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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15893-2014(O&M)

Date of Decision: 18.01.2024

Jaivir Singh

....Petitioner(s)

Versus

Haryana Urban Development Authority and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Y.P. Malik, Advocate and
Ms. Divya Jyoti, Advocate, for the petitioner.

Mr. R.S. Longia, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing of office order dated 22.07.2013 (Annexure P-8) qua the petitioner with a further prayer to issue a writ in the nature of *Mandamus* directing the respondents to modify the nomenclature/designation of the petitioner from Water Pump Attendant to Water Pump Operator in the pay scale of Rs. 950-1400 (pre-revised) as he was initially engaged and serving as such throughout and also to convert the regularization of his services to Water Pump Operator especially when the same has been done to other persons who are juniors to the petitioner vide Annexure P-5 and also in view of the Government instructions dated 07/18.03.1996 alongwith consequential

benefits.

2. The brief facts of the present case are that the petitioner was appointed and kept on daily wage basis as Water Pump Operator on 23.05.1988. There was no letter of appointment or service record available pertaining to his appointment since he and some other persons were kept at that point of time considering the contingencies of the respondent-department. The petitioner is having educational qualification of 10+1. The category of the aforesaid Water Pump Operator is stated to be class 'C' category which is equivalent to class III post. The services of the petitioner were regularized on 30.04.1997. His services were regularised on the cadre of the post of Pump Attendant in the pay scale of 750-12-875-EB-14-940/-. In this way, there was a distinction between the nomenclature because earlier he was appointed on daily wages as Water Pump Operator but his services were regularized in the nomenclature of Pump Attendant. However, there was a difference of category of both the posts. Water Pump Operator is stated to be in class III category whereas Water Pump Attendant is stated to be in class IV category. The relevant portion of aforesaid Annexure P-3 by which the services of the petitioner were regularized is reproduced as under:-

“Memo No.6262

Dated 30.04.1997

Sub: Regularization of Daily Wages Employees.

Consequent upon the decision to regularize the work-charged/Casual/Daily Wagers in terms of the State Govt.Letter No.6/38/95/2GSI dated 07.03.1996/18.03.1996 and in terms of the saction accorded by the 'State Government'vide their letter No.1/16/96/1 TCP dated 15.04.1997 you are brought on the regular cadre of the Post of PUMP ATTENDANT in the pay scale of Rs.750-12-875-EB-14-940/- with effect from 19.03.1997 on the following

terms and conditions:-

Sr. No.1 to 12 : not relevant.

*Sd/-
EXECUTIVE ENGINEER
HUDA Division No.1
GURGAON*

3. The petitioner was therefore aggrieved by the action of the respondent-HUDA inasmuch as he was earlier appointed in class III post on daily wage basis whereas at the time when he was regularized in the year 1997, he was regularized to the post of Water Pump Attendant which was a class IV post and therefore, he filed CWP No.7817 of 2001 alongwith some other similarly situated persons as well. The aforesaid writ petition was disposed on 02.03.2013 vide Annexure P-7 with a direction to the authorities to take a final decision on the claim made by the petitioners to their legal notice dated 19.10.2012. Consequent thereupon, the respondent-HUDA passed a speaking order vide impugned order Annexure P-8 whereby the claim of the petitioners of the aforesaid writ petition which included the petitioner was rejected. Vide impugned order it was so stated by the HUDA that the petitioner was regularized as Water Pump Attendant in class IV category as he did not fulfil the requisite qualifications prescribed for class III post and he had joined on class IV post as daily wager and therefore was required to have been regularized as class IV employee and therefore, they were brought on regular establishment w.e.f. 1997 on class IV post. Reference was also made to one other person namely, Kuldeep Singh and it was so stated in the order that he was brought on class III post since he possessed educational qualifications prescribed vide instructions dated 07.03.1996 and 18.03.1996 but the present petitioner and the petitioners of the aforesaid writ petition did not have the requisite qualifications for class

III post and therefore, the case of the petitioner was not similar to that of the aforesaid Kuldeep Singh. It was so therefore stated in the aforesaid impugned order that the petitioner at the time of engagement was deficient in fulfilling the prescribed qualification meant for the post of category III employee and therefore, the petitioner was correctly appointed to the post of Pump Attendant WPO(H). From a reading of the aforesaid order another thing has transpired that the post of Pump Attendant has been equated with WPO (H) which is stated to be different from WPO to which the petitioner is claiming his claim.

