

212 (two cases)+ 215

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

(i)

CWP-15136-2015

Darshna Rani

..... Petitioner

Versus

State of Haryana and others

..... Respondents

(ii)

CWP-13842-2015 (O & M)

Shivani

..... Petitioner

Versus

State of Haryana and others

..... Respondents

(iii)

CWP-9790-2016 (O&M)

Vedpati and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

Date of Decision : 19.09.2022

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present : Mr. Manoj Makkar, Advocate
for the petitioners.

Mr. Sandeep Singh Maan, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-10890-CWP-2017 in CWP-13842-2015

Application is allowed as prayed for. Replication to the

written statement is taken on record.

CWP-15136-2015 and
CWP-13842-2015

By this common order, the aforesaid writ petitions, details of which have been given above, are being disposed of as these writ petitions relate to the same controversy. (For the sake of convenience, the facts are taken from **CWP-13842-2015**)

In the present petition, the prayer of the petitioner is for regularizing the services of the petitioner on the post of Embroidery and Needle Work Instructor keeping in view the order passed by the Hon'ble Supreme Court of India in SLP No.9230-31 of 2009 and other connected cases, decided on 21.01.2013 wherein, the respondent-State had undertaken that 258 employees who are working with the respondent-State will be accommodated for regularisation of their services in case they fulfill the requisite qualification for the posts in question.

The facts leading to the filing of the present writ petition are as under:-

“The petitioner was appointed as Embroidary & Needal Work Instructor on contract basis on 08.09.2007 for a period of 06 months or till the regularly selected candidates are available from commission, whichever is earlier. A service agreement was executed between the petitioner and the Department and the petitioner continued working with the respondent(s). The petitioner who claims that she fulfills the requisite qualification in respect of the post on which she was discharging the duties, was allowed to work as no regular appointment was made. The appointment of the petitioner initially was after following the due process. In

the year 2007, writ petitions were filed by the Instructor and Language Teacher one being CWP No.5289 of 2007 wherein the Government had given an undertaking that the petitioners will be allowed to continue till the regular selected candidates join. Keeping in view the order passed in CWP No.5289 of 2007, another CWP No.1586 of 2008 was also decided on the same terms vide order dated 24.01.2008.

Against the said order dated 24.01.2008 passed in CWP No. 1586 of 2008, the State of Haryana filed SLP being SLP No.9230-9231 of 2009. During the hearing of the said SLP before the Hon'ble Supreme Court of India, the Joint Secretary to Government of Haryana, Department of Industrial Training filed an affidavit dated 13.07.2011 that the Government is prepared to accommodate the eligible employees numbering 258, who fulfill the requisite qualifications against the available vacant posts on humanitarian ground so as to regularise their services. Keeping in view the said affidavit, the liberty was granted to the Department to accommodate 258 people, which also included the petitioner. After the passing of the said order by the Hon'ble Supreme Court of India, the petitioner met with an accident on 14.09.2013 and she received head injuries. She remained hospitalized as keeping in view the injuries suffered, she was advised rest and ultimately the petitioner joined the duties on 13.12.2013 after being granted medical fitness certificate.

Keeping in view the order passed by the Hon'ble Supreme Court of India dated 21.1.2013, large number of workers were accommodated by the respondent-State by regularizing their services but the said benefit was not granted to the petitioner on the ground that there was a break in the service of the petitioner, hence, the services of the

petitioner could not be regularized and the said break included the period when the petitioner was admitted in the hospital and was advised rest after she had met with an accident in September 2013.

As the prayer of the petitioner for regularization of her services was not being accepted, the petitioner filed the present petition.

After issuing notice of motion, the respondents have filed the reply wherein, they have stated that the Government has issued a regularization policy on 20.06.2014 for regularising the services of Group 'C' and Group 'D' Employees and though, the petitioner fulfilled the qualification for appointment on the post on which she is working but as there was a break in the service, her services could not be regularized under the said policy.

With regard to the grant of benefit of the order dated 21.01.2013, by the Hon'ble Supreme Court of India, while order was passed keeping in view the undertaking given by the State of Haryana, it is the stand of the respondents that the said regularization of the personnel was on humanitarian ground and the petitioner who is working on contractual basis, and was part of 258 employees but she cannot claim the said benefit as a matter of right and she was required to fulfill the terms and conditions of the regularization policy issued in the year 2014. As per the respondents, in the year 2011, the petitioner had 25 days break; in the year 2012, the petitioner had 04 days break; in the year 2013, the petitioner had 110 days break and in the year 2014, the petitioner had 21 days break, hence, keeping in view the regularisation Policy of the year 2014, in case there is more than 30 days break in a

particular year, the same cannot be condoned hence, as the petitioner had 110 days break in the year 2013, the claim of the petitioner for regularizing her services under 2014 regularisation Policy has rightly been rejected. Learned counsel for the respondents further submits that the claim of the petitioner was sent to the authorities concerned for consideration which has not found favour. Hence, the claim of the petitioner for the grant of regularization in terms of the order passed by the Hon'ble Supreme Court of India dated 21.1.2013 may kindly be declined.

I have heard the learned counsel for the parties and have gone through the record of the cases.

