

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-339-2018 (O&M)

Date of decision: 24.07.2023

Dharamvir

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Anil Rathee, Advocate for the petitioner

Mr. Gaurav Jindal, Addl. AG Haryana

Mr. Randeep Tanwar, Advocate for

Mr. Padamkant Dwivedi, Advocate for respondents No.2&3

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* quashing the order dated 19.12.2017 (Annexure P-20) vide which the order dated 27.09.2014 (Annexure P-11) was withdrawn without giving any notice or hearing the petitioner or any other effected persons and change the date of regularization from the date of joining from the date of passing of typing test and consequently withdrawn the ACP and promotion given to the petitioner. Further, the petitioner seeks a direction to grant him all consequential benefits including pay fixation, promotion and ACP considering him appointed as LCD on regular basis w.e.f. 22.10.1998 in view of order dated 27.09.2014 (Annexure P-11).

(2). Brief facts of the case are that the father of the petitioner, namely, Ram Singh was working as Lineman in erstwhile Haryana State Electricity Board. However, unfortunately, the father of the petitioner was

died in harness on 10.07.1998. The petitioner being matriculate applied for the post of LDC as per the policy prevalent in the year 1998 and was appointed as LDC vide order dated 22.10.1998 on *ad hoc* basis at Rs.4000/-, however, with a condition that he will have to qualify the type test whether in English or Hindi within 2 years in four chances from the date of joining, failing which his annual increment will be stopped and his services will be regularized from the date of passing the typing test. The petitioner submitted an application for conducting the type test on 20.10.2000 in the office of the Chief Engineer (Admn) and thereafter on 05.04.2001, the petitioner was asked to appear for type test examination on 09.04.2001 which he is stated to have qualified. However, while preparing the seniority list, the petitioner was shown at serial No.36 in tentative seniority list. Despite petitioner having passed the typing test on 09.04.2001, his increment was stopped and was asked to appear in the typing test again. Accordingly, the petitioner re-appeared in the typing test on 24.08.2005 and qualified it again. The respondents in place of making correction in their record have illegally shown the petitioner regularized from 24.08.2005 in place of 22.10.1998. The petitioner thereafter earned promotions to different posts.

(3). Learned counsel for the petitioner submitted that the enquiry has been conducted by Superintending Engineer/Fuel Headquarter without associating the petitioner and not only this, after the so called enquiry report was submitted by Sh. V.K. Mirjapuri, no notice or opportunity of hearing was given to the petitioner or any other effected person, rather the agenda item was brought in the meeting held on 02.11.2017 about regularization of services of LDC appointed under *ex-gratia* scheme. It is further submitted

that while passing the order dated 19.12.2017 (Annexure P20) vide which the order dated 27.09.2014 (Annexure P11) regularizing the services of the petitioner from the date of joining on ad hoc basis was withdrawn, the respondents have relied upon memorandum issued by HVPNL dated 26.09.2016 having no relevance with the case of the petitioner and as such, the order dated 19.12.2017 is illegal and arbitrary.

(4). It is further submitted that the action of the respondents in de-regularising the services of the employees whose services were ordered to be considered as regular w.e.f. date of joining in place of passing of the type test is arbitrary and unjust *inasmuch as* it is nowhere mentioned under which provision of the law, the impugned order dated 19.12.2017 (Annexure P20) has been passed and under which power the earlier order was reviewed. It is well settled that the same authority has no power to review the earlier order and that too without giving notice or affording opportunity of hearing to the affected persons.

(5). Learned counsel for the petitioner exhorted that the sustenance of the impugned order (Annexure P2) would not only affect his seniority albeit the same would entail civil consequences to the petitioner as the ACP which has already been received by the petitioner will be taken away from him and also his promotions to the post of Deputy Superintendent and Superintendent and as such, the impugned order has been passed without due application of mind and is against the principles of natural justice.

(6). Notice of motion was issued on 11.01.2018 and pursuant thereto, respondents No.2&3 have filed their written statement on 16.01.2019.

