

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

Date of Decision: 06.02.2023

241 CWP-176-2020 (O&M)

BHAGI RATH AND OTHERS

... Petitioners

VS

STATE OF HARYANAAND OTHERS

... Respondents

241-A CWP-2359-2020 (O&M)

SURAJ BHAN

... Petitioner

VS

STATE OF HARYANAAND OTHERS

... Respondents

241-B CWP-2103-2020 (O&M)

VINOD KUMAR AND OTHERS

... Petitioners

VS

STATE OF HARYANAAND OTHERS

... Respondents

241-C CWP-2127-2020 (O&M)

RAMESH CHANDER AND OTHERS

... Petitioners

VS

STATE OF HARYANAAND OTHERS

... Respondents

241-D CWP-30996-2019 (O&M)

ASHOK KUMAR AND ORS

... Petitioners

VS

STATE OF HARYANAAND OTHERS

... Respondents

241-E CWP-34569-2019 (O&M)

RAM SARAN AND OTHERS

... Petitioners

VS

STATE OF HARYANA AND OTHERS

... Respondents

241-H CWP-32580-2019

MUKESH KUMAR AND OTHERS

... Petitioners

VS

STATE OF HARYANA AND OTHERS

... Respondents

241-I CWP-33405-2019

BEDO DEVI AND ORS

... Petitioners

VS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. BD Rana, Advocate
for the petitioners
in all the petitions.

Mr. Rohit Arya, DAG, Haryana.

HARNARESH SINGH GILL, J.(Oral)

This order of mine shall dispose of the above noted writ petitions, as a common question of law and fact arose for consideration in all the petitions. However, for facility reference, facts are being taken from CWP-176-2020 titled as Bhagi Rath and others vs State of Haryana and others.

Prayer in this petition is for issuance of a writ in the nature of Certiorari quashing the impugned order dated 10.09.2019 (Annexure P-3) passed by respondent No.2 and notice dated 23.11.2019 (Annexure P-4), vide which the benefits of ante-dated regularization and arrears granted earlier, have been sought to be withdrawn.

Learned counsel for the petitioners submits that the petitioners are working in the capacities of Peon/Sweeper-cum-Chowkidar/Water Carriers being Class-IV employees on regular basis; that the petitioners were initially appointed on part-time basis in the respondent-Department; that the respondent-Department had promoted the persons junior to the petitioners w.e.f. 01.04.2011; that the petitioners filed a writ petition before this Court, seeking regularization from the date their juniors were regularized; that on the directions of this Court, the respondent-Department considered the case of the petitioners for regularization and that the services of the petitioners were regularized w.e.f. 01.04.2011 and accordingly, the arrears were also paid.

Learned counsel for the petitioners further submits that now, in compliance of the order dated 19.07.2019 passed in CWP-16086-2019 titled as Pushpa Devi vs State of Haryana and others and other connected petitions, the Director Secondary Education, Haryana, has framed guidelines for regularization of part time Class-IV employees, vide impugned notice dated 10.09.2019; that as per the said guidelines, the department concerned has been directed to maintain the seniority of the employees working on contract/part time basis in the various Districts;

that the case of the employees for regularization is to be strictly considered as per the seniority list; that the Committee considering the case of the employees shall provide an opportunity of hearing to the employee concerned, before passing any order and that the cases of all the employees, who have either filed the writ petitions before this Court or not, were to be considered. He further submits that the guidelines so framed were in terms of the policy dated 11.11.2003 and after making the seniority list.

Learned counsel for the petitioners further submits that after the judgment in CWP-16086-2019, the petitioners are being harassed and that the respondent-Department is giving threats to the petitioners and violating the mandate of the law.

Learned counsel for the petitioners submits that, though, vide instructions dated 23.02.2016, the Additional Chief Secretary, Government of Haryana, clarified that the recovery of the excess amount cannot be made from the employees belonging to Class-III and Class-IV service (or Group-C and Group-D service), yet the fact remains that recovery has now been sought to be effected from the petitioners, vide the notice impugned herein. In support of his contention, learned counsel for the petitioners relies upon the judgment rendered by Hon'ble Apex Court in Civil Appeal No.11527-2014 titled as State of Punjab and others vs Rafiq Masih (White Washer) and others.

On the other hand, learned State counsel submits that the petitioners were paid contingencies as per the DC Rates, Hisar, issued

from time to time and that as per the policy dated 30.12.1998/25.02.1999, issued by the Department concerned, there were following three conditions for regularization:-

- i. Part time employee fulfilling the requisite qualification for regular Class-IV employee in Haryana Staff Secondary Education Filed Offices (Group-D) Services Rules, 1998.*
- ii. Those part time candidates who have been recruited through Employment Exchange should have at least three years' experience on their post.*
- iii. Those candidates recruited on part time basis through direct recruitment, they should have at least six years' experience on their posts.*

Learned State counsel further submits that as per the Policy for the year 1998-99, the petitioners did not fulfill the above-said conditions, at that stage, as there was neither any vacant nor sanctioned post of Class-IV employee in the Government Primary Schools. He further submits that in the Middle School, there was/is only one sanctioned post of Peon and the same is not vacant and thus, the services of the petitioners cannot be regularized.

Learned State counsel further submits that in compliance of the order passed by this Court in CWP-5926-2001 titled as Vidya Devi and Others vs State of Haryana and others, the Department framed the new policies dated 11.11.2003/27.02.2004 for regularization of the

services of Class-IV employees working on part-time basis against the vacant regular sanctioned posts and all the prior policies were superseded by these policies. He further submits that as per the policies for the year 2003-04, the District Education Officer, Hisar, prepared a district level common seniority list of all Class-IV employees working in Government Primary/Middle/High/Senior Secondary Schools/Field Office as on 30.06.2003 and that the services of the petitioners were regularized as per their eligibility and seniority.

