

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

103

CWP No.25253 of 2019

Judgment reserved on:24.01.2023

Date of pronouncement:28.02.2023

Kanta Sharma

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.N.P.S.Kohli, Advocate
for the petitioner.

Mr. Pankaj Middha, Addl.A.G.Haryana.

SUVIR SEHGAL J.

Instant petition has been filed under Articles 226/227 of the Constitution of India *inter alia* seeking issuance of a writ in the nature of mandamus directing the respondents to consider the case of petitioner for regularization of her services, w.e.f. 01.02.1996 in the light of instructions dated 07.03.1996 (Annexure P-1) read with circular dated 18.03.1996 (Annexure P-2). Another prayer has been made for directing the respondents to decide the representation dated 12.09.2017 (Annexure P-7) submitted by the petitioner.

Facts in brief are that the petitioner was engaged on daily wages/muster roll basis as Pump Attendant on 01.11.1992 in the Public Work Department, Public Health Engineering Division, Ambala Cantt. Her services were regularized w.e.f. 01.10.2003 as a Pump Attendant instead of 01.02.1996. She submitted a representation, Annexure P-7 which is pending, before approaching this Court.

Upon notice, writ petition has been contested by the respondents by filing a response, wherein, it has been submitted that the petitioner has not approached the Court with clean hands and has tried to mislead the Court by concealing facts.

By placing reliance upon the instructions, Annexure P-1 read with circular, Annexure P-2, counsel for the petitioner submits that petitioner fulfilled all the requisite eligibility conditions as on 31.01.1996 and was entitled to be regularized w.e.f. 01.02.1996, but her claim has been illegally declined. Reference has been made by him upon the judgment dated 19.08.2004 (Annexure P-3) passed by a Division Bench of this Court against which SLP has been dismissed. Counsel has also made a reference to office orders dated 14.10.2015 and 20.05.2016, Annexures P-5 and P-6, respectively, to submit that similarly placed persons have been regularized w.e.f. February, 1996.

On the other hand, State counsel has opposed the petition and by placing reliance upon the judgment of Supreme Court in **Managing Director, Ajmer Vidhyut Vitran Nigam Ltd., Ajmer and another Vs. Chiggan Lal and others 2022(2) SCT 176**, he urges that there can be no parity in the matter of regularization. He has also argued that the petitioner is not entitled to the discretionary relief, in view of the fact that she has approached the Court with tainted hands.

I have considered the submissions made by counsel for the parties and have gone through the paper-book.

Perusal of the written statement filed by the respondents shows that the petitioner was engaged as a Class-IV unskilled worker on daily

wages w.e.f. 01.11.1992 and she left the job on 30.11.1993. She raised an industrial dispute and the Labour Court, vide its award dated 24.11.1998, directed her reinstatement with continuity and full back wages w.e.f. 21.02.1994 i.e. from the date of service of demand notice. CWP No.14057 of 1999 was preferred by the respondents, which was disposed of by this Court, vide order dated 05.03.2001 and the matter was remanded back to the Labour Court for deciding as to whether the petitioner was working as Clerk or Class-IV employee. By its subsequent award dated 04.06.2001, Labour Court held that the petitioner was unskilled daily wager and disposed of the reference, vide award, Annexure R-1 noticing that as per the affidavit submitted by the State, the workman will be given continuity in service without back wages. By memo dated 04.06.2001, the petitioner was asked to rejoin duty as unskilled worker. However, despite a reminder, the petitioner did not join her employment and approached this Court by filing a writ petition, which was disposed of, vide judgment dated 25.02.2003, whereby, the award was set aside and the matter was remitted to the Labour Court to re-decide it, in view of the directions contained in the judgment dated 05.03.2001. Once again, Labour Court by award dated 14.05.2003 held the petitioner to be unskilled (Class-IV) employee. Another writ petition bearing CWP No.4042 of 2004 was filed by the petitioner claiming that she was working on the post of Clerk. This writ petition was dismissed by this Court, vide judgment dated 26.04.2005, relevant extract of which is as under:-

“We find that the petitioner's stand throughout had been that she was a Class-IV employee. The Labour Court has

independently examined the matter and found that she was a Class -IV employee and could not claim the status of Class-III employee.

We, therefore, find no merit in this writ petition.

Dismissed.”

Petitioner rejoined her duty on 16.05.2005 and has been paid daily wages regularly thereafter. Vide memo dated 15.05.2006, respondent No.2 requested the Govt. for creation of one post of Pump Attendant w.e.f. 01.02.1996 and also wrote for sanction of back wages. The matter was under consideration, but in the meanwhile, in view of the judgment of Hon'ble Supreme Court in **Secretary, State of Karnataka Vs. Uma Devi (2006) 4 SCC 1**, Govt. of Haryana, vide instructions dated 29.05.2007 rescinded instructions, Annexure P-1 and P-2. By letter dated 15.07.2008, sanction was accorded for payment of back wages to the petitioner and a banker's cheque was sent to the petitioner, but she refused to accept it. Petitioner filed yet another writ petition bearing CWP No.20784 of 2006 seeking regularization w.e.f. 01.02.1996, which was disposed of by this Court, vide order dated 23.01.2007 with a direction to respondent No.1 to decide the legal notice within a period of six months. In compliance of the above, respondent No.1 vide order dated 10.04.2009, informed her that her services cannot be regularized in view of the judgment of the Supreme Court in **Uma Devi's case (supra)**. Contempt petition filed by her became infructuous in view of this development. Yet another writ petition bearing CWP No.8351 of 2015 came to be filed by the petitioner wherein she claimed regularization in view of policy instructions dated 01.10.2003. By order dated 22.03.2017,

this Court issued direction to the competent authority to pass a speaking order on her claim. Vide order No.11797-11801 dated 11.07.2017, services of the petitioner were regularized w.e.f. 01.10.2003, as claimed by her, in Group D service on the post of Pump Attendant in the pay scale of Rs.2500-55-2600-EB-60-3200. Arrears amounting to Rs.11,42,039/- were paid to her vide Annexure R-2. Petitioner's services were regularized subject to the decision of CWP No.17206 of 2014 titled as '**Yogesh Tyagi Vs.State of Haryana and others**' and other similar writ petitions. It has been further submitted that these writ petitions were disposed of by this Court vide common judgment dated 31.05.2018. State Govt. has challenged this judgment by way of SLP(C) No.31566 of 2018 which is pending and by order dated 26.11.2018, Hon'ble Supreme Court has directed that status quo qua the employees shall be maintained during the pendency of the petition.

For reasons best known to her, petitioner has not disclosed these facts in the writ petition. A heavy onus lies on a person, who approaches the Court to reveal all the facts and circumstances. It is the bounden duty of a litigant to place before the Court the entire gamut of facts leading to filing of the petition so as to enable the Court to assess them and arrive at a conclusion. However, when a litigant tries to act smart and hoodwinks the Court, conceals and suppresses material facts, he/she is not entitled to any relief. Rather to curb such tendency of the litigants, their petition deserves to be dismissed with costs. Not only this, petitioner has failed to place on record copy of regularization order dated 11.07.2017, nor she has sought its modification.

In view of the above circumstances, this Court refrains from exercising the discretionary power vested in it under Article 226 of the Constitution of India. Petition is accordingly dismissed.

(SUVIR SEHGAL)
JUDGE

February 28, 2023
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes