

CWP-13579-2015 and
CWP-13623-2015

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2023:PHHC:166409

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13579-2015
DECIDED ON: 12th JULY, 2023

KHAJAN SINGH

.....PETITIONER

VERSUS

KAITHAL COOPERATIVE SUGAR MILL LTD. AND OTHERS

.....RESPONDENTS

2.

2023:PHHC:166410

CWP-13623-2015

MAHINDER SINGH

.....PETITIONER

VERSUS

KAITHAL COOPERATIVE SUGAR MILL LTD. AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shavetanshu Goel, Advocate
for the petitioner.

Mr. Surinder Saini, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. This Court intends to dispose of both the writ petitions by this common order, which involve identical question of law on similar set facts.

2. To avoid any brevity, the facts are being noticed herein from

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CWP-13579-2015, titled “*Khajan Singh vs. Kaithal Cooperative Sugar Mill Ltd. and another.*”

3. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* to quash the impugned reply dated 14.10.2014 and 19.05.2015 (Annexures P-13 and P-19) whereby, the claim of the petitioner(s) for regularization of services has been declined.

4 Further prayer has been made for issuance of a writ in the nature of *mandamus* directing the respondents to regularize the services of the petitioner with effect from the date when the juniors to the petitioner have been regularized and grant the benefit of reservation in regularization and promotion, as per the Roaster point and also to release all the arrears thereof along-with interest @ 18% per annum.

5. The factual matrix of the present case is that the petitioner was appointed as daily wager on a seasonal post from 01.12.1994 by adopting due procedure who has also passed the matriculation examination in the year 2012. The respondent authorities have prepared the seniority list of maximum daily wages in which the name of the petitioner was shown at Sr. No.14 whereas, the name of Ishwar Singh, Harikesh and Kuldeep was shown at Sr. Nos. 22, 23 and 25 respectively. Further the authorities have regularized the services of employees junior to the petitioner.

6. Learned counsel for the petitioner(s) has contended that impugned order dated 19.05.2015 (Annexure P-19) is illegal and arbitrary. The claim of the petitioner was rejected only on the ground that he was not matriculate in the year 2010 and therefore, on this account his services were

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not regularized on the post of Security Guard. He also argues that there is no post of Security Guard in the rules framed by the Haryana State Federation of Cooperative Sugar Mill Ltd, Panchkula, though, the post of Peon-cum-Chowkidar is existing for which the middle pass qualification has been prescribed in the rules whereas for the post of Chowkidar/Security Guard, no notification has been prescribed and, therefore, the guidelines dated 19.09.2007 vide which the qualification of matriculation has been prescribed for the post of Security Guard/Chowkidar is contrary to statutory rules and cannot be enforced.

7. It is the further assertion on behalf of petitioner that he is working from the last 21 years and rejection of the claim for regularization on the ground that the petitioner is not working on a sanctioned post is against the settled law of the Hon'ble Apex Court rendered in the case of **"HVPN vs. Gian Chand & Others"**, wherein, it has been held that if an employee works for a long period in that case, it is presumed that the post is there. Reliance has been placed upon the judgment passed in CWP-11368-2012, titled as **"Gian Chand & others vs. HVPN"**, whereby, respondents were directed to consider the case for regularization on the said post. The afore-said pronouncement has been upheld in the LPA as well as in SLP and after attaining finality of the judgment, the petitioners have been regularized vide order dated 05.03.2015.

8. Learned counsel submits that in compliance to the judgment passed by the Hon'ble Apex Court in the case of **"Secretary, State of Karnataka vs. Uma Devi" (2006) 4 SCC 1**, the Government of Haryana has taken a decision vide policy dated 29.07.2011 (Annexure P-10) to regularize

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the services of those Group 'C' and 'D' ad-hoc/contract/work charged/daily wages and part time employees, who have completed 10 years of service, as on 10.04.2006, if they fulfill the following conditions:-

“(i) That the employee/worker should have continued to work for not less than ten years as on 10.4.2006 and is still in service but not under cover of the orders of the Courts of Tribunals against duly sanctioned vacant posts. The period of continuous break in such service should not be more than one month in a calendar year.

(ii) That the employee worker possessed the minimum presented 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 Department Selection Committee by inviting applications through advertisement against duly sanctioned vacant post.

(iv) That the work and conduct of such employee should have been through out satisfactory and to disciplinary or criminal proceedings should be pending against him.

(v) That the employee should be regularized against a sanctioned vacant post of relevant category.

(vi) A medical fitness certificate and documentary proof of date of Birth as per the instructions shall be obtained from the employees concerned.

(vii) His antecedents should be got verified by the police as per the Government Instructions if it was not done earlier.

viii) No relaxation of the criteria as laid down above shall be allowed.”

9. Further reliance has been placed upon notification dated 18.06.2014 (Annexure P-11) to contend that the petitioner has completed

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more than three years service as on 28.05.2014 and is entitled for regularization as per the said policy. It is further argued that the rejection of valid and genuine claim of the petitioner for regularization vide impugned communications dated 14.10.2014 and 19.05.2015 (Annexures P-13 and P-19 respectively) is discriminatory and against the regularization policies dated 29.07.2011 and 18.06.2014 (Annexures P-10 and P-11 respectively).

