

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: 09.05.2023
Date of decision: 02.06.2023

1. CWP-22371-2021 (O&M)

BHAWNA AND ANOTHER

...Petitioners

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondents

2. CWP-22376-2021 (O&M)

SONIA

...Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Gurminder Singh, Senior Advocate with
Mr. J. S. Gill, Advocate
for the petitioners.

Mr. S. K. Kaushik, Addl. A.G., Haryana.

JAISHREE THAKUR, J.

1. By this common order, this Court proposes to dispose of the above noted two writ petitions, as a common question of law is involved.
2. CWP No.22371 of 2021 has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of certiorari for quashing order dated 13.10.2021 (Annexure P-28) vide which, the petitioners,

namely Bhawna and Sanjeev Kumar, have been reverted to their original post of Computer Operator and Data Entry Operator respectively on contractual basis, despite the fact that they stood absorbed in terms of Haryana Electricity Regulatory Commission (Officer and Employees Condition of Service) Regulations, 2016, with a further prayer to direct the respondents to allow the petitioners to continue on the post of Junior Scale Stenographer and Assistant Librarian, respectively.

CWP No.22376 of 2021 has been filed, seeking issuance of a writ in the nature of certiorari for quashing order dated 13.10.2021 (Annexure P-35) vide which, the petitioner, namely Sonia, has been reverted to the post of Assistant Director (Economics) on contractual basis despite the fact that she already stood absorbed in terms of Haryana Electricity Regulatory Commission (Officer and Employees Condition of Service) Regulations, 2016, with a further prayer to direct the respondents to allow the petitioner to continue on the post of Deputy Director (Economics).

3. In brief, the facts, as stated in CWP No.22371 of 2021, are that for the purpose of computerization in the State of Haryana, Government of Haryana established the Haryana State Electronics Development Corporation Limited (HARTRON), for providing technical manpower to the various departments in the State of Haryana. Petitioners were placed as Computer professionals with the respondent-Commission by HARTRON on contract basis in terms of Haryana Electricity Regulatory Commission (Officer and Employees Condition of Service) Regulations, 2011. Petitioners No.1 and 2 joined the services as Computer Operator and Data Entry Operator respectively in the respondent-Commission on contract basis for a period of one year in terms of the placement letters dated

27.12.2011 and 26.03.2013 and were working against sanctioned posts. Thereafter, the petitioners were granted yearly extensions. In addition to their own duties, petitioner No.1 was posted as Junior Scale Stenographer and petitioner No.2 was posted/adjusted as Assistant Librarian vide order dated 18.09.2014. Even though the petitioners were discharging their duties as Junior Scale Stenographer and Assistant Librarian, however, in subsequent extension orders, they were still shown as Data Entry Operators.

4. With regard to CWP No.22376 of 2021, the facts, as stated are that the respondent-Commission issued an advertisement/notice in the year 2014, inviting applications for the post of Assistant Director (Economics) in the Commission on contract basis for a period of one year. Petitioner joined as Assistant Director (Economics) on contractual basis on 20.11.2014 and was granted yearly extensions from time to time. She was allotted and executed the work against the post of Deputy Director (Economics).

5. Subsequently, the respondent-Commission in exercise of its powers conferred by Section 91 of the Electricity Act, 2003 and with the approval of the State Government, framed the Haryana Electricity Regulatory Commission (Officer and Employees Condition of Service) Regulations, 2016, by repealing the 2011 Regulations. Regulations of 2016 provided for absorption of anyone, who is working on the post of Junior Scale Stenographer and Assistant Librarian after completion of three years of post qualification service in Commission and who is working on the post of Deputy Director (Economics) after completion of two years of post qualification service in Commission. The petitioners fulfilled the conditions of qualifications as well as experience and submitted their applications for

absorption. It was decided by the Commission, in its 91st meeting dated 24.12.2018, to absorb the petitioners in terms of 2016 Regulations. Vide order dated 24.12.2018, the petitioners were permanently absorbed against the vacant post of Junior Scale Stenographer, Assistant Librarian and Deputy Director (Economics) respectively, as per the provisions of Haryana Electricity Regulatory Commission (Officer and Employees Condition of Service) Regulations, 2016. One Smt. Atti Devi, working as Clerk in the respondent-Commission and whose services were regularized in terms of the 2014 Regularization Policy, requested the benefit of absorption on the post of Junior Scale Stenographer, which is a promotional post of Clerk, as has been done in the case of petitioner No.1 in CWP No.22371 of 2021. The representation of Smt. Atti Devi was considered by the then Chairman of the Commission on 07.01.2020 and the same was rejected. It is thereafter, the Commission decided to re-examine the case of the petitioners herein and issued them show cause notice. Thereafter, the petitioners stand reverted to their original posts of Computer Operator, Data Entry Operator and Deputy Director (Economics) respectively on contractual basis. Hence, these writ petitions.

6. Learned Senior Advocate appearing on behalf of the petitioners would argue that once the petitioners stand absorbed in terms of Regulations of 2016, there was no reason for reverting them and such orders would tantamount to imposing a major punishment. It is submitted that the services of the contractual employee can be absorbed in terms of 2016 Regulations as Appendix 'D' to 2016 Regulations provides that the post of Junior Scale Stenographer can be filled either by direct recruitment *or* by promotion amongst Clerks having two years' post qualification experience as such and having English shorthand at a speed of 100

words per minute and transcription thereof at a speed of 20 words per minute and Hindi shorthand at a speed of 80 words per minute and transcription thereof at a speed of 15 words per minute and has passed the test conducted by the Commission *or* by permanent absorption of the Junior Scale Stenographer, who may already be working on the post in the Commission after completion of three years of post qualification service in the Commission. The post of Assistant Librarian can be filled either by direct recruitment *or* by deputation *or* by permanent absorption of the Assistant Librarian, who may already be working on the post in the Commission for three years of post qualification service in the Commission and the post of Deputy Director (Economics) can be filled either by direct recruitment *or* by promotion from amongst Assistant Directors having minimum two years post qualification experience in the Commission as such or its equivalent *or* by deputation *or* by permanent absorption of the officer, who is already working on post in the Commission, after completion of two years of post qualification service in the Commission. However, in case of permanent absorption of an officer, who was working as Assistant Director in the Commission for the last two years and has been promoted as Deputy Director (Accounts/Finance/Economics), the condition for serving two years on deputation in the economics on the post of Deputy Director (Accounts/Finance/Economics) shall not be applicable. Furthermore, the respondent-Commission has failed to disclose any provision in the impugned order, as per which a contractual employee cannot be absorbed in the Commission.

7. Learned counsel appearing on behalf of the respondents would urge that the respondents while rectifying their mistake have recalled the order dated

24.12.2018 and restored the petitioners to their original post of Computer Operator, Data Entry Operator and Assistant Director (Economics), vide order dated 13.10.2021, on which they were initially engaged on contractual basis before their appointment as Junior Scale Stenographer, Assistant Librarian and Deputy Director (Economics). It is further submitted that the petitioners are not entitled to be absorbed on the promotional post of Junior Scale Stenographer, Assistant Librarian and Deputy Director (Economics) as enumerated in the grounds taken in the impugned order dated 13.10.2021, as the petitioners had been initially engaged on contractual basis before they came to be absorbed as Junior Scale Stenographer, Assistant Librarian and Deputy Director (Economics). It is submitted that in terms of the Employment Exchanges (Compulsory Notification for Vacancies) Act, 1956, public posts are to be filled up after inviting applications from the general public, by judging the suitability of each candidate and, thereafter, to offer appointment and any deviation from the abovesaid Act, will make appointments illegal. It is further argued that the petitioners knew that their services could not be regularized under the 2014 policy as they did not fall within the eligibility conditions on the cut off date and, therefore, submitted representations on 15.12.2018 for their absorption on a higher post, than the post on which they were engaged on contractual basis. The request of the petitioners for absorption was inadvertently accepted and by the impugned orders, the mistake has been rectified and the petitioners have been reverted back to the position of contractual employees. Reliance in this regard has been placed upon judgments passed in *Sunder Lal and others versus State of Punjab, AIR 1970 P.H. 241; Anand Prakash versus State of Punjab, 2005 (4) RJ 749; Raj Kumar Batra versus State*

of Haryana, 1992 (1) SCT 129; Chandigarh Administration versus Narang Singh, J.T. 1997 (3) SC 536; G. Srinivas versus Government of A.P. and others, 2005 (13) SCC 712 and Union of India versus Narendar Singh, 2008 (2) SCC 750. It is further argued that there is no definition of an employee under the Haryana Electricity Regulatory Commission (Officer and Employees Condition of Service) Regulations, 2016 and such a definition of the Government employee will be derived from the definition as given in Haryana Civil Services (General) Rules, 2016 and by virtue of the definition as stipulated in Section 2(36) of the Rules of 2016, the petitioners being on contract are not holding a public post and, therefore, could not be absorbed.