4. Learned counsel appearing on behalf of the petitioner made the following submissions:-

- (i) He submitted that when the aforesaid writ petition was filed before this Court, then the Executive Engineering had filed written statement to the aforesaid writ petition which has been now attached alongwith the present petition as Annexure P-14. In para No.2 of the reply, it has been admitted by the respondent-HUDA that the present petitioner who was the petitioner No.4 in the aforesaid writ petition was appointed as Water Pump Operator on daily wages on 23.05.1988 and he is also a Matriculate. Para No.2 of the aforesaid reply is reproduced as under:-

“2. That in reply to para 2, it is submitted that petitioners Nos. 1 and 2 were appointed on daily wages as Fitter-Helpers on 12.05.1988 and 1.10.1989 respectively. Petitioners Nos. 3 and 4 were initially appointed as Water Pump Operators on daily wages on 16.10.1988 and 23.05.1988 respectively. It is further submitted that the petitioners are only Matriculates”

He submitted that now by way of speaking order the respondent-HUDA cannot take a U-turn and state that the petitioner was not appointed to the post of Water Pump Operator but was appointed to the post of Pump Attendant especially in view of the fact that there is no appointment letter available on record of either of the parties nor there is any record with regard to the same and therefore now the respondent-HUDA after having filed reply is estopped from denying the benefits to the petitioner in this regard. He also submitted that had it been any wrong reply filed earlier, then even no action has been taken against any of the officers who had filed an erroneous reply according to the knowledge of the petitioner.

- (ii) He submitted that this issue was earlier raised in the year 1992 by the HUDA Public Health Karamchari Union with regard to equating of the post of Water Pump Operator and Pump Attendant and vide Annexure P-9, a letter was issued by the Chief Engineer, HUDA, Manimajra to the Superintending Engineer, HUDA Circle, Panchkula for taking a decision on the aforesaid issue and thereafter, vide Annexure P-9/A, the position was clarified by the Chief Engineer, HUDA, Manimajra wherein it has been so specifically decided by way of a conscious decision that all the categories of Pump Operator/Pump Attendant (typing error in Annexure but also reproduced in para 12 (iii) of petition) may be treated as Pump Operator at par. He further

submitted that rather a specific averment was made by the petitioner in para No.11 of the present petition by stating that the nomenclature of Water Pump Operator and Water Pump Attendant is synonymous in view of the aforesaid Annexures P-9 and P-9/A. He further submitted that when the respondent-HUDA filed reply to the present petition, the aforesaid factual position has not been specifically denied and rather in para No.11 of the reply, the same is totally evasive and there is no denial of the aforesaid position. He also submitted that even when the benefit of Water Pump Operator was given to the other similarly situated person namely, Rajinder Parsad, the aforesaid Annexures P-9 and P-9/A were taken into consideration and it was rather so stated vide Annexure P-15 in the orders passed pertaining to the aforesaid similarly situated person namely, Rajinder Parsad that these two posts were at par with each other and relying upon these instructions /clarifications by the Chief Engineer benefit was granted to the aforesaid Rajinder Parsad and so far as the present petitioner is concerned, he is similarly situated with the aforesaid Rajinder Parsad as well and HUDA itself had granted similar relief to the aforesaid Rajinder Parsad vide order Annexure P-15 and the same has been denied to the petitioner without any justification.

- (iii) Learned counsel also referred to the case of one another similarly situated person namely, Kuldeep Singh who has also been granted the same benefit as that of the petitioner

since he was also Matriculate and was appointed as Water Pump Operator but thereafter he was regularized as Pump Attendant and rather the aforesaid Kuldeep Singh was junior to the petitioner as per the seniority list (Annexure P-6). He submitted that even on the point of discrimination as well pertaining to two persons namely, Kuldeep Singh and Rajinder Parsad as aforesaid, the petitioner is entitled for the similar relief.

