

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18506-2016 (O&M)

Decided on 23.11.2023

Vir Bahadur @ Bir Bahadur @ Veer Bahadur

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. BS Dhillon, Advocate for the petitioner

Mr. SS Mann, Addl. AG Haryana

Mr. Arvind Seth, Advocate for respondents No.2 to 6

Sandeep Moudgil, J.

The petitioner has filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of *certiorari* for quashing the order dated 17.04.2014 (Annexure P1) passed by respondent No.5 which allegedly was never communicated to the petitioner by respondent No.5 till 17.08.2015 as well as the impugned order dated 29.02.2016 (Annexure P2) communicated to the petitioner on 02.03.2016, during the pendency of the COCP No.869 of 2015. Further a direction is sought to the respondents to comply with the order dated 2.5.2005 (Annexure P4) passed by this Court in CWP-17563-2002 (Hari Ram & Ors. Vs. HVPNL & Ors.).

In brief, the facts of the case are that the petitioner was appointed as part time Mali on 17.03.1996 (Annexure P3). Despite numerous request, when the services of the petitioner were not regularized, he and similarly situated employees filed CWP-17563-2002 (Hari Ram & Ors. Vs. HVPNL & Ors.), which was allowed vide order dated 02.05.2005 (Annexure P4) wherein a direction was issued to the respondent to consider the case of the writ-

petitioners for regularization within 6 months, in view of the order passed in CWP-12210-2003 (Shiv Narain & Ors. Vs. HVPNL). Thereafter, a seniority list (Annexure P8) was prepared by respondent No.4 showing the petitioner at Sr.No.17, however, wrongly mentioning the date of joining as 17.11.1996 in place of 17.03.1996. Based on the wrong date of joining, the services of the persons junior to the petitioners were regularized. The writ-petitioners filed Execution Application No.14 of 2010 wherein a specific direction was issued on 01.12.2011 to regularize the service of the petitioners within four weeks. However, in SLP No.15780 of 2012 preferred by the respondents, the Supreme Court vide its order dated 01.11.2013 (Annexure P6) quashed the order dated 01.12.2011 and directed to consider the claim of the petitioner for regularization in terms of the policy. Thereafter, the writ petitioners filed COCP No.869 of 2015 in CWP-17563-2002 for non-compliance of the order dated 02.05.2005 stating therein that vide order dated 17.04.2014 (Annexure P1) passed by respondent No.5, the petitioner's claim for regularization was rejected on the ground that he has not completed 10 years' regular service upto cut off date as per policy of the Nigam.

Learned counsel for the petitioner contended that as per terms and conditions of the policy and subsequent notifications, the cut off date was fixed as 10.04.2006 for the completion of 10 years' service for regularization and joining date of the petitioner is 17.03.1996, as is evident from Annexures P3, P10, P11, P14 to P16 and P22, respectively and as such the petitioner became eligible for regularization on 17.03.2006 itself i.e. much prior to the cut off date fixed as 10.04.2006.

It is further contended that as per the information sought by the petitioner under RTI Act, 2005 from the respondent No. 4 regarding his own bio-data from the Incumbency Register held by 132 K.V. Sub-station Cheeka and the copy of which attested by the respondent No. 6 has been provided to the petitioner (Annexure P22), the petitioner has joined the services of the respondents on 17.03.1996 and thus, as per their own record, the petitioner is well eligible for regularization of services having more than 10 years of continuous service on cut-off date 10.04.2006 as per the terms & conditions of the policy.

Written statement dated 23.08.2017 has been filed by contesting respondents No.1 to 6 wherein it has been averred that as per policy for regularization framed by HVPNL dated 08.08.2003, however, the same was withdrawn and replaced by policy dated 11.05.2012 which provided that an employee/worker should have continued to work for not less than 10 years as on 10.04.2006 and the said policy was further modified on 17.06.2014 and adopted by the respondent on 14.08.2014 which provided that the concerned employee/worker should have been appointed/engaged against “duly sanctioned vacant post”. It is then averred that the petitioner has not fulfilled the condition since he was engaged as part time Mali on 17.11.1996.

Mr. Arvind Seth, learned counsel for respondents No.1 to 6 further vehemently argued that the letters in which the date of joining is shown to be as 17.03.1996 are the official conversations of the Nigam and the date of joining i.e. 17.03.1996 has been inadvertently mentioned and in fact the date of joining of the petitioner is 17.11.1996 and not 17.03.1996.

Heard learned counsel for the parties and gone through the record.

The contentions raised on behalf of respondents No.1 to 6 as to the date of joining of the petitioner to be 17.11.1996 and not 17.03.1996 as claimed the petitioner is misplaced and contradictory and stands proved from their own documents. The letter of sanction of part time (Annexure P3) issued by Addl. XEN, the work and conduct of the petitioner (Annexure P10) and copy of incumbency register (Annexure P22) issued by respondent No.6 and so on, are some of the official documents which shows that the petitioner actually joined the service as Part Time Mali on 17.03.1996. In such a scenario, the contention of the official respondents as to inadvertently error while mentioning the date of joining of the petitioner cannot at all be accepted.

Secondly, as per letter dated 12.11.2012 (Annexure P13) written by the Superintending Engineer, TS Circle HVPNL Karnal addressed to Legal Remembrancer, HVPNL, Panchkula, it has been acknowledged that 39 posts of Mali are lying vacant and permission was sought to regularize the services of the petitioner in compliance of the order dated 02.05.2005 passed in CWP-17563-2002. As such, the contention of the official respondents that there was no sanctioned post itself is rejected.

Accordingly, this writ petition is allowed and the impugned order dated 17.04.2014 (Annexure P1) passed by respondent No.5 as well as the impugned order dated 29.02.2016 (Annexure P2) are quashed and the respondents are directed to comply with the order dated 2.5.2005 (Annexure P4) passed by this Court in CWP-17563-2002 (Hari Ram & Ors. Vs. HVPNL

& Ors.) and order dated 10.08.2004 passed in CWP-12210-2003 (Shiv Narain & Ors. Vs. HVPNL) and regularize the service of the petitioner w.e.f. 17.03.1996 and grant all necessary consequential service/pension/retiral benefits, accordingly, within a period of two months from the date of receipt of certificate copy of this order and in default thereof, the petitioner shall be granted interest @ 18% p.a. besides exemplary cost from the erring officer/officials.

All pending applications, if any, also stand disposed of.

Ordered accordingly.

23.11.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No