Learned State counsel further submits that vide letter dated 10.09.2019, the Director Secondary Education, Haryana, has directed the Department concerned to reconsider the cases of all the employees for regularization, who were regularized w.e.f. 01.04.2011, inadvertently. In support of his contention, the learned State counsel relies upon the judgment passed by the Hon'ble Supreme Court in Civil Appeal No.1875-2022 titled as Managing Director, Ajmer Vidhyut Vitran Nigam Ltd. Vs Chiggan Lal and others, wherein it has been held that the Notification dated 01.10.2003 issued by Haryana Government, General Administration Department, is not applicable on part-time Class-IV Employees and the same is applicable to ad hoc/contractual/daily wages employees only.

Learned State counsel further submits that vide orders impugned in the writ petition(s), the petitioners have been called to put forth their defence/case as to why action be not taken against them and that there is no specific order either terminating the services of the

petitioners or ordering recovery from them and thus, the petitioners have no cause of action to file the present petition.

I have heard the learned counsel for the parties.

The petitioners were initially appointed on part-time basis and their services were regularized w.e.f. 01.04.2011, though after the interference of this Court and accordingly, the arrears were also paid.

In CWP-16086-2019, the Coordinate Bench of this Court on 19.07.2019, passed the following orders:-

'Learned counsel for the petitioners though express apprehension that the Department may not adopt pick and choose policy again.

I am afraid the aforesaid contention cannot be accepted, once the officer of the rank of Additional Director, Secondary Education, Haryana, has undertaken by way of affidavit to comply strictly with the policy dated 11.11.2003 as well as seniority maintained.

Accordingly, the writ petitions are disposed of with direction to the Competent Committee headed by District Education Officers in all the Districts, to consider the cases of all the employees/petitioners including the persons, whose writ petitions are pending or have not approached this Court so far, but represented or received representation and decide the same in terms of the policy dated 11.11.2003, by

maintaining seniority as well as observations hereinabove, within a period of five months from the date of receipt of certified copy of this order.

It is also a matter of record that the Department has maintained seniority of the employees working on contractual/part time in various districts, thus, shall consider the representations strictly as per seniority list as well as policy, much less, in accordance with law.

The Committee shall be at liberty to afford an opportunity of hearing, in case of any query or clarification sought from the concerned employee.

It is also made clear that in case, the reasons sought in contemplated action, are not satisfactory, this Court may not be constrained to impose exemplary costs on the members of the Committee.

The affidavit also contains list of pending Court cases (Annexure R-1) regarding regularization of Class IV part time employees.

On going through the list, it is deciphered that many writ petitions spanning from 2012, 2013, 2014, 2017, 2018 and 2019 are pending adjudication.

Keeping in view the undertaking expressed in the affidavit as well as letter, I direct the Registry to list all the writ petitions, as mentioned in the affidavit

before this Bench, so that, the same can be disposed of, in terms of affidavit or order being passed by this Court, after informing the counsel representing the respective parties'.

In compliance of the said order, the respondent-Department vide order dated 10.09.2019 (Annexure P-3) had directed the official concerned to constitute a committee to reexamine the cases of the petitioners along with other similarly situated employees for regularization in terms of the Policy dated 11.11.2003. The relevant extract of the order dated 10.09.2019, would read as under:-

1 to 5. xxxxx

6. The competent constituted committee after re-examining the regularization cases found that an employee is not entitled for ante-dated regularization and then the orders of their regularization may be revised as per the departmental policy dated 11.11.2003 and their pay be refixed as per the revised order. In compliance of the order dated 19.07.2019 passed by the Hon'ble High Court in CWP-16086-20149 along with other connected matter, all the District Education Offices are to be directed to adopt the complete process of regularization till 10.10.2019. Any delay and violation of the direction of the Hon'ble Court will be taken seriously and

departmental action will start against all members and chairman of the committee'.

In compliance of the order dated 10.09.2019, Headmaster, Government Girls High School, Hisar, issued the show cause notice dated 23.11.2019, calling upon petitioner No.1 to put forth his defence/case as to why action be not taken against him as his services were regularized, without following the due process of law. The relevant extract of the show cause notice would read as under:-

'As per guidelines issued by the director, Secondary Education, Haryana, Panchkula for regularization of class-IV part time employees vide memo No.13/91-2016 HRME-I(4) dated 10.09.2019 and the Committee constituted as per DSE, Panchkula vide Memo No.13/91 HRME-I(4) dated 28.05.2016 found that the benefit of regularization along with arrears given to Sh. Bhagirath posted in GGHS Kabrel, Hisar, designated Sweeper was not as per rule due to example of other district in regularization policy, 2003 and the employee who are regularized notional 01.01.1999 and 01.04.2011 actual in 1998-99 policy but are not entitle as they are not engaged as part time sweeper against sanction post.....

.....

Accordingly, this notice is hereby saved upon you to put forth all your defence/case before the undersigned/committee on or prior to ____ or receipt of this notice. If not reply/defence is received within stipulated time,. It would be presumed that you have nothing to submit against this notice.'

The factual position is that the petitioners have been called upon by the competent authority to put forth their defence/case and there is no order either terminating their services or ordering recovery from them. As no order has yet been passed affecting the rights of the petitioners and they have only been called to put up their defence, the present petitions are not maintainable, being premature.

In view of the above, I find no merit in the present petitions.
Dismissed.

06.02.2023
Aman Jain

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No