It is a conceded fact that in the Department of Industrial Training, 258 people were working on contract basis whose services needed to be regularized, which matter came up for final consideration before the Hon'ble Supreme Court of India on 21.1.2013. It is also a conceded position that in those proceedings, the State filed an affidavit on 30.07.2011 wherein, the State had undertaken before the Hon'ble Supreme Court of India to accommodate eligible respondents numbering 258 who fulfill the requisite qualification on humanitarian ground for regularisation of their services. It is also a conceded position that the petitioner was one of 258 people, whose services needed to be regularized on humanitarian ground as per the affidavit of the State dated 30.7.2011.

The question which arises before this Court is whether, keeping in view the undertaking given by the State of Haryana before the Hon'ble Supreme Court of India dated 30.7.2011 coupled with order

passed by Hon'ble Supreme Court of India dated 21.1.2013, the petitioner is entitled for the regularization of her services or not.

The order passed by the Hon'ble Suipreme Court of India dated 21.01.2013, is as under:-

“The application for correction of cause title in SLP(C) Nos.16389-16415 of 2009 is allowed. Let the cause title be corrected accordingly.

The applicationsfor impleadment are dismissed.

Delay condoned.

Pursuant to our order dated 13th July, 2011 a short affidavit has been filed by Mr. Vijay Singh, Joint Secretary to Government of Haryana, Industrial Training Department, wherein it is stated that the Government is prepared to accommodate the eligible respondents numbering 258 who fulfill the requisite qualification as per rules on humanitarian ground in the Industrial Training Department against the vacant posts in case a direction is issued to that effect.

Having heard learned counsel for the parties, we are of the opinion that it would be in the interest of justice if the eligible respondents who fulfill the requisite qualification are accommodated. Let the necessary action be taken by the State within a period of three months.

The special leave petitions are, accordingly disposed of.”

A bare perusal of the above order would show that the only requisite required for regularization of the services of 258 employees on humanitarian ground was that a candidate should fulfill the requisite academic qualification for the post on which the employee is working. In the present case, it is not disputed that the petitioner is one of 258

employees and that she fulfilled the qualification of the post of Sewing & Needal Instructor. That being so, no other aspect was required to be considered by the Department for regularising the services of the petitioner. The undertaking was given by the respondents before the Hon'ble Supreme Court of India in the year 2011 hence, the respondents were under obligation to fulfill the said undertaking once, the Hon'ble Supreme Court of India directed the respondents to accommodate the eligible candidates. The petitioner being fully eligible on the date of undertaking given by the State i.e. 13.7.2011 as well as when the order was passed by Hon'ble Supreme Court of India on 21.1.2013 as far as the qualifications are concerned, is entitled for the regularization of her services.

The respondents are considering the claim of the petitioner under the regularization policy issued in June 2014. The said Policy cannot be made applilcable upon the petitioner for the reason that the decision to regularise the services of the petitioner was taken on humanitarian ground vide affidavit/undertaking dated 13.7.2011 which decision was taken much before the issuance of the said policy in the year 2014. The said regularisation Policy of the year 2014 was prospective only and could not have been made applicable on the petitioner as the claim of the petitioner was to be governed as per the affidavit/undertaking dated 13.7.2011 submitted before the Hon'ble Supreme Court of India. Therefore, once it is not a disputed fact that petitioner fulfilled the qualifications for the post on which she was working, the respondents were under obligation to grant her the benefits keeping in view the

affidavit/undertaking dated 13.7.2011 given before the Hon'ble Supreme Court of India as well as the acceptance of the same by the Hon'ble Supreme Court of India vide order dated 21.1.2013. Therefore, the Policy which is being applied upon the petitioner dated 14.06.2014 is without any basis and the rejection of the claim under the said Policy is arbitrary and illegal and is accordingly quashed.

Even otherwise, as per the regularisation policy of the year 2014 also, the claim of the petitioner cannot be rejected. The only objection which the respondents have taken is that there should not be a break of more than 30 days in a particular year as per the regularisation Policy of 2014. The said break has to be intentional break and not a forced break and the break should not be more than 30 days in a particular year. In the year 2011, the break is only of 25 days whereas in the year 2012, the break is only of 04 days. The only break which exceeds 30 days is in the year 2013. The said break was forced upon the petitioner keeping in view the accident which she had met with and she remained under hospitalization and thereafter on medical leave as per the advice of the doctors. Once the petitioner was not medically fit, the said forced break attributed to her cannot serve as impediment so as to deny her the benefit of regularization even under 2014 Policy. Therefore, the said absence due to medical reason need to be condoned even for considering the claim of the petitioner under 2014 Policy as well.

As the said regularisation Policy of the year 2014 is held to be not applicable upon the case of the petitioner, the petitioner is entitled for regularization of her services simplisitor, keeping in view the

undertaking given by the respondents before the Hon'ble Supreme Court of India dated 13.7.2011, as noticed in the order of Hon'ble Supreme Court of India dated 21.01.2013.

Keeping in view the above, the respondents are directed to regularize the services of the petitioners in terms of the undertaking/ affidavit dated 13.7.2011 read with order dated 21.1.2013 passed by the Hon'ble Supreme Court of India. The benefits which have been extended to the similarly situated 258 employees while regularizing their services, be extended to the petitioner with all consequential benefits.

Let the order be complied with, within a period of two months. No other argument was raised.

CM-376-CWP-2019 and
CM-19222-CWP-2019 in CWP-13842-2015

Since the main petition has been decided, therefore, the instant application stands disposed of.

Photocopy of this order be placed on the files of connected cases, numbered above.

19.09.2022
mamta

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No