

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

LPA No. 777 of 2022 (O & M)
Date of Decision: 02.12.2022

Manish KumarAppellant(s)

Versus

State of Haryana and othersRespondent(s)

AND

LPA No. 855 of 2022 (O & M)

Satish Kumar and othersAppellant(s)

Versus

State of Haryana and anotherRespondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Vikas Chatrath, Advocate,
for the appellants.

G.S.SANDHAWALIA, J. (Oral)

CM-1854-LPA-2022 in LPA No. 777 of 2022

Application for condonation of delay of 4 days in filing the appeal is allowed in view of averments made in the application supported by affidavit and in view of the nominal delay.

Delay of 4 days in filing the appeal is condoned.

C.M. stands disposed of.

CM-2048-LPA-2022 in LPA No. 855 of 2022

Application for condonation of delay of 6 days in refiling the appeal is allowed in view of averments made in the application supported by

affidavit.

Delay of 6 days in refiling the appeal is condoned.

C.M. stands disposed of.

Main Cases

The present judgment shall dispose of two letters patent appeals i.e. LPA Nos.777 and 855 of 2022, since both the appeals arise out of the common judgment dated 09.12.2021 passed by the learned Single Judge in CWP Nos. 7886 of 1999, Satish Kumar and others vs. State of Haryana and another alongwith CWP No. 4368 of 2019, Manish Kumar vs. State of Haryana and others.

The prayer made by the writ petitioners in the writ petitions was for quashing the action of the respondents where despite the issuance of letter of extension dated 06.03.2019 (Annexure P-6), they had not been allowed to join by respondent No.2-Corporation on the post of Junior Engineers. The learned Single Judge came to the conclusion that the petitioners, on the expiry of the contract period, did not have any vested right to continue in service and they had been appointed for a period of one year or till appointment of regular incumbents, which ever is earlier. On completion of last extension, they were taken to be relieved since the Corporation was in the process of restructuring and even the requisition sent to the Staff Selection Commission for filling up regular posts including those of Junior Engineers had been withdrawn. It was held that since there was no work available, the services of the writ petitioners were not required and they could not claim to be allowed to join and work when no such work was available. The argument raised that the respondents had gone to the extent of changing the

nomenclature of the jobs and coming up with a plea that sufficient work was not available was also repelled as it was for the employer to see how much work was available and how many hands were required for doing that work and whether the work available justifies hiring of more work force and the number and period for which such additional work force should be hired. The submissions made that on account of asking for hike in wages by the employees was the reason to push them out was also not made out and the fact that there was no *mala fides* on the part of the respondents and neither any material had been placed on record to that extent. Reliance upon the judgment of the Apex Court in ***Hargurpratap Singh vs. State of Punjab and others, (2007) 13 SCC 292*** was also repelled on the ground that there was nothing to show that similarly situated employees on contractual basis were being appointed in their place on the same terms and resultantly, the writ petitions were as such dismissed.

Counsel for the appellants has vehemently submitted that there was availability of posts while referring to a communication dated 04.06.2021 (Annexure A-5) to show that revised man power is required to be outsourced as per the requirement of the Corporation and Senior Site Engineers and Junior Site Consultants were required and it was claimed that they were in the same pay grade as such. Similarly, reliance is also placed upon the document now placed on record dated 14.03.2022 (Annexure A-1), which is a noting portion showing that there was requirement of five Junior Engineers (Civil) and 4 Junior Engineers (Electrical) at level-III. It is, thus, submitted that the learned Single Judge was not correct in holding that there was no availability.

We are of the considered opinion that the argument is bereft of any merit as admittedly, at an initial point of time, the appellants were appointed on the basis of a walk-in-interview as per advertisement (Annexure P-1), which was conducted for J.E. (Civil) and J.E. (Electrical). The advertisement specifically stated that the appointment shall not be beyond a period of one year or when regular employees are available, whichever is earlier as per the policy decision of the Government dated 06.04.2015 and the employees did not have any right of regularization. The letter of engagement as such was issued on 03.06.2016 (Annexure P-2) which was also mentioning the said fact and putting the appointees in the pay band of Rs.15,559/- per month, which was 50% of the initial pay + grade pay + dearness allowance of a fresh entrant regular employee. It was specifically mentioned that the service contract period was to cease on the expiry of the term without providing any claim for continuity of contract of service or any other consequential benefit and there would be no legal right to claim regularization of service or any other benefit like seniority in the Corporation. The period was extended on 21.07.2017 for a period of one year beyond 02.06.2017 with the same conditions till regular selected candidates are appointed which ever is earlier. The formal order was passed on 20.09.2017 (Annexure P-4). It is the admitted case that their services as such were dispensed with at the expiry of the said period though a proposal had gone for their extension which was given on 06.03.2019 (Annexure P-6) but they were never allowed to join thereafter. Resultantly, the writ petitions came to be filed seeking the necessary relief on the strength of the said communication.

The stand by the respondent-Corporation was that they were

restructuring as such and even the requisition sent for appointment of regular employees of 152 posts including the posts of Junior Engineers to the Haryana Staff Selection Commission was withdrawn on 30.10.2019 (Annexure R-2/1) and at present, there was no fresh proposal for construction of new godowns and the present strength of Junior Engineers was sufficient.

It is not disputed that in pursuance of the subsequent appointment which was after a period of almost 3 years on account of outsourcing of similarly situated persons out of the 8+1 writ petitioners, two who have joined, as would be clear from the grounds of appeal itself, the cause of action accrued. Apparently, there is a period of 3 years' lag as such as to when the service was dispensed with and any requirement which has now arisen on account of the intervening period which has gone by would not as such give any ground to the appellants to plead on the basis of the judgment in *Hargurpratap Singh's case (supra)* that they should be adjusted. Nothing could be brought on record to show that at the time when the services were dispensed with, similarly situated persons were asked to apply by way of any advertisement at that point of time.

In such circumstances, the reasoning given by the learned Single Judge that the judgment in *Hargurpratap Singh's case (supra)* is not applicable cannot be interfered with and is well justified. The terms and conditions as such of appointment were of contractual nature and the appellants were well aware of their status as they have no legal right to continue in service. It is for the Corporation to see that at what point of time, how much man-power is required and keeping in view the particular nature of work which has to be done in view of subsequent events. If some

requisition of additional staff is required, it would not give a right as such to the appellants to contend that they had a legal right to continue only on account of a *ex post facto* sanction which has been granted which was not acted upon. For the grant of a writ in the nature of mandamus, a legal statutory provision or a binding policy as such would be the requirement and in the absence of the same, no writ of mandamus is liable to be granted. Therefore, we are of the considered opinion that the learned Single Judge has not erred in any manner in dismissing the writ petition.

Accordingly, the present appeals are dismissed in *limine*.

(G.S. SANDHAWALIA)
JUDGE

02.12.2022
shivani

(GURBIR SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No