

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

Date of Decision:12.05.2023

(1) CWP-4111-2020 (O&M)

Ajmer Singh and others

....Petitioners

Versus

State of Haryana and others

...Respondents

(2) CWP-13302-2021 (O&M)

Bala and others

....Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vikas Sonak, Advocate, for the petitioners.
(In CWP-4111-2020)

None for the petitioners in CWP13303-2021.

Mr. Rohit Arya, DAG, Haryana.

HARNARESH SINGH GILL, J.

This order shall dispose of the above noted two petitions, as common questions of law and facts arise therein. However, for the facility of reference, the facts are taken from CWP-4111-2020.

2. The petitioners seek issuance of a writ in the nature of Certiorari quashing the impugned order dated 18.12.2019 (P.9), whereby the ante-dated regularization given to the petitioners, has been withdrawn; pay of the petitioners has been re-fixed and recovery sought to be made from them.

3. It is the case of the petitioners that they had been appointed to the Group-D posts, on part-time basis, in the respondent-Education Department, Haryana in the year 2000. The State of Haryana had issued a Policies for Regularization of the services of the part-time employees on 30.12.1998 and 25.02.1999. However, the part-time employees, whose services were not regularized in terms of the said Policies had filed CWP-5926-2000, which was decided on 20.02.2002, directing the respondents therein to consider the case of the part-time employees for regularization within six months in the light of the aforesaid Policies. The SLP filed against aforesaid order was dismissed by the Hon'ble Apex Court on 22.03.2010. The respondent-Department in supersession of the earlier Policies had issued Policy dated 27.02.2004 stipulating therein that the part-time employees who had completed six years of service, would be considered for regularization of their services in accordance with their seniority. The services of the petitioners were regularized vide orders dated 07.08.2014 with effect from 2011.

4. It is further the case of the petitioners that when they had learnt that similarly placed employees, were granted ante-dated regularization and benefit of arrears, the petitioners had filed CWP-24617-2018, which was disposed of vide order dated 01.10.2015 with a direction to the respondents to decide the legal notice. The prayer of the petitioners in the said petition was to grant them benefit of arrears in terms of the judgment of this Court in CWP-27304-2013 – Suraj Mal and others Vs. State of

Haryana, decided on 26.09.2018 and that there was no prayer for ante-dated regularization. But, the respondent-Department, while giving them the benefit of ante-dated regularization w.e.f. 01.04.2011 also re-fixed their pay and paid them the arrears.

5. Yet further, it has been averred in the on 24.09.2019, the respondents issued show cause-cum-personal hearing notices to the petitioners. The petitioners, in response thereto, had served upon the respondents a legal notice dated 22.10.2019, but instead of deciding the claim raised in the legal notice, the respondents had passed the impugned order dated 18.12.2019, vide which the benefit of ante-dated regularization and other consequential benefits, granted to the petitioners, have been withdrawn.

6. Learned counsel for the petitioners submits that in CWP-24617-2018 filed by the petitioners, the only prayer was for grant of arrears in terms of the judgment of this Court in Suraj Mal' case (supra), but despite that the respondents had granted the petitioners the benefit of ante-dated regularization and once such benefit was granted to the petitioners, the respondents cannot take a u-turn and withdraw the said benefits.

7. Still further, it is submitted that there was neither any misrepresentation nor any concealment on the part of the petitioners in obtaining the benefits granted to them by the respondent-Department. It is also contended that while the petitioners were granted the benefit of ante-dated promotion with effect from 01.04.2011, many junior employees were

granted such benefit prior to the said date and, thus, even on that count, the petitioners were treated arbitrarily.

8. On the other hand, the learned State counsel would submit that in terms of the order dated 19.07.2019 passed by the learned Single Judge of this Court in CWP-16086-2019 – Pushpa Devi and others Vs. State of Haryana and others, guidelines were issued by the Directorate of Secondary Education on 10.09.2019 to constitute a Committee, headed by the District Education Officer, at District level to re-examine the cases of regularization of the part time Class-IV employees. It is further submitted that the said Committee, while examining the cases of all the employees, found that the petitioners were inadvertently regularized with all consequential benefits w.e.f. 01.04.2011 and which was why, the respondent-Department had served show cause notices upon the petitioners on 24.09.2019 calling upon to file reply within 30 days. It is, thus, submitted that the impugned order only rectifies the inadvertent mistake done by the respondents earlier.

9. I have heard the learned counsel for the parties and have also gone through the paper book.

10. It is not disputed that a Coordinate Bench of this Court in Pushpa Devi's case (supra), had issued directions to the respondent-Department to consider the cases of the employees for regularization as strictly as per seniority. The relevant extract from the said order would read as under:-

“...Accordingly, the writ petitions are disposed of with direction to the Competent Committee headed by District Educational 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.
.....”

11. The sole stand of the respondents to sustain the impugned order, is the directions issued by the Coordinate Bench above, and thereafter, the respondents’ preparing a list of the employees seniority wise and consider their case for regularization in terms of the report given by the Competent Committee.

12. It may be noticed that the Committee constituted in compliance with the directions issued in Pushpa Devi’s case (supra), submitted its report on 23.11.2020 concluding that as in terms of Policy dated 11.11.2003, the services of the part time Class-IV employees were to be regularized only against the vacant posts at District level, subject to fulfillment of all eligibility conditions and seniority and that every District had its separate District level seniority of the part time Class0-IV

employees, who were appointed upto 30.06.2003 in their Districts. It was, thus, concluded by the Committee that the part time Group-D employees cannot seek regularization from the date on which the employees in other Districts, were regularized. It was accordingly, resolved by the Committee that the part-time Group-D employees, who were working against non-sanctioned posts, were inadvertently, regularized w.e.f. 01.04.2011 and they could not have been granted such ante-dated benefit. However, it was resolved by the Committee that the recovery could not be effected, as financial benefits from ante-dated regularization were already disbursed w.e.f. 01.04.2011 by the Education Department in compliance with the orders passed by this Court.

13. It was in pursuance of the said report, the impugned order was passed by respondent No.3.

14. The position, thus, comes to be settled that the petitioners were granted ante-dated regularization inadvertently. The respondents have now corrected the same after re-examining the seniority of the part-time Group-D employees, at District level. Both the parties are ad-idem that such exercise had been carried out in terms of the directions issued in Pushpa Devi's case (supra).

15. Thus, finding no merit, the present petitions are dismissed.

16. Needless to say that the Competent Committee in its report dated 23.11.2020 had resolved that no recovery could be effected. Hence, it is taken that the respondents would not effect any recovery from the petitioners and will take into

consideration the judgments of the Hon'ble Supreme Court in
State of Punjab and others etc. Vs. Rafiq Masih (White Washer)
etc., (2015) 4 SCC 334 followed in Thomas Daniel Vs. State of
Kerala & Ors, 2022 AIR (Supreme Court) 2153.

12.05.2023
ds

(HARNARESH SINGH GILL)
JUDGE

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