

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4659-2019
DECIDED ON: 13.12.2023

ISHWAR CHANDER

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.S. Rawat, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Addl. AG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned letter dated 11.02.2019 (Annexure P-7) vide which the respondents asked the petitioner to give his consent for his absorption on the post of Peon (Group D post), while permitting the other surplus employees working on the post of Superintendent, Investigator, Junior Scale Stenographer, Technical Assistant/Statistical Assistant, Junior Computer Programmer to continue working on the same post till their superannuation/death.
2. Learned counsel for the petitioner contends that the petitioner was working on the post of Instructor since the year 1997 and has the experience of performing the duties of Assistant but was declined surplus alongwith other persons, who were deputed on various posts namely Superintendent, Investigator, Junior Scale Stenographer, Technical Assistant/Statistical Assistant, Junior

Computer Programmer, Accountant Drivers, Peon, Chowkidar-cum-sweepers, but thereafter except the petitioner, who was actually performing the duties as Assistant since the year 1997 against a vacant post and at times against the vacant post of Assistant Project Officer (APO) also, all other employees in the categories have been ordered to continue vide letter dated 09.01.2019 (Annexure P-6) till the date of their superannuation/death as such.

3. Learned State counsel submits that the petitioner has been offered a post of Peon (Group D) assigning the reason that he is only a middle class, therefore, does not fulfill the qualifications for any of the aforesaid posts except that of Peon and accordingly commensurate to his educational qualification, post of peon has been offered very fairly and justifiably.

4. In counter to the aforesaid argument raised by Mr. Sandeep Singh Mann, Addl. AG, Haryana, learned counsel for the petitioner has relied upon a judgment rendered by the Supreme Court in “***Sukh Bilas Thakur vs. Bihar State Electricity Board and Others, 2019(1) SCT pages 535 alongwith Simla Devi vs. State of Punjab and Others, 2006 (2) RSJ 656***”, wherein it was held that an employee cannot be denied regularization on account of lack of qualification, who has gained experience by his length of service and has to be considered equivalent to the requisite educational qualification meant for that post.

5. In the instant case, there is no dispute to the effect as could be made out from a perusal of the written statement as well that the petitioner was working on the post of Assistant, since 1997 despite being middle class except a bald assertion to the vague denial to say that the petitioner never performed the duties of Assistant and that of APO, whereas the report shows otherwise.

6. In the light of aforesaid facts, the respondents are directed to consider the case of the petitioner keeping in view the length of service rendered by him for

29 years on a group 'C' post and experience to perform the duties at par with the persons, who are matriculated and have been offered the posts of Superintendent, Investigator, Junior Scale Stenographer, Technical Assistant/Statistical Assistant, Junior Computer Programmer, Accountant, Driver, Peon, Chowkidar-cum-Sweepers.

7. This Court is also sanguine of the case law in *B.N. Saxena vs. New Delhi Municipal Committee and Ors., 1990 (2) RSJ as well as Bhagwati Prasad vs. Delhi State Mineral Development Corporation, 1990 (1) RSJ 255 (SC)*, wherein it was held that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability and, therefore, the petitioner cannot be thrown out after serving the department for a period of 29 years on the pretext that he does not acquire the necessary educational qualification particularly in the light of admitted fact at the time when he was taken into service; there was no criteria prescribed for minimum educational qualification for the said post and with the prevailing educational qualification criteria, his services rendered for 29 years cannot lose sight of the said fact.

8. Hence, the petition stands allowed and the respondents shall take a decision by passing a speaking order, considering the claim of the petitioner, in the light of aforesaid case law as well as his length of service and observations made herein within a period of one month from receipt of certified copy of this order.

9. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

13.12.2023

Meenu

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