

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-40272-2018 (O&M)

Date of decision: August 04, 2022

Prithvi Singh

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jangjit Singh Dahiya, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned order dated 21.02.2018 (Annexure P-20) and dated 26.06.2009 (Annexure P-22) which were supplied to the petitioner under RTI Act, 2005, vide letter dated 02.04.2018, whereby claim of the petitioner for regularization of services has been rejected, and a hostile discrimination has been made with the petitioner by regularizing services of juniors to the petitioner who are illiterate.

2. Succinct factual background first. Petitioner was appointed as Class-IV employee as Water Carrier. He had undergone training for protection/ rescue the flood victims campus organized from 30.06.1983 to 05.07.1983 vide certificate dated 05.07.1983 (Annexure P-1). Petitioner was issued various commendation certificates and rewarded accordingly from time to time for rendering excellent service and for helping the

administration. Services of the petitioner were terminated vide order dated 26.04.1994 (Annexure P-8). Petitioner filed civil suit before Civil Judge (Junior Division) Ambala against his termination order, and the said civil suit was decreed vide judgment/ decree dated 13.05.1998 (Annexure P-9) directing respondents to re-employ the petitioner as Water Carrier with full back-wages. Respondent-State aggrieved by the said judgment/ decree, preferred appeal before the learned District Judge, Ambala, which was dismissed vide judgment/ decree dated 01.12.1998 (Annexure P-10). Therefore, services of the petitioners were reinstated vide order dated 09.03.1999 (Annexure P-11). Petitioner along with other employees preferred CWP-20903-2008, which was disposed of vide order dated 21.03.2009 (Annexure P-12) with a direction to decide the representation of the petitioners. Services of juniors to the petitioner were regularized, but the benefit thereof was denied to the petitioner. Petitioner sought various RTI information regarding particulars of Class-IV employees with respect to their appointment as well as regularization of services. Vide reply dated 01.03.2016 (Annexure P-17) to the RTI application, petitioner came to know that juniors to the petitioner who were appointed much later than him and rather are illiterate, their services were regularized. In the year 2016, salary of the petitioner was stopped. Accordingly, petitioner approached this Court by way of CWP-23616-2016, which was disposed of directing respondents to release the salary to the petitioner. Thereafter, petitioner served a legal notice dated 20.01.2018 (Annexure P-19) through his counsel for regularization of his services, which was rejected vide impugned order dated 21.02.2018

(Annexure P-20). Petitioner filed RTI application for providing information regarding rejection of his claim for regularization, which was supplied to him vide letter dated 02.04.2018 and impugned order dated 26.06.2009 (Annexure P-22) was conveyed to him, whereby claim of the petitioner was rejected on the ground that he is illiterate and policy for regularization have been withdrawn by the State Govt. Petitioner rendered more than 34 years of service and as per policy for the year 1993, 1995, 1996 and 2003, services of many juniors to the petitioner, though were illiterate, were regularized.

3. I have heard competent contentions of the learned counsel for the parties and perused the record.

4. This is the second foray of the petitioner before this Court and yet for the one reason or the other, his claim seems to have been rejected on the flimsy grounds. Finally what emerges is that rest of the parameters are though admitted including length of service as pleaded by them, but he has been held not eligible for seeking regularization on the ground that since petitioner was working as Water Carrier, therefore, the educational qualification of minimum Class-5 pass is applicable, which is pre-requisite and he being illiterate is not eligible to be regularized. In this context, I need not labour all over again. Reference may be had to order dated 12.02.2016 passed in CWP-4928-2013, when in somewhat similar circumstances, speaking for this Court, my learned Sister Ritu Bahri, J. had an occasion to deal with the similar set of Class-IV employees who lacked education upto Class-5 and observed as below in order dated 12.02.2016 passed in CWP-4928-2013:-

“On notice, reply has been filed on behalf of respondent Nos. 2 to 5 taking a stand that the case of the petitioners for regularization of their services, was forwarded vide letter dated 11.10.2013 to DGP Haryana Panchkula, who after going through the relevant record of the petitioners and after going through the notification dated 29.07.2011, found that petitioner Nos. 1, 2 and 4 do not fulfill the conditions mentioned at Sr No. (ii) and (iii) of the above notification and petitioner No. 4 does not fulfill the condition mentioned at Sr. No. (iii) of the above notification and their case was thus rejected. The condition at Sr. NO. ii and iii of notification dated 29.07.2011 reads as under:-

(ii) That the employee/worker possessed the minimum prescribed qualifications for the post on the date of appointment/engagement.

