

CWP-12858-2018 and other connected cases
2023:PHHC:111408 **1**
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(217) **CWP-12858-2018**
Date of Decision : August 24, 2023

Chand Singh and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(2) **CWP-1677-2019**

Sukhwinder Singh and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(3) **CWP-1686-2019**

Vijender Singh and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(4) **CWP-1701-2019**

Satish Kumar and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(5) **CWP-18037-2020**

Balwinder Kumar and another **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

Rajender Singh and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jasbir Singh Malik, Advocate and
Mr. Anshul Jain, Advocate, for the petitioners.

Mr. Parvesh Jaglan, Advocate, for the petitioners
in CWP No.18037 of 2020.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. By this common order, six writ petitions, the details of which have been given in the heading, are being disposed of as all the petitions involve the same question of law on similar facts.

2. The present petition has been filed challenging the order dated 21.02.2018 (Annexure P-17) by which, the benefit of treating the petitioners regular from the date of their initial appointment, as granted vide order dated 22.06.2017, a copy of which has been appended with this petition as Annexure P-9, has been withdrawn.

3. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

4. The petitioners were appointed as Drivers in pursuance to the Advertisement which was issued by the respondents in the year 2002. Though the petitioners were made to undergo all rigors of the regular selection but at the time of appointment, it was mentioned that they are being appointed on contractual basis on a consolidated salary. Despite the

fact that all the rigors of regular selection were undertaken while appointing the petitioners but they were not granted the regular pay scale and were appointed on a fixed salary. The fixed salary was to be changed in regular pay scale after a period of two years. The said action of granting them the fixed salary was challenged in various petitions, which came to be decided by the Division Bench of this Court on 01.04.2013 while deciding CWP No.22516 of 2012 titled as Mohinder Singh and others vs. State of Haryana and others along with other bunch of petitions, keeping in view the nature of appointment of the petitioners and rules governing the service, grant of consolidated salary was held to be unconstitutional and the same was set aside and a direction was given that the petitioners will be entitled for the minimum of the pay scale from the date of their initial appointment and their pay should be fixed accordingly.

5. The said order passed by the Division Bench of this Court was upheld with the only modification that the arrears for which the petitioners became entitled for were to be given w.e.f. 01.01.2014.

6. After the issue with regard to the nature of appointment of the petitioners had attained finality, the respondent-Transport Department issued a letter on 28.11.2016 as to what benefit is to be granted to the Conductors/Drivers who were appointed on contractual basis on or after 01.01.2003. As per the said letter, keeping in view the judgment of this Court, which has already attained finality as well as the agreement between the employees Union, all the Conductors/Drivers who have been recruited on or after 01.01.2003 and were being treated as a contractual appointee, are to be treated as regular employee from their initial date of their joining and will be granted ACP by considering the length of service from the date of initial appointment but the benefit will be given to them notionally upto

31.07.2016 and actual benefit will only be admissible from 01.08.2016.

According to the said letter, the said decision was taken at the highest level and the same had the approval of the Chief Minister, Haryana as well as the concurrence of the finance Department.

7. Keeping in view the said decision, the respondents passed an order on 22.06.2017 (Annexure P-9) granting the date of regular appointment to the petitioners from the date they had initially joined i.e. in the year 2002.

8. Despite granting the benefit of regular appointment from the date of their joining, the other benefits such as ACP and arrears were not being granted to them for which the petitioners raised the grievance. Rather than granting the benefits, for which the petitioners became eligible under the decision dated 28.11.2016, a copy of which has been appended with this petition as Annexure P-5, the respondents withdrew the order dated 22.06.2017 (Annexure P-9) granting the petitioners the benefit of regular appointment from the initial date on the ground that as per the judgment dated 01.04.2013, only the benefit of pay scale was to be granted from the date of initial appointment and not regularization from the initial date. The said order of the respondents dated 21.02.2018 (Annexure P-17) by which the order dated 22.06.2017 (Annexure P-9) granting the petitioners the benefit of regular appointment from the initial date has been withdrawn, is under challenge in the present petition.