10. Mr. Surinder Saini, Advocate for the respondents has supported the impugned orders and contended that the present petition is not maintainable before this Court. Since the Sugar Mill neither qualifies as “State” nor other “Authority” under Articles 12 of Constitution of India. He has placed reliance upon the judgment passed by the Apex Court in the case of **“General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, UP vs. Satrughn Nishan and others”; (2003) 8 SCC 639**; wherein, it has been held that the Mill is engaged in manufacture and sale of sugar, which would not involve any public function and, therefore, Sugar Mills is not amenable to writ jurisdiction. He further argues that this Court relying upon ***General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, UP’s case (supra)*** has declined to entertain the writ petition titled as **“Khushal Singh vs. State of Haryana; CWP-4662-2016**, and reliance has also been placed upon the judgment of the Apex Court rendered in the case of **“Anandi Mukta Sadguru Shree Jeevandasswami Suyarna Jaya vs. V.R. Rudani and others; AIR 1989 SC 1607**.

11. On merits, learned counsel for the respondents has argued that the petitioner is working on the post of Security Guard as daily wager and as per the decision dated 19.09.2007 by which the Haryana State Federation of

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Cooperation Sugar Mills Ltd. has decided to regularize the services of Security Section against vacancy as per which the requirement for being eligible by a Security Guard for regularization is having the qualification of matriculation. He would submit that the petitioner was not having the qualification of matriculation on 19.09.2007 as he passed the same only in November 2012 when the decision dated 07.03.2012 was in operation whereby, the cadre of Security Guards was declared as diminishing cadre and, therefore, the impugned orders date 14.10.2014 and 19.05.2015 (Annexures P-13 and P-19 respectively) have rightly been passed by the competent authority. Controverting the argument of counsel for the petitioner with regard to discrimination the counsel for the respondents has argued that no negative discrimination can be alleged. The arguments on behalf of the respondent was concluded with the prayer for dismissing the writ petition.

12. Having heard learned counsel for the parties.

13. After having considered and perused the record, this Court finds that it is an admitted fact that the petitioner was engaged on 01.12.1994 on the post of Security Guard on daily wage basis. It is also evident from the record that he has submitted his matriculation certificate in November 2012 and on 19.09.2007, he was not having the qualification of matriculation, which was a pre-requisite condition for regularization. There is nothing on record to show that the regularization policy dated 29.07.2011 (Annexure P-10) issued by the Government of Haryana has been adopted by the respondent-Sugar Mill. It is also undisputed fact that the policy dated 18.04.2014 (Annexure P-11) has been set aside by this Court in CWP-

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17206-2014 titled as **“Yogesh Tyagi and another vs. State of Haryana and others”** decided on 31.05.2018. As per the decision dated 19.09.20017 of the Federation, the petitioner is not entitled for regularization on the post of Security Guard as he is not fulfilling the condition of passing of Matriculation examination, which is essential for regularization of services of Security Guard. The petitioner has completed his matriculation examination in November 2012 and after completion of qualification of matriculation, he cannot be considered for examination because vide decision dated 07.03.2012, the Managing Director, Haryana State Federation of Cooperative Sugar Mills has declared the cadre of Security Guard as diminishing cadre, therefore, without there being any vacancy of Security Guard the case of the petitioner for regularization cannot be considered.

14. This Court cannot lose sight of the settled proposition of law in the case of discrimination. In Civil Appeal No. 2985 of 2007, **“Official Liquidator Vs. Dayanand”**, the Apex Court has held that the judgment passed in appeal (Civil) 3765 of 2001, **“UP State Electricity Board vs. Pooran Chandra Pandey and others”**, is not a good law. In Pooran Chandra Pandey’s case (supra) the Apex Court has issued direction for regularization of the employees only on the ground of discrimination holding that where there is allegation of discrimination the regularization of illegal appointments cannot be denied taking the shelter of Constitutional Bench judgment in Uma Devi’s case (supra). The Apex Court has held in Uma Devi’s case (supra) that illegal appointments cannot be regularized and it is only one time measure the irregular appointments can be regularized subject to fulfillment of eligibility qualification of the post.

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15. In the case in hand, on the date of decision of regularization of Security Guards, the petitioner is not eligible for the same as he was not having the required matriculation qualification. The argument of the counsel for the petitioner with regard to discrimination has no force as per settled proposition of law.

16. Moreover, the present petition is not maintainable as the Mill is engaged in the manufacture and sale of sugar, which would not involve any public function and against the Sugar Mills, the writ jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked, as per *General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, UP’s case (supra)*.

17. No other point has been argued by the counsel for the petitioner.

18. In view of the foregoing reasons, this Court does not find any merit in the present petition, as such the same is dismissed with no order as to costs.

19. Pending Applications, if any, shall stand disposed off.

20. A copy of this order be placed on the file of another connected petition.

12th JULY, 2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether Reportable : *Yes/No*