8. I have heard learned counsel for the parties, and with their able assistance, have gone through the pleadings of the case.

9. Admittedly, the petitioners came to be appointed to various posts on contractual basis. The petitioners continued to work and were also given additional duties as Junior Scale Stenographer, Assistant Librarian and Deputy Director (Economics). Though the petitioners were discharging their duties as Junior Scale Stenographer, Assistant Librarian and Deputy Director (Economics), their extension orders reflected that they were working as Computer Operator, Data Entry Operator and Assistant Director (Economics). The Regulations of 2016 and Appendix-D would stipulate how the post of Junior Scale Stenographer, Assistant Librarian and Deputy Director (Economics) are to be filled up. One of the modes is by permanent absorption of Junior Scale Stenographer and Assistant Librarian, who may be already working on the post in the Commission after completion of three years of post qualification service in the Commission, meaning thereby, any

person who had been working on the post of Junior Scale Stenographer for a period of three years with the Commission and further in the case of Deputy Director (Economics), after completion of two years of post qualification service in the Commission, would be entitled to permanent absorption. Based on the Regulations of 2016, the petitioners applied for absorption by contending that they had worked on the post of Junior Scale Stenographer, Assistant Librarian and Deputy Director (Economics) and it was after due consideration and deliberation that they were absorbed by the Chairman of the Commission in its 91st meeting held on 24.12.2018.

10. The argument raised by learned counsel for the respondents that the petitioners were not eligible for regularization under the 2014 policy and chose a method of getting themselves absorbed under the Regulations of 2016, is not tenable as a perusal of minutes of the 91st meeting held, would reflect that there was due consideration of the applications given. Merely because the petitioners would not fall within the State Policy, 2014 for regularization, it cannot be held that the Regulations policy of 2016 cannot be made applicable to the petitioners herein. The mode of recruitment as specified in the regulation itself provides that any person, who had worked on the post of Junior Scale Stenographer and Assistant Librarian for a period of three years and on the post of Deputy Director (Economics) for a period of two years, could be permanently absorbed in the Commission.

11. Learned counsel for the respondents-State would urge that none of the petitioners herein are Government employees as stipulated in Section 2(36) of the Haryana Civil Services (General) Rules, 2016, since the said definition specifically

excluded persons, who are appointed on contractual basis, appointed as casual or daily rated or part time employees, paid from contingencies/contingent charges or work charged establishment. However, this argument itself would not be sustainable as the respondent-Commission is bound by its own regulations as formulated in the year 2016, overruling the Regulations of 2011. The word employee does not find mention therein. Even in the Appendix-D as relied upon, the mode of recruitment is either by direct recruitment, promotion, deputation or permanent absorption of Junior Scale Stenographer, Assistant Librarian and Deputy Director (Economics) and the regulation does not draw any distinction therein that a person has to be a regular employee of the Commission. A person working through a contract has not been specifically ousted. The argument that public posts are to be filled up after inviting applications from the general public in terms of Employment Exchanges (Compulsory Notification for Vacancies) Act, 1956, would not be applicable since the regulation itself allows for the vacancies to be filled up through promotion and absorption. The argument of the respondents that the petitioners have sought to get themselves absorbed with the Commission even though they were not entitled to regularization under the State Regularization Policy, 2014, sans merit since the respondent-Commission was well aware of the fact that the petitioners themselves were contractual employees and, thereafter, a conscious decision was taken in its meeting held on 24.12.2018 to absorb them under 2016 Regulations. The matter was deliberated upon and a legal opinion was taken before the petitioners herein were absorbed with the Commission. Since the petitioners were regularized/absorbed in service after due deliberation, it cannot be said that the request of petitioners was accepted by mistake. Therefore, the

judgments as relied upon by the respondents for rectifying the mistake are not applicable to the facts in hand. Even otherwise, the law is well settled that the successor in office does not have the jurisdiction to review or modify the order passed by its predecessor. In this regard, reliance can be placed upon a judgment rendered by the Supreme Court in Vinod Kumar versus State of Haryana and others, 2014(1) SCT 312 and by this Court in CWP No.13794 of 1995, titled as Balwinder Singh versus State of Punjab and others, decided on 17.05.2017.

12. Consequently, both the writ petitions are allowed and the impugned orders dated 13.10.2021 (Annexure P-28) in CWP-22371-2021 and dated 13.10.2021 (Annexure P-35) in CWP-22376-2021, whereby the petitioners herein have been reverted as contractual employees, are hereby set aside.

02.06.2023
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

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