9. Learned counsel for the petitioners argues that in the present case, there is no application of mind on the part of the respondents and despite the fact that the petitioners have succeeded in getting the relief that the initial appointment of petitioners was in accordance with law and after going through all the rigors of the regular selection, still the benefit of

regular appointment from the date of initial joining granted to the petitioners vide order dated 22.06.2017 (Annexure P-9), has been withdrawn, which is totally arbitrary and illegal.

10. Learned counsel for the respondents objects to the said argument and submits that the benefit which has been withdrawn vide order dated 21.02.2018 (Annexure P-17) is perfectly valid and legal as the same was passed by wrongly interpreting the judgment of this Court as well as the Hon'ble Supreme Court of India.

11 I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. It is a conceded fact that the petitioners were appointed initially in the year 2002 and the petitioners fulfilled the required qualification envisaged under the rules for appointment to the post in question. It is also a conceded position that at the time of appointment of the petitioners, the word "ad hoc" as well as "contract" was mentioned. The plea of the petitioners that they should be granted regular pay scale instead of a consolidated salary along with all consequential benefits was allowed by this Court while deciding bunch of petitions in ***CWP No.22516 of 2012 titled as Mohinder Singh and others vs. State of Haryana and others and other connected cases on 01.04.2013***. As per the said judgment, the grant of consolidated salary to the petitioners was impermissible and they were entitled for the minimum of regular pay scale along with arrears of pay from the date of initial appointment. The said judgment dated 01.04.2013 has already been upheld by the Hon'ble Supreme Court of India vide order dated 31.01.2017.

13. It is a conceded position that after the judgment dated 01.04.2013 passed by this Court, the respondents issued a letter on

28.11.2016 to the Transport Department as to how, the benefit of the said judgment is to be given to the petitioners. As per the said decision which was taken at the highest level and had approval of the Finance Department, the petitioners were to be treated as regular appointee from the date of their initial appointment and the benefit of ACP was to be given notionally upto 31.07.2016 only. It may be noticed that keeping in view the said decision taken, the respondents had passed an order granting the benefit to the petitioners which resulted in the order dated 22.06.2017 (Annexure P-9), granting the benefit of regular appointment from the initial date of appointment. Once, the basis of the grant of relief to the petitioners, which culminated in the order dated 22.06.2017 (Annexure P-9) was the decision rendered by this Court coupled with the decision of the Government itself interpreting those decisions, till the decision of the Government dated 28.11.2016, remains intact, the benefit extended to the petitioners on 22.06.2017 (Annexure P-9) could not have been withdrawn.

14. Learned counsel for the respondents has not been able to state as to whether the decision of the Government dated 28.11.2016 stands withdrawn or modified. Hence, once the decision dated 28.11.2016 was taken by the Government interpreting the relief liable to be extended to the petitioners in view the order passed by this Court which means that the petitioners are to be treated as regular employee from the date of initial appointment, withdrawal of the benefit of granting the date of regular appointment from the initial date, as envisaged in order Annexure P-9, could not have been done. Hence, the order dated 21.02.2018 (Annexure P-17) is without considering the relevant facts on record and the decision of the Government itself.

15. Further, once a decision of the Government has been taken at the highest level, which had the approval of the Chief Minister, Haryana as well as the Department of Finance, according to which the petitioners were to be given regular appointment from the initial date of appointment, the Transport Department cannot interpret the relief granted to the petitioners in an another manner. It is only in case the decision, as recorded in the letter dated 28.11.2016 is withdrawn, then only, the Department of Transport could have taken any action withdrawing the benefit as extended to the petitioners vide order dated 22.06.2017 (Annexure P-9).

16. Keeping in view the facts and circumstances of the present case, the order dated 21.02.2018 (Annexure P-17) is bad in law and withdrawing of the said benefit was beyond the jurisdiction of the authority which has passed the said order. Hence, the same is accordingly set aside.

17. Keeping in view the above, as the services of the petitioners were regularized w.e.f the date of initial appointment, the respondents are directed to grant the petitioners consequential benefits such as ACP etc. by counting the experience of the petitioners from the date of initial appointment. Let the consequential benefits be released in favour of the petitioners within a period of two months from the date of receipt of copy of this order.

18. All the writ petitions are allowed in above terms.

19. Any civil miscellaneous application pending if any, is also disposed of.

August 24, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes