

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1794-2016 (O&M)
DECIDED ON: 28th JULY, 2023

RAJBIR SINGH

.....PETITIONER

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. S.S. Duhan, Advocate
for the petitioner.

Mr. R.S. Longia, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *Certiorari* to quash the order dated 21.06.2012 (Annexure P-2) passed by respondent No.2 whereby, the order dated 13.03.2012 regularizing the *ad-hoc* period of the petitioner on the post of Lower Division Clerk (LDC) w.e.f 04.09.2001 i.e. the date of joining under *ex-gratia* employment scheme was withdrawn .

2. The brief facts of the case are that the petitioner was offered appointment on the post of LDC on *ad-hoc* basis vide order dated 03.09.2001 issued by respondent No.5-Executive Engineer (OP), Circle, Dakshin Haryana Bijli Vitran Nigam, Hisar. Thereafter, respondent No.2 passed an order dated 21.06.2012 and ordered for the withdrawal of the earlier order dated 13.03.2012 issued in pursuance of office order dated 19.06.2012, whereby, the services of the petitioner were

regularized w.e.f. 04.09.2001 i.e. the date of joining under *ex-gratia* Employment Scheme (Annexure P-2).

3. While issuing notice of motion on 29.01.2016, following order was passed by this Court:-

“ Vide order dated 21.06.2012 (Annexure P-2), the benefit of regular appointment given to the petitioner w.e.f. 04.09.2001 has been withdrawn without giving him any notice. The petitioner was appointed on 03.09.2001 under the Ex-gratia Employment Scheme. Hence, for all intents and purposes, his services have to be treated as regular. The petitioner was also granted the benefit of ACP as per Annexure P-3.

Notice of motion for 23.07.2016.

In the meantime, operation of the impugned order dated 21.06.2012 (Annexure P-2) shall remain stayed.”

4. In pursuance of notice of motion, respondents have put in appearance and filed their written statement/reply stating that the present petition is hopelessly time barred, as the impugned order was passed on 21.06.2012 and for the last more than 3½ years, the petitioner never agitated against the impugned order, meaning thereby, he was very well aware of the fact that the earlier order dated 13.03.2012 was wrongly passed and therefore, the same was rightly withdrawn by the impugned order. The present petition after a delay of 3½ years is clearly an after thought. Even before filing the present writ petition the petitioner did not served any representation or legal notice for his grievance. Therefore, the present writ petition is liable to be dismissed on this score alone. Moreover, the petitioner has mislead the Court by concealing the material facts. As per the Ex-gratia Employment Scheme dated 21.06.1990, it is specifically provided that his/her services will be regularized from the date of clearing type test as per terms of appointment. Accordingly, learned counsel for respondents has prayed for dismissal of the present

petition.

5. No other point has been argued by either of the parties.
6. Heard learned counsel for the respective parties.
7. It is an admitted fact that the petitioner was appointed as LDC (Adhoc) on 03.09.2001 under Ex-Gratia Employment Scheme dated 21.06.1990, as such he joined his duties on 04.09.2001. The relevant extract of the Scheme is reproduced as under:-

“According to the existing ex-gratia employment practice, and dependent family member of deceased employee with minimum prescribed qualification of Matric in 1st & 2 Divn. is considered eligible for his/her direct appointment as LDC without type test and in case of 3 Division matriculation, the type test at the prescribed speed of 30/35 W.P.M. in English/Hindi respectively is required to be qualified before his/her appointment. The whole- Time-Members in their meeting held on 23.4.90 & 3.5.90 have reviewed the above procedure and further decided that the dependent family member with Matric in 3rd Division will be considered for direct appointment as L.D.C. on adhoc basis and he/she will be required to clear the type test at the prescribed speed within a period of two years in four chances from the date of joining the post falling which his/her annual increment will be stopped. His/Her services will be regularised from the date of clearing type test as per terms of appointment. The existing ex-gratia employment procedure in case of the applicant with matric in 1st & 2nd Division will continue as here-to-fore.”

8. From the record, it is crystal clear that the appointment of the petitioner was provisional till qualifying the type test with 30/25 w.p.m in English/Hindi respectively, within two years in four chances. The petitioner has qualified/passed the type test on 26.04.2010. The services of the petitioner were wrongly regularized w.e.f 04.09.2001 vide this office order no.26/SE/M&P dated 13.03.2012.

Subsequently, the 1st ACP was also sanctioned by the SE/HR, DHBVN, Delhi now

at Hisar, vide his office order no. 119 dated 17.4.2012 w.e.f 01.10.2011. However, as per the observations made by the SE/Admn, DHBVN, Hisar vide his office memo no.Ch-68/ENG-4159 dated 19.06.2012, the services of adhoc period of the petitioner w.e.f 04.09.2001, i.e. the date of joining in DHBVN under Ex-Gratia Employment Scheme has been withdrawn vide this office order no.61/SE/M&P dated 21.06.2012 and further his services were regularized w.e.f 26.04.2010 i.e. the date of passing the test vide this office order no.62/SE/M&P dated 21.06.2012 in pursuance of SE/Admn, DHBVN, Hisar office memo no.Ch-68/ENG-4159 dated 19.06.2012. The 1st ACP Scale granted to the official w.e. 01.10.2011 was also withdrawn vide SE/HR, DHBVN, Delhi office order no.335 dated 14.12.2012.

9. From the discussions made hereinabove, this Court can culminate the zist of the case as to there is a delay of 3 ½ years in impugning the order dated 21.06.2012 (Annexure P-20, which was in fact within the knowledge of the petitioner on 13.03.2012 itself and in addition to that he is guilty of concealing the material fact while making a valiant attempt to mislead the Court withholding the information as per Ex-gratia Employment Scheme, his services were to be regularized only from the date of clearing type test, which was stipulated in the appointment letter itself in clear terms.

10. Hence, I do not find any merit in the present petition and the same is dismissed being devoid of any merits.

(SANDEEP MOUDGIL)
JUDGE

28th JULY, 2023
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No