(7). Mr. Padamkant Dwivedi, Advocate for respondents No.2&3 submitted that the order dated 19.12.2017 (Annexure P20) withdrawing regularization of services of the petitioner from the date of joining on ad hoc basis, does not suffer from any infirmity. He averred that according to the ex-gratia employment policy applicable in erstwhile HSEB prior to 21.06.1990, one dependent family member of deceased employee with minimum prescribed qualification of Matric with 1st & 2nd Divn. was considered eligible for his/her direct employment as LDC without type test and in case of 3rd Division in matriculation, the type test at the prescribed speed of 30/25 W.P.M. in English/Hindi respectively was required to be qualified before his/her appointment. He further submitted that the Whole-Time-Members in their meeting held on 23.04.90 & 03.05.90 reviewed the above procedure and decided that dependent family member with Matric in 3rd Division will be considered for direct appointment as L.D.C. on adhoc basis and he/she will be required to clear the type test at the prescribed speed within a period of two years in four chances from the date of joining the post failing which his/her annual increment will be stopped and that his/her services will be regularized from the date of clearing type test as per terms of appointment (Annexure R-1).

(8). Learned counsel for the respondents No.2&3 further averred that the Clause (VI) of the policy dated 08.05.1995, stipulated that "the prescribed qualification for appointment to Class-III post shall not be relaxed for appointment under the scheme and the competent authority may relax qualifications on a case to case basis in respect of a Class-IV post, if relaxation in qualifications does not impinge upon the performance of

duties", however, the petitioner was Matriculate with 3rd Division and was appointed as an LDC on adhoc basis on 22.10.1998 (Annexure P-3) and it was mentioned in his appointment letter that his services will be regularized from the date of passing the type test and the said conditions were accepted by the petitioner

(9). It is submitted that the petitioner after joining the Board/Corporation himself applied for type test on 20.10.2000 and the petitioner was asked to appear for type test on 09.04.2001, but he failed to appear for type test on that date as per record maintained by the office. Thereafter, the petitioner again submitted an application and as such appeared in the type test on 24.08.2005 and qualified the same. Accordingly, vide office order No. 285/CE/Admn dated 05.09.2005, his services were regularized w.e.f. 24.08.2005 i.e. the date of passing the type test as per terms & conditions of his offer of appointment.

(10). Learned counsel then argued that The Haryana Compassionate Assistance to the Dependent of deceased Govt. Employees Rule, 2003 which was applicable from the date of its issuance were not given retrospective effect. It is then admitted that in the year 2014, vide office order No.475/CE/Admn. Dated 27.09.2014 & order No.344/CE/Admn. dated 08.06.2015, services of the petitioner & other employees were regularized inadvertently from the date of their joining on adhoc basis, instead of date of passing the type test and as soon as the said mistake came to the notice of the authorities, the Enquiry Officer was appointed to conduct detailed inquiry who submitted enquiry report (Annexure P-17) observing that the case of the petitioner is required to be placed before the Co-ordination Committee of

MDs/Haryana Power Utilities for consideration and as such, the agenda was placed before the Whole Time Directors, HPGCL, in their 37th meeting held on 02.11.2017 for considering the matter wherein, the Whole Time Directors considered the memorandum and after deliberation approved the adoption of HVPNL instructions issued vide Memo No. Ch. 52/ECP-2509 dated 26.09.2016 and directed to take necessary action in line with the instructions in respect of regularization of services of LDCs/Adhoc appointed under ex-gratia scheme and as such, the impugned order has been passed.

(11). It has been submitted on behalf of respondents No.2&3 that the employees mentioned by the petitioner namely Raj Kumar Gupta, Bhagat Singh, Krishan Kumar and Parveen Kumar qualified the said exam on dated 02.06.2000, 10.01.2003, 19.04.2004 & 19.04.2004 respectively i.e. prior to the petitioner. Therefore, as per the provision of the Recruitment & Promotion Policy dated 19.10.1990 & 23.04.1992, all the above officials were promoted to the post of UDC(HO) and Assistant(HO) prior to the petitioner hence, the petitioner was rightly promoted as UDC (HO) and Assistant (HO) vide order dated 11.05.2007 & 27.07.2010 respectively.

(12). Lastly, it is contended that no question of prior notice for giving any hearing arose because the competent authority reviewed its own decision and there was no need to give notice to the petitioner or to hear him as order dated 27.09.2014 was passed inadvertently and was in violation of Department's Rules and policy.

(13). Heard learned counsel for the parties and gone through the record.

