

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7820 of 1998 (O&M)
Reserved on: 22.07.2024
Pronounced on: 26.07.2024

Ram Singh
.....Petitioner
Versus
State of Haryana and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Jawahar Lal Goyal, Advocate
with Mr. Parth Goyal, Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR J. (Oral)

1. The instant writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus, directing the respondents to regularize the services of the petitioner as Driver w.e.f. 31.01.1996. Further prayer has been made to direct the respondents to fix the pay of the petitioner in the scale of Driver, which is a Group 'C' service post w.e.f. 31.01.1996 and grant him arrears of salary in the pay-scale of Driver, along with annual increments etc.
2. It is the case of the petitioner that he was appointed as Truck/Jeep Driver on daily wage basis on 18.10.1992 and he worked as a Driver on muster-rolls upto July, 1993 in the office of Executive Engineer, Mechanical Division, Hisar. In the month of July, 1993, he

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was transferred to the office of respondent No.4 and continued to perform the duties of a driver and was paid the admissible payment as per muster-roll and he continued to get the salary of a Driver till the middle of the year 1994 and thereafter, he was paid salary of a Beldar for some time in year 1994 and 1995. Although, he continued to perform the duties of a Driver and again w.e.f. January, 1996, he was paid the salary of a Driver, however, his services have been regularized w.e.f. 31.01.1996 as Beldar and whereas, his services are liable to be regularized on the post of Driver. It has further been averred that the petitioner is a matriculate and is possessing necessary Driving Licence to drive light/heavy vehicle and, therefore, the petitioner was having the necessary qualifications to be appointed as Driver, which is a Group 'C' post.

3. On issuance of notice of motion, written statement on behalf of respondents No.1 to 4 has been filed wherein it has been stated that initially, the petitioner was engaged on muster-rolls during the month of December, 1992 by the Executive Engineer, Mechanical Division, Hisar and he remained as Driver from December, 1992 to June, 1993 in Mechanical Division, Hisar and from July, 1993 to April, 1994, the petitioner had worked as Driver on muster-rolls in Provincial Division-II at Sirsa. The petitioner was paid wages as Driver during the aforesaid period. The services of the petitioner were utilized at Provincial Division-II at Sirsa as Driver during the period April, 1993 to April, 1994 and after this period, the department did not require the

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services of the petitioner as Driver due to availability of services of a regular Driver with the department. The petitioner was again engaged as Beldar on muster-rolls for the period from May, 1994 to January, 1996 and he was paid his wages as such and thereafter, his services were not required by the department. The petitioner's services were again utilized as Driver on muster-rolls by engaging him as such for the period of February, 1996 to 23.10.1996. In this way, the petitioner's services were taken as Beldar as well as Driver from time to time as and when the department was in need of the same. The petitioner worked with the department as Beldar for a majority period, when he worked with the department.

4. In terms of orders dated 09.09.2016 and 30.11.2017, the respondents were directed to file a specific affidavit about the working of the petitioner as Driver and Beldar.

5. In pursuance thereto, affidavit of P.K. Jindal, Executive Engineer, Provincial Division No.2, PWD (B&R), Sirsa dated 24.02.2018, has been filed, wherein it has been stated as under:-

“1. That the petitioner worked as a driver on Muster Roll basis from December 1992 to June 1993 i.e. for a period of seven months at Mechanical Division, Hisar. Thereafter the petitioner served as a driver from July 1993 to April 1994 i.e. for ten months at Provincial Division No.II, Sirsa.

2. That as per the office records petitioner Ram Singh served on Muster Roll from May 1994 to January 1996 at Provincial Division No.II, Sirsa. The Muster Rolls

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show that the petitioner had served as a Beldar (male coolie) during this period. However, the gate passes photo copies whereof have been produced by the petitioner in the Hon'ble Court show that the petitioner had also been serving as a driver after May 1994 and in the year 1995 as well. The log book of Jeep No.HRW-990 of the department shows that in the month of January 1996, the petitioner worked as a driver for some days. In the letter dated 20.8.1997 (Annexure P-6) also the then Executive Engineer Provincial Division No.II, Sirsa has also stated that attendance of the petitioner was wrongly marked on the Muster Roll in the month of January 1996 due to mistake although he had worked as Jeep Driver. Similarly in the letter dated 12.9.1996 (Annexure P-1) the then Executive Engineer, Provincial Division No.2 Sirsa under para No.2 has stated that petitioner had completed three years service on 31.1.1996 and had completed 240 days in each years and was present on 31.1.1996 as daily wages driver. From all these facts it appears that although in the Muster Roll from May 1994 to January 1996 the attendance of the petitioner has been marked as a Beldar, yet the work of driver was also being taken from him.

3. That the cadre strength of driver at the relevant time i.e. 31.1.1996 were Road Roller drivers 33, Jeep/Truck drivers 39, Tractor Driver 1 and Tipper Driver 1.

