

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

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**CWP No.7825 of 2016
Date of Decision : 20.9.2023**

*Anil Kumar and others**..... Petitioners*

versus

*State of Haryana and another**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Sajjan Singh, Advocate, for petitioners no.1 to 4

Mr. Devender Punia, Advocate, for petitioners no.5 to 7

Ms. Tanushree Gupta, DAG, Haryana

TRIBHUVAN DAHIYA J.:

This petition has been filed seeking a writ of *mandamus* directing the respondents to grant deemed date of regularisation to the petitioners w.e.f. 31.1.1996, in view of the Government's regularisation policy dated 7.3.1996, Annexure P-1, which has been revived vide letter/circular dated 16.6.2014, Annexure P-3, along with all consequential benefits.

2. Facts of the case in brief are, the petitioners were initially appointed Lecturers (College cadre) on *ad hoc* basis in 1994 by a duly constituted Selection Committee. On 7.3.1996, the Government notified a policy to regularise its Class-II employees, including the petitioners, who were working on 31.1.1996, and had completed two years' service. The policy was, however, withdrawn vide letter/circular dated 8.12.1997, Annexure P-2.

2.1 Later, the Haryana Public Service Commission (hereinafter referred to as 'the Commission') advertised posts of Lecturers (College cadre), now known as 'Assistant Professor College cadre', for different subjects. The petitioners being eligible applied for the posts. They were selected on regular basis following the due selection process, and appointed as such on different dates, between 4.11.1997 to 2.1.2002, as mentioned in the petition.

2.2 On 16.6.2014, the regularisation policy dated 7.3.1996 was revived by the Government vide letter, Annexure P-3, which states that the policy has been revived only to regularise those Group-B employees working on *ad hoc* basis whose services could not be regularised vide policy dated 7.3.1996, on account of the same having been withdrawn.

2.3 It is also averred that in the Technical Education Department, which is now a part of the respondent Higher Education Department, similarly placed teachers have been given benefit of the policy dated 7.3.1996, as revived vide letter/circular dated 16.6.2014, and they have been regularised in service w.e.f. 31.1.1996, vide order dated 29.8.2014, Annexure P-5.

2.4 The petitioners are also eligible to be so considered and regularised w.e.f. 31.1.1996 in terms of the policy dated 7.3.1996, but the benefit has not been extended to them. In these circumstances, the instant petition was filed.

3. Learned counsel for the petitioners contends that the petitioners fulfill all the requisite conditions of regularisation in terms of the policy dated 7.3.1996, as revived vide letter/circular dated 16.6.2014, and are, therefore, entitled to be regularised in terms thereof. It is further submitted

that the benefit has already been extended by the respondents to similar placed teachers vide order dated 29.8.2014, and declining of the same benefit to the petitioners is discriminatory and arbitrary. Reliance has been placed on an opinion given to the Government officers, which has been placed on record in the form of file noting, Annexure P-10, that the services of employees who were directly appointed on regular basis through the Commission after 31.1.1996, can be considered for regularisation provided they were eligible as on 31.1.1996 under the Policy dated 7.3.1996. Still further, it has been contended that law laid down by the Division Bench of this Court in CWP No.17206 of 2014 titled *Yogesh Tyagi and another v. State of Haryana and others*, decided on 31.5.2018, has no application to the facts and circumstances of this case. This is because the letter/circular dated 16.6.2014, reviving the regularisation policy, despite being under challenge before the Court, has not been set aside by that judgment. Therefore, there is no hindrance in the petitioners' case being considered by the respondents.

4. Learned State counsel, on the contrary, contends that different policies of regularisation, dated 16.6.2014, 18.6.2014, 7.7.2014 for Group-B employees and 7.7.2014 pertaining to Group-C and D employees, were under challenge before this Court in *Yogesh Tyagi* case (*supra*), and have been quashed being in violation of law. The judgment is under challenge before the Supreme Court, and the matter is *sub judice*. Therefore, the petitioners' case cannot be considered for regularisation.

