

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CWP-6673-1998 (O&M)
Date of decision: April 28, 2022

Ajesh Kumar and others	versus	...Petitioners
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 mandamus directing the respondents to regularize the services of the petitioners as Pump Operator under Category-C instead of Pump Attendant in terms of the policy of Haryana Government vide Annexures P-3 and P-4.

2. Learned counsel for the petitioners submits that petitioners were appointed as Pump Attendant (later designated Water Pump Operator II) in Class-III category on daily wage basis. State of Haryana issued policy/ instructions dated 07.03.1996 (Annexure P-3) to regularize the services of work charged/casual/daily rated employees on their respective posts, who had completed 5 years service on 31.03.1996. Subsequently modified Instructions were issued vide letter dated 18.03.1996 (Annexure P-4) whereby services of the daily wagers who have completed three years' service up to 31.01.1996 were to be regularized with effect from 01.02.1996. As per the policy instructions, the services of the petitioners were to be regularized on Group C, Class III the post of Assistant Pump Operator/Pump Operator as they were appointed initially on daily wage basis as Pump Attendant on a Class-III post. But the respondents regularized their services as Pump Attendant in Group-D, Class-IV post carrying

pay scale of Rs.750-950. As per notification dated 26.07.1991 (Annexure P-6), the pay scale of the post of APO (now designated as Pump Operator) is Rs.1200-2040 and qualification is matriculation with ITI. Aggrieved, petitioner No.1 served a legal notice dated 03.10.1997 (Annexure P-7). Thereafter, respondent No.3 rejected the claim of the petitioner vide order dated 13.11.1997 (Annexure P-8) and declined the regularization to the post of APO/WPO-II. Hence, the instant petition.

3. Petition was admitted on 10.07.2003.

4. 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*'.

5. Learned State counsel controverts the submissions made by learned counsel for the petitioners.

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

7. 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 Chageman/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."

8. 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, the Supreme Court has 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.

9. 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 (Annexure P-3) which were modified vide later Instructions dated 18.03.1996 (Annexure P-4) 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.

10. Reverting to the case in hand, petitioners No.1, 2 and 3 were appointed on 01.07.1990, 09.11.1991, 01.06.1990 respectively. All of them were appointed as Pump Attendants later on re-designated as Water Pump Operators-II in Category C. They assert that they are/were all matriculates and in addition to also possess ITI certificates. That apart, they had more than the required three years experience as on 31.01.1996.

11. 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 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-4).

12. 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.

13. Accordingly, petition is allowed and respondents are directed to regularize the services of the petitioners with effect from 01.02.1996 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.

14. 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