

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

CWP-6018-1998 (O&M)

Date of decision: April 28, 2022

Surender Kumar and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.S. Maanipur, Advocate,
for the petitioners.

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

ARUN MONGA, J. (ORAL)

Petition was filed in the year 1998, *inter alia*, for issuance of a writ in the nature of certiorari to quash impugned order dated 20.04.1998 (Annexure P-7) whereby the benefit of regularization of their services under Class-III on the post of 'Work Munshi' had been withdrawn, which is contrary to the rules and regularization as the petitioners did not work on Class-D Post even a single day on daily wage basis.

2. Learned counsel for the petitioners submits that petitioners joined as Pump Operator on daily wage basis w.e.f. 01.03.1992 and 01.07.1992 respectively. State of Haryana issued policy/instructions dated 07.03.1996 to regularize the services of work charged/casual/daily rated employees on respective posts, who had completed 5 years service on 31.03.1996. Subsequently modified Instructions were issued vide letter dated 18.03.1996 whereby services of the daily wagers who had completed three years' service up to 31.01.1996 were to be regularized on that day. As per the policy Instructions, the services of the petitioners were to be regularized on Group C, Class III post of

Water Pump Operator-II, as they were appointed initially on daily wage basis as Pump Operator on a Class-III post.

3. But the respondents regularized their services in Group-D, Class-IV post carrying pay scale of Rs.750-940 vide order dated 18.10.1996 (Annexure P-1). As per Notification dated 26.07.1991, the pay scale of the post of APO (Now designated as Pump Operator) is Rs.1200-2040 and its qualification is matriculation with ITI. Aggrieved by the order of regularization in Group D post, the petitioners requested the authorities that they could not be regularized on a lower post on which they had not worked for even a single day. Respondents No.3 and 4 recommended their case for regularization of their services on a Class-III post to respondent No.2. Respondent No.2 granted approval vide order dated 03.11.1997 whereby they were ordered to be regularized on Group-C post. In pursuance of the abovementioned approval, the petitioners though were entitled to regularization to the post of WPO but respondent No.3 considering the fact that the post of 'Work Munshi' as well as the post of WPO were carrying the same pay scales i.e. Rs.950-1400, regularized the services of the petitioners vide order dated 06.02.1998 (Annexure P-3) as 'Work Munshi'. Thereafter, on the basis of complaint, respondent No.4 was directed to investigate the matter and send the report regarding the appointment of the petitioners on daily wages in 'Group C' and their regularization on the post of Work Munshi instead of WPO. Petitioners were also asked to submit their qualification certificates. Petitioners submitted their certificate of BA Part-I and B. Com-Part-III respectively. Despite having submitted the requisite certificates, respondent No.3 passed impugned order dated 20.04.1998 (Annexure P-7) withdrawing the order dated 06.02.1998 (Annexure P-3) whereby they were regularized in Group-C. Hence, the instant petition.

4. While issuing notice of motion vide order dated 30.04.1998, recovery from the petitioners pursuant to the impugned order was stayed. Petition was admitted on 10.12.2001.

5. When called out for hearing, learned counsel for the petitioner submits that case of the petitioners 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*'.

6. On a Court query, learned State counsel does not dispute that the petitioners fulfill the criteria as per the regularization Instructions dated 07.03.1996 as duly modified vide later instructions dated 18.03.1996.

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

8. I may like to refer to my opinion rendered in Anil Kumar judgment, *ibid*, relevant thereof 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.*

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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*. Subsequent policy Instructions dated 07.03.1996 (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, petitioners were appointed on 01.03.1992 and 01.07.1992 respectively. Both of them were appointed as Pump Operator. They assert that they are/were all matriculates. That apart, they 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 am thus of the view that petitioners are 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 31.01.1996 in terms of the policy instructions dated 07.03.1996 as duly modified vide later instructions dated 18.03.1996.

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 petitioners are entitled to regularization of their services as already noted hereinabove.

14. Accordingly, petition is allowed and petitioners are deemed to be regularized on Class-III post with effect from 31.01.1996 in terms of the observations contained in preceding paragraph of the instant order/judgment with all consequential monetary benefits along 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 petitioners approach 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