(14). It has come on record that the Corporation deliberately took a conscious decision on 27.09.2014 to consider to regularize all its *ex gratia* employees from the date of their joining since there was no such stipulation to give *ad hoc* appointment to the dependents of the deceased employee as per the policy decision dated 08.05.1995 which was approved by the Board on 02.08.1995 (Annexure P-1). Accordingly, vide order dated 27.09.2014 (Annexure P11), the petitioner was shown to have been regularly appointed w.e.f. 22.10.1998 as LDC (the day when he was inducted into service on *ad hoc* basis) and eventually, the respondent-Corporation even granted 1st ACP to the petitioner w.e.f. 01.11.2008 i.e. completion of 10 years of regular satisfactory service considering his date of joining on the post of LDC as 22.10.1998. There was no dispute with regard to seniority in the cadre of LDC as the petitioner was shown senior to the persons namely, Bhagat Singh, Parveen Kumar, Krishan Kumar and Raj Kumar. Even the name of the petitioner was recommended by the respondents along with 6 other Deputy Superintendents for further promotion on 08.07.2015 (Annexure P16) and in pursuance thereof, the above-mentioned junior persons were promoted as Superintendents vide order dated 04.08.2015 and the case of the petitioner was kept in abeyance on the ground that enquiry regarding review of regularization of LDC Headquarter is pending, though at no point of time any notice or hearing was given to the petitioner about the called enquiry and without associating the petitioner.

(15). The appointment of the petitioner is on compassionate grounds which is governed by the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 and its Rule

9(a) which deals with determination/availability of posts unequivocally provides that “appointments under these Rules shall be made **only on regular basis** and that too only, if regular posts meant for that purpose are available”. Once the Rules governing the condition of service of the petitioner itself avowedly specifies that all compassionate/*ex gratia* appointments shall be made only on regular basis, how can the respondents be allowed to firstly appoint a compassionate appointee – the petitioner on *ad hoc* basis and further incorporating the condition of passing the type test within two years of his appointment as such. Any State Government policy/executive instructions etc. evidently in contravention of the Rules *ibid* is liable to be set at naught being illegal and arbitrary. It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by law made by appropriate Legislature or by rules and if there is a conflict between the executive instructions and the Rules made under the *proviso* to Article 309 of the Constitution, the Rules made under *proviso* to Article 309 of the Constitution shall prevail. Thus, in the case of the petitioner, The Haryana Compassionate Assistance to the Dependent of deceased Govt. Employees Rule, 2003 formulated as such will prevail over any executive instruction that may be contradictory to it. Any executive instruction in contravention of the Rules regarding appointment/promotion will be void in accordance with the *ratio* of the judgment of Supreme Court in **UOI & others Vs. Somasundran1 Viswanath & Ors. (1990) SC 166 10.**

(16). Further, there is nothing in the impugned order (Annexure P20) or in the enquiry report (Annexure P17) to show that any opportunity of

hearing was afforded to the petitioner before passing the aforesaid impugned order and also during the course of the enquiry. Learned counsel for the respondent-Nigam does not dispute the fact that no opportunity of hearing was afforded to the petitioner before passing the aforesaid impugned order or during the enquiry proceedings.

(17). In administrative law, the principle of *audi alteram partem* has been held to be a fundamental principle of the rules of natural justice. This requires the maker of a decision to give prior notice of the proposed decision to the persons affected and an opportunity to make a representation. The exercise of a power which affects the rights of an individual must be exercised in a manner which is fair and just and not arbitrarily or capriciously. An administrative order involving civil consequences must necessarily be made in conformity with rules of natural justice. Any decision which has been made without compliance of the aforementioned fundamental principle of natural justice i.e. the rule of *audi alteram partem*, cannot be allowed to sustain. This Court is of the opinion that if the order of regularisation of petitioner's services was to be passed, the same could not have been passed without providing opportunity of hearing to the petitioner *inasmuch as* the date of regularisation of the services of the petitioner came to be modified, more-so, without giving any opportunity to the petitioner, which is prejudicial to the interest of the petitioner. Since the order under challenge is bound to have civil consequences, in that event this Court is of the view that rules of natural justice ought to have been adhered to. This is even more important when learned counsel for the petitioner has vehemently urged that the petitioner did appear and qualify the type test at the very first

instance as against the vague and bald assertion made by the respondents that the petitioner never qualified the type test in 2001.

(18). Having given thoughtful considerations to the submissions and counter-submissions advanced by learned counsel for the parties and also keeping in view the facts of the case and the legal position as enunciated by the Apex Court, this Court is of the considered view that in the instant case principles of natural justice do attract and, therefore, the impugned order (Annexure P20) is directly in contravention of Rule 9(a) of the 2003 Rules and also suffers from the vice of violation of principles of natural justice. Accordingly, and in the facts and circumstances of the case, the order dated 19.12.2017 (Annexure P17) is set aside. The respondents shall be at liberty to pass afresh order in accordance with law, and if so, comply with the principles of natural justice by affording the petitioner an opportunity of hearing, if necessary.

(19). Disposed of in above terms.

24.07.2023
V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No