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2023: PHHC : 126707

CWP-7631-2015

...Petitioner

...Respondents

2. It is the case of the petitioner that he joined as Daily Wager with the respondents on 22.12.1976 as T-Mate. Thereafter, the petitioner was given the temporary status and designated as Pump Attendant w.e.f.10.09.1987 and was promoted as Pump Operator w.e.f.30.03.1993 in the pay-scale as

admissible to the petitioner with further revisions in the pay-scales. As per the instructions dated 10.02.1999, the services of the petitioner were regularized by the respondents w.e.f.18.09.2000, however, the ACP due to the petitioner after completion of 8 years of service was not granted, whereas all those who were regularized alongwith the petitioners were granted the ACP benefit. The petitioner made various representations to the respondents to treat him as regular employee, but no reply has been received by him. The petitioner had also served a legal notice dated 12.09.2014 (Annexure P-4), but same was neither replied nor the petitioner was granted the benefit of ACP. Thereafter, the petitioner filed CWP-22177-2014 which was disposed of vide order dated 31.10.2014 (Annexure P-5) with a direction to respondent No.2 to consider and decide the claim as contained in the notice dated 12.09.2014 (Annexure P-4) by passing a speaking order expeditiously, preferably within three months. In compliance of the order by this Court, the notice dated 12.09.2014 was considered and the respondents rejected the claim of the petitioner. Vide order dated 24.02.2015 (Annexure P-6) holding that petitioner is not entitled for ACP benefits after 4 and 9 years of service. Hence this writ petition.

3. Learned counsel for the petitioner contends that the petitioner joined the respondent-Corporation as Daily Wager on 22.12.1976 and was promoted as Pump Operator w.e.f. 30.03.1993 and he worked on daily wage service till his promotion and thereafter, rather he worked till the time of his regularization in the year 2000. He further contends that the petitioner became entitled to an increment under the ACP Scheme on completion of 8 years of service as Pump Operator, but this benefit was denied to the petitioner by the respondent-Corporation on the plea that the service of the petitioner were

regularized w.e.f.18.09.2000, but he was not treated as regular work charge as his ACR was not maintained, therefore, service rendered by him cannot be counted for grant of such benefit. He further contends that his earlier service rendered as daily wager has been counted but his service after regularization i.e. 18.09.2000 has not been counted. According to learned counsel, the action of the respondent-Corporation is illegal, arbitrary and is violative of Articles 14 and 16 of the Constitution of India, therefore, he prays for issuance of necessary directions to the respondent. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment of Division Bench rendered in “**Varinder Kumar Vs. State of Haryana**”, 2002 (2) **S.C.T.799**.

4. Per contra, learned counsel representing the respondent Nos.2 and 3 opposed the prayer of the learned counsel for the petitioner and while referring to the reply dated 27.03.2016, he submits that petitioner along with other similarly situated persons was considered for regularization of his services and their case was referred to Board of Directors (BOD) for final decision. The BOD in its meeting dated 30.05.2013 regularized the services of 318 daily wage workers and 54 work charge employees w.e.f.01.07.2013, who fulfilled the minimum qualifications required for regular appointment, but the petitioner did not possess the requisite qualifications for regular employee to the post of pump operator. Further, the Govt. of Punjab, after considering the length of service, rejected the proposal of the respondent to regularize the services of 38 daily wage and 8 work charge employees (including the petitioner). He further submits that services of the petitioner were rightly not regularized as he had not been appointed by following the proper procedure of

inviting applications, therefore, he prays for dismissal of the present petition.

5. I have heard learned counsels for the parties and have gone through the material available on record.

6. This is the second round of litigation, as the petitioner had earlier filed CWP No. 22177 of 2014, which was disposed of vide order dated 31.10.2014 (Annexure P-5), in pursuance whereof, the respondents have passed the Office Order dated 24.02.2015 (Annexure P-6). Vide this impugned order the claim of the petitioner for grant of ACP benefits after 4 years and 9 years service as per rules, as claimed by the petitioner, has been rejected and the petitioner was held to be working as a "Work Charge Employee" and further stating that as per ACP Rules, framed by the Punjab Government, as applicable in the Respondent-Corporation, this benefit is available to the regular employees only. Although it is the admitted position that vide office order No. 525 of 2000-2001 dated 18.09.2000 (Annexure P-3), the services of as many as 26 employees, including the petitioner were being regularized against the posts mentioned against their names i.e. petitioner, who was at Sr. No. 16 of the said order, his services were regularized as a Pump Attendant.

7. The Full Bench of this Court has already dealt with this issue in case titled as **"Kesar Chand Vs. State of Punjab and others"** 1988(1) RSJ 433, in which it has been held as under:-

"19. In the light of the above, let us examine the validity of rule 3.17 (ii) of the Punjab Civil Services Rules Vol. II. This rule says that the period of service in a work-charged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the Workmen and the Chief Engineer, P.W.D. (B.& R.), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise, the matter was

settled by the Punjab Government Memo No. 14095-BRI (3)-72/5383 dated 6th February, 1973 (Annexure P7) where it was stated that all those work-charged employees who had put in ten years of service or more as on 15th August, 1972, their service would be deemed to have been regularised. Once the service of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the Pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strike at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government had to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

8. In the judgment of Division Bench of this Court titled as **“Varinder Kumar Vs. State of Haryana” 2002(2) S.C.T. 799**, as relied upon by the petitioners, the petitioners therein were appointed on work charge service and given regular pay scale and subsequently their services were regularized. The writ petition stands allowed and the services rendered in ‘work charged basis’ was held to be also computable for awarding the benefit of increments. In this judgment also in para no. 18 there is recital of Kesar Chand’s case (supra).

9. In view of the fact that even the petitioner stands regularized by the respondents itself vide Office order dated 18.09.2000 (Annexure P-3), the stand taken by the counsel for the respondents no.2 and 3, as aforesaid, is not

acceptable and the impugned order (Annexure P-6) being illegal, arbitrary and discriminatory is liable to be set aside.

10. In the light of aforesaid judgments, this Court, while concurring with the same is of the view that petitioner is entitled to be treated as regular employee on the basis of the order dated 18.09.2000 (Annexure P-3) and also entitled for all admissible benefits accruing to the petitioner by treating all the service, including the service as “Work-charge” as qualifying service and is held entitled to due increments as provided under ACP Scheme, aforesaid, from the date he become eligible.

11. Accordingly, the present writ petition is allowed and the impugned order dated 24.02.2015 (Annexure P-6) is set aside. The respondent-Corporation is directed to calculate the claim of the petitioner and to disburse the same to the petitioner within a period of three months from the receipt of certified copy of this order. However, the petitioner would be entitled to the consequential reliefs only for a period of three years immediately preceding the filing of the writ petition. In case the monetary benefits are not released within the stipulated period, the same shall carry interest @ 6% per annum till the date of actual payment.

(DEEPAK MANCHANDA)
JUDGE

02.08.2023
vanita

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