- (iv) Learned counsel also referred to Annexure P-16 wherein a specific information was sought by the petitioner through RTI with regard to the qualifications of Water Pump Operator wherein it was specifically replied by the Superintendent Engineer in the aforesaid information that the pay scale of Water Pump Operator was having qualification of matriculation with pay scale of Rs. 950-20-1150-EB-25-1400 and qualification of matric with ITI is Rs. 1200-30-1560-EB-40-2040 before 01.01.1996. He submitted that the reason given by the respondent-HUDA in the speaking order as well as in the reply filed in this case, it has been so stated that the petitioner was not qualified being only Matriculate and not ITI is totally against the record in view of the aforesaid information which was supplied to the counsel for the petitioner by the Superintending Engineer whereby even for Water Pump Operator, the qualification is only matriculation but when the qualification is of a higher level i.e. ITI, then there is a different pay scale and therefore,

it cannot be said that the petitioner was not qualified for being appointed as Water Pump Operator even if he was only a Matriculate. The relevant portion of the aforesaid information given under RTI is reproduced as under:-

Sub: Application for information under RTI Act, 2005.

As desired by you vide application dated 08.05.2015, the point-wise reply is as under:-

- 1. The pay scale of Water Pump Operator having qualifications of matriculation is Rs.Rs.950-20-1150-EB-25-1400 & qualification of matric with ITI is Rs. 1200-30-1560- EB-40-2040 before 01.01.1996 and after revision of the same w.e.f. 01.01.1996 is Rs. 3050-75-3950-EB-80-4590 & Rs.4000-100-4800-EB-100-6000.*
- 2. The service rules of HUDA pertaining to Class III/IV notified on dated 16th March, 2009.*

- (v) Learned counsel also submitted that this Court vide order dated 04.09.2019 sought clarification from HUDA with regard to the eligibility of the petitioner as Water Pump Operator which should have been mentioned in the affidavit which they were asked to file to which the respondents thereafter filed a reply in which it has been so answered by the respondents that HUDA was adopting the pattern of PWD Public Health Engineering Department and they were governed by the Haryana Public Works Department Public Health Branch Circle Cadre Mechanical Establishment Group-C & D Service Rules, 1998 and as per Rule 15, the qualifications for the post of Water Pump Operator was Matric and ITI in the trade of Motor/Tractor/Diesel Mechanical Electrical/Wireman. Thereafter, HUDA had

issued Service Rules in the year 2009 wherein as per serial No.34, the qualifications for the post of Water Pump Operator have been mentioned as Matric and ITI. The learned counsel submitted that so far as the aforesaid Haryana Public Works Department Public Health Branch Circle Cadre Mechanical Establishment Group-C & D Service Rules, 1998 are concerned, the same are not applicable to the present petitioner at all nor anything has been attached by the respondents in their reply to show as to when they have adopted it and even otherwise also assumingly for the sake of arguments, they were applicable, then still those Rules are of 1998 whereas the services of the petitioner were regularized in the year 1997 and therefore, at that point of time there was no question of having the applicability of the aforesaid Rules at all. So far as the Rules i.e. HUDA Authority (Group-C and D), Rules, 2009 are concerned, the same were made much after and therefore, the same were also not applicable to the present petitioner since the aforesaid Rules have not been made applicable with retrospective effect and it was at the time of the appointment of the petitioner, the relevant rules are to be considered and not any rules which have been promulgated after a number of years and therefore to the query which was put to the respondent-HUDA by this Court it is very clear that at the time when the petitioner was initially appointed on daily wages and thereafter regularized in the year 1997, there were

no service rules at all which are applicable to the respondent-HUDA and therefore, the respondents who have even raised the question of eligibility was erroneous and perverse and could not have been raised and therefore, the petitioner could not have been denied the benefit of the appointment as Water Pump Operator only on the ground that he was not having the educational qualification. He submitted that even otherwise also as per the RTI report (Annexure P-16) even a person having Matriculation qualification was also qualified for being appointed as Water Pump Operator.

5. On the other hand, learned counsel appearing on behalf of the respondents has submitted that so far as the aforesaid factual position is concerned, the same cannot be disputed in view of the reply filed by the HUDA. He has however submitted that the services of the petitioner were regularized in the year 1997 and the present petition has been filed in the year 2014 and therefore, the same is hit by delay and laches and therefore, the same is not maintainable.

