IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21369 of 2013(O&M)
and other connected case
Date of decision: 21.03.2023

Amrit Lal Bansal **..Petitioner**

Versus

State of Punjab and others **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Baljeet Singh Sidhu, Advocate
for the petitioner.

Mr. R.K.Kapoor, Addl.A.G., Punjab

ANIL KSHETARPAL, J(Oral)

1. Two writ petitions filed by a common petitioner have come up for final disposal.

2. In Civil Writ Petition No.21369 of 2013, the petitioner has sought the following substantive reliefs:-

> *"i. issuance of a writ in the nature of certiorari for quashing the impugned reply to the legal notice dated 18.3.2013 i.e. Annexure P-26 being illegal, null and void, arbitrary, unconstitutional, against the principle of natural justice and violative of Article 14 and 16 of the Constitution of India.*
>
> *ii. A writ in the nature of mandamus, directing the respondents to fix the final rate of wages, payable to the petitioner as the petitioner was being paid provisional rate of wages, for the period, while he performed the duty of Lab Chemist on daily wage basis and to regularize the service, w.e.f. 30.03.2001 instaed of 24.05.2011, as per*

NARESH KUMAR
2023.03.29 10:08
I attest to the accuracy and
authenticity of this order/judgment

the policy issued by the respondent-Government of Punjab on 23.01.2001 i.e. Annexure P-6, when the regular post of Lab Chemist was also vacant in the respondent department at Bathinda, where the petitioner was working and to grant the minimum pay scale of the post of Lab Chemist for a sum of Rs.6410-10640 w.e.f. 1.1.1996 and further to grant the initial pay scale of his post of Lab Chemist for a sum of Rs.10300-=34800+4200 grade pay as per fitment table 13 of Fifth Pay Commission Report w.e.f. 1.1.2006, with all consequential benefits and to pay the arrears, which will became due after refixation of his pay as mentioned above, along with interest @ 18% per annum from the date when it become due till its payment."

3. In Civil Writ Petition No.9944 of 2022, the petitioner prays for the following substantive reliefs:-

"(i) issuance an appropriate writ, especially in the nature of Certiorari for quashing the impugned final seniority list dated 25.03.2022 (Annexure P-9), issued by respondents-department and further during the pendency of the above said writ petition staying the implementation of final seniority list dated 25.3.2022 (Annexure P-9) issued by respondents-department in the interest of justice.

(ii) Further prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction to the respondents to include the name of the petitioner as Chemist in final seniority list, dated 25.3.2022 (Annexure P-9) issued by the respondents-department and all consequential benefits.

(iii) It is further prayed that this Hon'ble Court may be pleased to issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the

NARESH KUMAR
2023.03.29 10:08
I attest to the accuracy and
authenticity of this order/judgment

present case."

4. The relevant facts, in brief, are required to be noticed:-

5. The petitioner was engaged on a daily wage basis as a Lab. Chemist on 01.08.1992 in the Department of Water Supply and Sanitation. He has qualified the Bachelor of Science (Chemistry) degree. On 24.05.2011, the services of the petitioner were regularised as a Lab. Chemist. While claiming that he was entitled to be regularised with effect from 2001 as per policy dated 23.01.2001, he filed representation/notice before the concerned authority. However, his claim was rejected vide reply dated 18.03.2013, resulting in filing of the writ petitions.

6. Pursuant to the notice of the writ petition, the respondent-State has filed the counter affidavit. It has been stated that as per the Punjab Public Works (Public Health) Laboratory Staff Group-'B' Service Rules 2001, the petitioner being a B.Sc Graduate with Chemistry was required to be regularised as a Assistant Lab. Chemist. It has been disclosed that though in the regularization order passed on 25.05.2001, the petitioner's service was regularised as a Lab. Chemist, however, he was paid at the pay scale of the Assistant Lab. Chemist. In para 4 of the preliminary objection, it has been stated that as per the policy of the Government dated 23.01.2001, the services of a daily wage worker could be regularised on completion of 3 years regular service without any break subject to availability of vacancies in that cadre and the petitioner's case could not be previously considered due to non-availability of the vacancy in said cadre.

7. As is evident in the Civil Writ Petition No.9944 of 2022, the petitioner prays for quashing the seniority list issued on 25.03.2022 with respect to the cadre of the Lab. Chemist.