5. Submissions made by learned counsel for the parties have been considered and the case file has been perused.

6. The regularization policy, dated 7.3.1996, was for *ad hoc*

employees who were in continuous service for two years on 31.1.1996. It was in vogue from 7.3.1996 to 8.12.1997, and had been revived for the employees who could not be regularized on account of the policy having been withdrawn. During that period the petitioners were working as Lecturers on *ad hoc* basis, but could not be regularised in terms thereof. They were subsequently regularly selected and appointed as Assistant Professor (College cadre) between 4.11.1997 to 2.1.2002 by undergoing due process of selection pursuant to advertisement issued by the Commission. Their services are governed by the Haryana College Cadre Group-B Service Rules, 1986, which have no provision for regularization. Therefore, there is no basis for their claim; rather, it is antithetical to be members of the service and, at the same time, seek regularization in service also. Once the petitioners have been regularly appointed, they become members of service from the date of joining. The policy of regularization, *de hors* its validity, which is meant to bring *ad hoc* employees on regular strength, becomes alien to them as they are already regular members of service. Accordingly, it is held that after joining the service on regular basis, the petitioners have disentitled themselves from raising any claim of regularisation under the policy.

6.1. Further, learned counsel for the petitioner has sought the benefit of regularization for the petitioners on the grounds of parity also, by claiming that the benefit has already been extended by the respondents to similar placed teachers in the Technical Education Department, vide order dated 29.8.2014. Firstly, the order does not indicate that those teachers regularized w.e.f. 31.01.1996 in terms of the letter dated 16.06.2014, already stood appointed in service through regular mode of selection on a

subsequent date; nor is there any such averment in the petition. Therefore, they cannot be taken to be similarly placed as the petitioners herein. Secondly, even if such benefit has been given to any teacher after his/her regular appointment in service, it cannot be termed valid, as already discussed hereinabove, and will not confer any right upon the petitioners to claim the same as that will amount to perpetuating an illegality.

6.2. The reliance placed by learned counsel for the petitioners on the legal advice given to the government that even the employees appointed on regular basis through the Commission can be considered for regularisation in terms of the Policy dated 7.3.1996, is also of no avail. Merely on the basis of an advice tendered, no right to be regularised in service accrues to the petitioners, more so in view of the discussion above, holding that after being selected in service through the Commission, the petitioners cannot claim regularisation.

7. Additionally, the petition is liable to be dismissed since it has been filed without impleading necessary parties. In case the petitioners' claim for regularisation in service w.e.f. 31.1.1996 is to be granted, it will adversely affect seniority of the employees who were appointed in service prior to the petitioners' date of joining. They are, therefore, necessary parties to the petition, but none of them has been impleaded. On this account, no effective relief can be granted to the petitioners and the petition becomes not maintainable.

8. It also needs a mention that the entire issue of regularisation of employees in service pursuant to different policies issued by the State Government is *sub judice* before the Supreme Court. The policies issued by the government after the Constitution Bench judgment in *Secretary*,

State of Karnataka and others v. Umadevi (3) and others, (2006) 4 SCC 1, have already been quashed by this Court in *Yogesh Tyagi* case (*supra*), being violative of Articles 14 and 16 of the Constitution. It has been held that regularisation is not a source of recruitment, nor is it intended to confer permanency in appointments. Once the entire process of regularisation has been held illegal and contrary to law, merely because the letter/circular no.6/7/2014-1GSI dated 16.6.2014 was not specifically quashed by the court in *Yogesh Tyagi* case (*supra*), does not give any right to the petitioners to claim regularisation in terms thereof. Besides, as discussed hereinabove, even otherwise the petitioners' have no right to claim regularization in service.

9. In view of the discussion above, there is no merit in the petition; and it stands dismissed accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

20.9.2023
Ashwani

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No