(iii) That the concerned employee should have been appointed only after either his name has been sponsored by the Employment Exchange or has been appointed/engaged on the basis of recommendations made by the Departmental Selection Committee by inviting applications through advertisement against duly sanctioned vacant post.”

Further a stand has been taken that Government of Haryana has framed the policies only for regularization of service as whole time class IV employees and not for part time contingent paid class IV employees. Further it has been stated that the respondents have not regularised the services of any person junior to the petitioners.

Heard learned counsel for the parties.

*Reference at this stage can be made to a judgment passed by this Court in a case of **Dharam Pal v. State of Haryana and others, 2002(3) SCT 644** whereby petitioners were working as part timers since 1987 and were seeking regularisation of their services by relying upon government's policy to regularise services of Class IV employees. The writ petition was allowed and it was held that since the petitioners were working continuously for the last 15 years, the Government is not justified in denying them regularisation.*

Thus, the respondents cannot take a stand that no posts are available with them, as the petitioners have been working with the respondents for the last about 15 years.

*Reference at this stage can further be made to a judgment of a Division Bench of this Court in a case of **Umed Singh vs. State of Haryana and others, 2001(1) RSJ 752** wherein it has been held that after 10 years, the petitioners in the case cited above were considered to be eligible for regularisation. It is pertinent to note that the petitioners are also claiming that the expression “part time” does not indicate with regard to nature of*

their work and the time spent by them in the schools. According to them they are working for the entire day in the school and performing their functions and duties assigned to them by the Administration. It is specifically disputed that they work only for an hour or two in a day. It is contended that there are nursery schools where small children are studying. Thus, the cleaning process of the class rooms etc is carried out for the hours during which the school is run.”

The writ petition was allowed and the following direction was issued:-

(i) The case of the petitioners for regularisation as par time employees would be considered by the State within a period of six months in the light of its policy dated 30.12.1995/25.02.1999.

(ii) The claim of the petitioners would not be declined on the ground that they do not possess the essential qualification as stipulated in the said policy as per the statement made in the court by Mr. Amol Rattan, learned Assistant Advocate General upon the instructions of the State.

(iii) The State shall appoint the Sub Committee headed by an officer not below the rank of Under Secretary to Government of State to examine the building, infrastructure, staff and number of children studying in every school of the State of Haryana and in the light of that to recommend how many regular posts can be created in every school depending on the work and the strength of the employees and students. The committee shall consider the availability of the posts as and when it became available/vacant in a particular school to identify the total number of posts which can be filled up as of now, under the policy of the Government.

(iv) We also consider it appropriate that the Committee afore-stated shall hear the part time employees in a representative capacity before determining the criteria to implement the order.”

The above said judgment is directly applicable to the facts of the present case, as in the present case, the case of the petitioner for regularisation of their services had been declined on two grounds i.e non availability of posts and with regard to qualification, which have been taken care of in the above mentioned judgments.

*Reference at this stage can further be made to a judgment of this Court in a case of **Budho Devi v. State of Haryana, 2015 (3) LLJ 447** whereby this Court directed the respondents to regularise the services of the appellant as he had served the department for almost 31 years. The respondents have rejected*

*the case of the appellant on the ground that she did not fulfil the condition of eligibility. Reference has been made to the judgment of **Dharam Pal v. State of Haryana and others, 2002(3) SCT 644.***

Applying the ratio of the above mentioned judgments, the writ petition is allowed and respondents are directed to regularise the service of the petitioners, pursuant to policy (P-7). The lack of education qualifications or age should not come in their way. xx xx xx”

5. I am in respectful agreement with the above view taken by the learned Single Judge. I see no reason why the petitioners be not accorded similar benefit.

6. Accordingly, writ petition is allowed. Respondents are directed to accord the benefit to the petitioner of regularization of his services as has been granted to his counter-parts, whose names are mentioned in the list appended with letter dated 01.03.2016 (Annexure P-17) obtained under RTI Act by the petitioner. Monetary benefits be given on the same terms as were awarded to the counter-parts who were accorded regularization of services in terms of office order *ibid*. Arrears be also granted in terms of office order *ibid*.

7. Needful be done within a period of 3 months from today.

(ARUN MONGA)
JUDGE

August 04, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No