4. That the sanctioned strength of driver at the relevant time i.e. 31.1.1996 were Road Roller drivers 33, Jeep/Truck drivers 39, Tractor Driver 1 and Tipper Driver 1.

5. That there was no vacancy of driver at the relevant time i.e. on 31.1.1996 i.e. before regularization of

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services of the petitioner as Beldar.

6. That no seniority list of Muster Roll drivers was maintained at Circle or District level.

7. That the duties and responsibilities of Beldar in Mechanical Division, PWD B&R Branch, Hisar is to assist the Foreman/Mechanic for repairing and maintenance of machineries/vehicle in departmental workshop.”

6. I have heard learned counsel for the parties and perused the record.

7. The only question which requires consideration in the present petition is that as to whether the services of the petitioner has rightly been regularized as Beldar or his services were required to be regularized as Driver w.e.f. 31.01.1996.

8. A letter dated 12.09.1996 (Annexure P-1) was written by Executive Engineer, Provincial Division No.2, Sirsa to the Superintending Engineer, Hisar Circle, PWD (B&R) Branch, Hisar, with regard to the regularization of the services of the petitioner and one Karnail Singh. The said letter, reads as under:-

“Subject: Regularisation of work charged/daily rated employees.

Reference: Your office memo No.E/16448-53 dt. 23.8.96.

In this connection, it is submitted that Sh. Ram Singh son of Sh. Karnail Singh is working in this Division as daily wage Driver. The official was engaged on muster rolls as a Driver during the month of 12/92 by the Executive Engineer. Mechanical Divn.. Hisar. He came in this Divn. during 7/93 & engaged on muster roll as a

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Driver. The official has worked as A Driver from 12/92 to 4/94 continuously. But he was paid as wages Beldar from 5/94 to 1/96. After that pay of the official is being paid as daily wages Driver from 2/96 to to-date. As such most of the period he has worked as Driver on various vehicles in the Deptt. So that the services of the official are required to be regularised as a Driver and regularisation of the services of Driver in Group C (Class III) is within the competency of your good office. The name of the official is also include in the list submitted to head office vide your memo No.2653 dt. 12.8.96 for regularisation of service as a Driver.

2. Sh. Ram Singh s/o Sh. Karnail Singh daily wages driver has completed three years service on 31.1.96 and completed 240 days in each years and he was present on 31.1.96 and there is no break more than one month at a time in his service. As such he fulfill all the required. conditions of the regularisation of service. So the services of Sh. Ram Singh s/o Sh. Karnail Singh may please be regularised as a Driver in Group C at the earliest.

3. As regards the regularisation of other eligible daily wages persons, whose services are to be regularised by this office being the competency of the undersigned, case is under process. Services of these daily wages persons will be regularised shortly & intimated to your office please.

*Sd/-12.9.96
Executive Engineer
Provincial Divn.No.2
Sirsa.”*

9. A perusal of the aforesaid letter would show that it has

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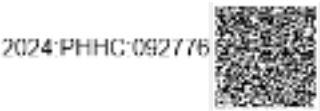


been admitted that the petitioner has performed duties as Driver throughout and for some period, he was paid the wages as Beldar. Further, the aforesaid affidavit dated 26.02.2018, would show that the petitioner had worked as Driver and therefore, his services were also required to be regularized as Driver and not as Beldar particularly when initially, he was engaged as Driver and also fulfills the qualification for the post of Driver. It is the case of the respondents that when the services of the petitioner were regularized, there was no post of Driver. In this context, the Instructions dated 07.03.1996, which relates to regularization of work-charge/casual/daily rated employees, reads as under:-

“Daily-rated employees (Class III)

That only such daily-wagers who have completed five years services on Class-III posts on 31st January, 1996 and were in service on 31st January, 1996, shall be regularized against their respective Class-III posts provided they fulfill the requisite qualifications and were originally appointed on Class-III posts and the posts are available. If the posts are not available, they should be got created from the Finance Department or they should be regularised in Group ‘D’ scale on compassionate grounds like other daily-wagers provides further that they have worked for a minimum period of 240 days in each year and the break in service in any year is not more than one month at a time.”

10. The aforesaid Instructions were modified vide letter dated 18.03.1996 and the period of 05 years was reduced to 03 years for



regularization. The Instructions dated 07.03.1996, clearly provides that if the posts are not available, they should be got created from the Finance Department or they should be regularized in 'Group D' scale on compassionate grounds. In the present case, the petitioner had already retired from service on attaining the age of superannuation on 30.06.2023 and if his services are regularized as Driver, which is a Group 'C' post, only then he would be entitled for monetary benefits.

11. In view of the above, the present petition is allowed and the respondents are directed to regularize the services of the petitioner as Driver instead of Beldar w.e.f. 31.01.1996 and grant all the consequential benefits arising therefrom including revision of his pensionary benefits. The necessary exercise shall be made and the benefits be released to the petitioner, within a period of 04 months from the date of receipt of certified copy of this order.

26.07.2024	(NAMIT KUMAR)
<i>yakub</i>	JUDGE
Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No