

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(210)

CWP-15731-2017

Date of decision:- 21.02.2023

Raghuvinder Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Harish Nain, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

Instant writ petition has been filed inter alia for issuance of a writ in the nature of certiorari for quashing impugned order dated 28.04.2016, Annexure P-10, passed by respondent No.3, whereby, claim of the petitioners for adjustment against the post of Conductor Grade-I has been rejected.

Petitioners were working on different mechanical posts in the workshops of Haryana Roadways. Pursuant to letter dated 19.09.2006, Annexure P-1, petitioners applied for adjustment to the post of Conductor as they fulfilled the requisite eligibility conditions. 135 employees from the workshops staff were identified for the post of Conductor and 28 for the post of Drivers. Petitioners were adjusted as Conductors vide letters, Annexures P-3 and P-4. In 2008, an attempt was made to revert the petitioners, but by

communication dated 29.08.2008, Annexure P-5, the Transport Commissioner, Haryana directed the General Managers not to revert the adjusted employees. By letter dated 10.04.2012, Annexure P-7, petitioners have been ordered to report for duty to their original post. Petitioners filed a Suit for declaration and by virtue of an interim order, they continued on the post of Conductor. In the meantime, some of the similarly placed reverted employees approached this Court by way of a writ petition, which was dismissed. In LPA, a Division Bench of this Court by judgment dated 07.05.2014, Annexure P-8, directed the respondents to adjust the employees as Drivers/Conductors as per Rules. Civil Suit, filed by the petitioners, was disposed of with a direction to the respondents to decide their representation in view of the judgment of the Division Bench, but by impugned order dated 28.04.2016, Annexure P-10, the representation has been rejected.

Upon notice, written statement has been filed on behalf of the respondents, who have contested the writ petition by taking a stand that the petitioners were adjusted as Drivers/Conductors purely as a temporarily arrangement since there was shortage of staff.

I have heard counsel for the parties and perused the documents appended with the paper-book with their able assistance.

Counterparts of the petitioners approached this Court and by judgment dated 07.05.2014, Annexure P-8, passed in LPA No.928 of 2013, a Division Bench *inter-alia* observed and held as under:-

“After hearing counsel for the parties, we feel that learned Single Judge failed to take note of the contents of letter dated 19.09.2006, vide which it was decided to invite applications from the employees, working in the Mechanical

Staff Workshops to work against the posts of Drivers/Conductors. It was specifically stated therein that those employees, who want to become Driver/Conductor, and are possessing requisite qualifications, may apply for the same. In the decision taken, there is nothing to show that adjustment was to be made on temporary basis. In a very arbitrary manner, after receipt of applications, without any justification, letter was issued to say that it is a temporary measure. Be that as it may, temporary measure can continue for months or for a year and not for a long period of five years. In the process, the appellants had acquired sufficient experience. There is no dispute that they are qualified. In view of the Rules, referred to above, the appellants have a right to be considered and adjusted against the post of Conductor/Drivers Grade I. It is not in dispute that fresh candidates were taken in service without having any experience and the appellants, who had sufficient experience of about five years, were shown the door. The conduct of the respondents-authorities is totally irrational.

Further more the adjustment of the appellants from lower post to the higher post can be taken as transfer from one cadre to another in the same department. Otherwise there was no justification with the respondents to get their services against requisition sent vide letter dated 19.09.2006.”

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XXXXX

XXXXX

“..... It is not in dispute that in the year 2006, 135 employees were adjusted against the post of Conductors and 28 against the post of Drivers. The appellants have gained sufficient experience, which cannot be ignored. When they opted for adjustment there was dearth of staff. The department after utilizing the services of the appellants for about five years, cannot say that they are outsiders and be sent to their parent post.

Further, once it has been held that adjustment of the appellants was virtually a transfer from one post to another post within the same department, it was incumbent upon the respondent-authorities to grant them opportunity of hearing before passing adverse order against them, which was not done.

In view of the facts mentioned above, the appeals are allowed. Order dated 25.04.2013 passed by learned Single Judge is set aside. The appellants be adjusted as Grade I Drivers/Conductors as per rules.”

The judgment of the Division Bench has attained finality and has not been challenged by the respondent-State before the Supreme Court.

From a perusal of the impugned order, Annexure P-10, it is evident that respondent No.3 has passed the order with a closed mind and has not considered the observations made by the Division Bench. The sole reason assigned by respondent No.3 is that the adjustment was made as an interim measure as there was paucity of staff. This ground has been specifically turned down by the Division Bench. In view of the above, the impugned order cannot be sustained.

Ergo, impugned order dated 28.04.2016, Annexure P-10, is set aside. Writ petition is disposed of with a direction to the respondents to adjust the petitioners on the post of Conductor as per Rules.

Although, counsel for the petitioners asserts that the petitioners are continuing as Conductors, but this fact has been disputed by the State counsel.

Be that as it may, in case the petitioners have been reverted, upon adjustment on the post of Conductor, they will be given the benefit of continuous service, however, they will not be entitled to any monetary benefit except for notional fixation of pay.

21.02.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No