot be defeated retrospectively by the subsequent withdrawal of the notification dated 11.05.1994 Annexure P-5 by the Government vide another notification no. GSR 13 const./Art. 309/2007 dated 13.04.2007 and the decision of the Government that all the vacant sanctioned posts occupied by the daily wage, contract, part-time, etc. at the time of withdrawal of the notification dated 11.05.1994 may be filled up through a process of regular recruitment as per provisions of the relevant service rules in compliance. I, therefore, repel the contention of the learned counsel for respondents that since there is no policy in existence at this stage on which the petitioner claims regularisation in Group-C, no such benefits can be given him.

25. As an upshot of the aforesaid, the petition is allowed, the impugned order dated 28.04.1997 (Annexure P-19) issued by respondent No. 3 withdrawing his own earlier order dated 31.03.1995 for regularisation of the petitioner's services in group 'C' and instead bringing him on regular establishment in lower group 'D' to the post of Helper to Electrical Chargeman/Electrician, is set aside and the earlier order dated 31.05.1995 Annexure P-16 regularising the petitioner's services on class III post as Water Pump Operator Grade II is restored. The petitioner shall be entitled to all consequential service benefits. Past arrears of monetary dues shall be paid to the petitioner within six months with interest @ 6% per annum from the due date till actual payment."

9. In the backdrop of the aforesaid judgment, it is thus borne out that in the context of earlier policy/decision of Haryana Government dated 11.05.1994,

Supreme Court had already noted in '**Amrit Lal Versus State of Haryana', 1999**

AIR (SCW) 4697 that the qualifications for the post of Water Pump Operator Grade II were prescribed by way of two alternatives i.e. a) either an ITI certificate or b) being *literate* and having minimum experience of 5 years.

10. Adverting to the policy Instructions dated 11.05.1994 (*supra*), the same were meant for regularization of services of work charged/casual/daily rated employees as is evident from the perusal of Amrit Lal Judgment, *ibid*. Later policy Instructions dated 07.03.1996 Annexure P-2 (modified vide later Instructions dated 18.03.1996) laid down the requirement of 3 years experience as on 31.01.1996. In other words, the eligibility requirement as it stood on 31.01.1996 for regularization was either possessing of an ITI certificate or being *literate* with minimum work experience of 3 years.

11. Reverting to the case in hand, petitioner was appointed on 11.09.1989. He was appointed as Water Pump Operators-II in Category C. He asserts that he is/was matriculate. That apart, he had more than the required three years experience as on 31.01.1996.

12. In totality of circumstance and as an upshot of the discussion in the preceding paragraphs, I may thus of the view that petitioner is eligible for regularization on the post of 'Assistant Pump Operator' now re-designated as 'Water Pump Operator' in Category C, which is a Class-III post with effect from 01.02.1996 in terms of the policy instructions dated 07.03.1996 as duly modified vide later instructions dated 18.03.1996 (Annexure P-3).

13. In the parting, at the cost of repetition, I may hasten to add here that to my mind, analogy of Anil Kumar Mehta judgment (*supra*) is applicable to the instant case and the petitioner is entitled to regularization of his services as already noted hereinabove.

14. Accordingly, petition is allowed and respondents are directed to regularize the services of the petitioner with effect from 01.02.1996 in terms of the observations contained in preceding paragraph of the instant order/judgment with all consequential benefits. It is however, made clear that the monetary benefits are confined to 38 months’ prior to filing of the writ petition payable with interest @ 5 % per annum till actual date of payment.

15. Needful exercise be carried out within a period of 3 months from the date when petitioner approaches the authorities along with copy of the instant order.

(ARUN MONGA)
JUDGE

April 28, 2022
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No