6. I have heard the learned counsel for the parties.

7. After hearing the learned counsel for the parties and a perusal of the record, it would transpire that at the time when the petitioner was appointed on daily wages on 23.05.1988, there is no such record available pertaining to the appointment letter etc. of the petitioner but the aforesaid position has not been denied by the respondents. The aforesaid post of Water Pump Operator is stated to be Class III post. Thereafter in the year 1997 i.e.

on 30.04.1997 vide Annexure P-3, the services of the petitioner were regularized but on the nomenclature of Pump Attendant. At that point of time, there were no service rules which were applicable to the respondent-HUDA. The Rules which have been referred to by the respondent-HUDA in its supplementary reply, the same were made either in the year 1998 which were applicable to the Haryana Public Works Department or the services rules which were pertaining to the HUDA, the same were of the year 2009 and therefore so far as the present petitioner is concerned, those rules could not have been made applicable retrospectively. So far as the objection raised by the respondent-HUDA in its reply with regard to the qualifications of the petitioner that because he was only Matriculate and he was not ITI, he could not have been appointed to Class III post of Water Pump Operator is concerned, the objection raised by the respondent-HUDA is not sustainable in view of the fact that as per letter and clarifications issued by the Chief Engineer himself vide Annexures P-9 and P-9/A, both the posts were at par and even relying upon the aforesaid letter, the benefit has been granted to one of the similarly situated person namely, Rajinder Parsad and now there is no justification for not making applicable the aforesaid Annexure P-9/A to the present petitioner. Apart from the above, even as per the RTI information received by the counsel for the petitioner, the qualification has been mentioned to be even Matriculate but in case of enhanced qualification of ITI different pay scale has been provided. In other words, there is nothing on the record or in the submissions of the learned counsel for the respondents to show as to why the petitioner was not qualified under any rule at that point of time or under any provision of law for not being appointed to the post of Water Pump Operator which falls in

the category of Class III.

8. Apart from the above, once the other similarly situated persons namely, Kuldeep Singh and Rajinder Parsad have also been granted the benefit of being appointed to the post of Water Pump Operator, although they were also regularized to the post of Water Pump Attendant earlier, then there is no justification for discriminating against the present petitioner. It is also not disputed by the learned counsel for the respondents that the petitioner performed the duties of Water Pump Operator right from the time when he was appointed on daily wages and even thereafter when his services were regularized and therefore once the petitioner discharged his duties as Water Pump Operator, then there was no question of denying him any benefit by changing the nomenclature. Apart from the above, even at the time when the petitioner had earlier filed a writ petition before this Court wherein direction was issued by this Court to consider and decide the legal notice, a specific reply was filed by the respondents which has been so relied upon by the learned counsel for the petitioner and in para No.2 of the reply which has been reproduced above, it has been so admitted by the respondent-HUDA that the petitioner was even initially appointed as Water Pump Operator and therefore, so far as the fact that at the time when he was appointed as a daily wager, he was appointed as Water Pump Operator, even if there is no appointment letter available on record, then the action of the respondent-HUDA in regularizing the services of the petitioners not as Water Pump Operator but as a Pump Attendant vide Annexure P-3 is contrary to law and is totally perverse in nature. Such an action could have been justified had there been some reason for the same. The only reason which now the respondents have turned up to say is that the petitioner was

not qualified for the post of Water Pump Operator since he was only matriculate. The aforesaid reason is not available with the respondents in view of the aforementioned facts which have been shown by the petitioner especially the information received through RTI and also the fact that there were no service rules applicable to HUDA at the time when the petitioner was appointed or his services were regularized and therefore, there was no provision of law or any service rules which provided for any educational qualification at the time when he was appointed or he was regularised.

8. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 22.07.2013 (Annexure P-8) is hereby set aside qua the petitioner. The respondents are directed to grant the benefit to the petitioner at the time when he was regularised as having been appointed to the post of Water Pump Operator and not Pump Attendant and to release all the consequential benefits to the petitioner by refixing the pay etc. with effect from the date when he was regularized.

9. The petitioner shall also be entitled for the arrears of salary which shall however be restricted to 38 months preceding the date of filing of the present writ petition alongwith interest @ 6% per annum.

18.01.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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