NARESH KUMAR
2023.03.29 10:08
I attest to the accuracy and
authenticity of this order/judgment

8. This Bench has heard and analyzed the arguments of the learned counsels representing the parties at length and with their able assistance perused the paper book.

9. The learned counsel representing the petitioner while relying upon the judgment passed in ***Bhagwati Prasad and others vs. Delhi State Mineral Development Corporation, AIR 1990 SC 371,*** contends that direction is required to be issued to regularize the services of the petitioner with effect from 2001 as the petitioner fulfills the requirement of 3 years of continuous service till the year 2001. He further contends that the Rules of 2001 shall not debar the petitioner from regularizing the services of the petitioner as a Lab. Chemist.

10. On the other hand, the learned counsel representing the State of Punjab submits that the minimum qualification for the post of a Lab. Chemist is M.Sc. Chemistry or Microbiology or Life Sciences, hence, the petitioner is not entitled to be regularised on the post of Lab. Chemist as he is only holding a graduate degree. He submits that it is for this precise reason, the petitioner has been paid during the whole job as a Assistant Lab. Chemist because he does not fulfill the aforesaid minimum academic qualification required for the post of the Lab Chemist.

11. Having analyzed the arguments of the learned counsels representing the parties, this court now proceeds to examine the following two issues that arise for adjudication:-

(1) Whether the petitioner in the absence of a vacant post in the cadre of the Assistant Lab Chemist is entitled to be regularised from 2001?

NARESH KUMAR
2023.03.29 10:08
I attest to the accuracy and
authenticity of this order/judgment

(2) Whether the petitioner can claim regularization on the post of Lab Chemist though he does not fulfill the minimum academic qualification as required for the psot?

12. The regularization of the services of a daily wage worker is a concept evolved by the Government in order to grant relief to the employees who are working on a daily wage basis, temporarily or on adhoc basis etc. Such regularization amounts to appointment. Once the employees are regularised, they hold civil posts and hence entitled to protection under Article 311 of the Constitution of India. However, while regularizing the services of temporary workers, the minimum educational qualification required for the post cannot be disregarded. In this case, the service rules were notified on 21.03.2001. The petitioner's claims for regularization could not be taken up as there were service rules which required that a Lab Chemist must possess minimum qualification of M.Sc. Chemistry, Microbiology or Life Sciences. Such minimum qualification cannot be neglected by the department while regularizing the services of a temporary employee. Since, the petitioner does not possess the minimum qualification therefore, the stand of the respondent-State that the petitioner will be deemed to have been regularised as a Assistant Lab. Chemist does not suffer from any error or perversity.

13. As regards the second claim of the petitioner, the State has taken a categoric stand that due to non-availability of the vacancy in the said cadre, the services of the petitioner could not be regularised between the period of 2001 to 2011. The petitioner's services have been regularised with effect from 25.05.2011. Clause-I of the Policy itself provides that no new

NARESH KUMAR
2023.03.29 10:08
I attest to the accuracy and
authenticity of this order/judgment

post will be created to absorb a temporary employee. The petitioner has failed to draw the attention of the court to the availability of the vacancy of the Assistant Lab Chemist before 24.05.2011, the day the services of the petitioner were regularised by the concerned authority.

14. This court has carefully read the judgment passed in ***Bhagwati Prasad's case (supra)*** . In the aforesaid case, the petitioners were appointed between the period 1983 to 1986. On the basis of the practical experience the court held that it would be hard and harsh to deny them the confirmation in the respective posts. The aforesaid judgment, with highest respect, is not applicable to the facts of the present case. It would not be appropriate for the Court to hold that even when the temporary worker does not possess the minimum qualification for the post, his claim for regularization must be considered. The Court cannot direct the respondent to substitute practical experience in place of minimum educational qualification which is required for the post in question.

15. Keeping in view the aforesaid facts and discussion, the writ petitions are dismissed.

16. All the pending miscellaneous applications, if any, are also disposed of.

March 21, 2023 **(ANIL KSHETARPAL)**
nt **JUDGE**

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

NARESH KUMAR
2023.03.29 10:08
I attest to the accuracy and
authenticity of this order/judgment