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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9025-2017 (O&M)
Date of Decision:20.03.2024

VINOD KUMAR AND ORS

..... Petitioners

Versus

STATE OF PUNJAB AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Fateh Singh Dhillon, Advocate
for the petitioner.

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 31.12.2016 (Annexure P-7) whereby respondent has rejected their claim for regularization and asked them to clear 8th Class with one subject of Punjabi language.

2. The petitioners joined respondent as Class-IV employee during 1997-1998. They were appointed on temporary basis and paid on Deputy Commissioner (for short 'DC') rate. At the time of their appointment, Punjab State (Class-IV) Service Rules, 1963 (for short '1963 Rules') were in vogue. As per Rule 5 of 1963 Rules, an applicant was required to possess requisite knowledge of regional language and of English language as may be prescribed by the Government from time to time. The Government at the time of appointment of petitioners had not issued any instructions/circular with respect to knowledge of regional or

English language. The respondent issued instructions dated 21.05.1998 mandating that minimum qualification for Class-IV post would be 8th pass. In the said instructions, it was clarified that it would be applicable for future appointments. The relevant extracts of instructions dated 21.05.1998 read as:

*“The Government has pondered over this and the decision taken has been that regarding the appointment against Class IV posts, minimum qualification should be 8th pass. **Thus, in future, when an appointment is made against the Class IV post, the said educational qualification, now decided, shall be kindly considered.** With regard to this, the Government has taken up the matter of amendment in the said rule under Rules, 1963 for the Class-IV employees.”*

3. The Director General of Police, Punjab issued letter dated 26.11.2016 holding that no minimum educational qualification would be required for contingent paid Class-IV employees i.e. Barber, Sweeper etc. The State Government vide notification dated 23.01.2003 amended 1963 Rules. Rule 5(d) of 1963 Rules was also amended. As per amended rule, an applicant must have passed examination of middle standard with Punjabi language as one of the subject. Unamended as well as amended Rule 5 (d) of 1963 Rules are reproduced as below:

“Unamended Rule

5. No person shall be recruited to the Service by direct appointment unless he-

(a) produces certificates of character from two responsible persons, not being his relatives, who are well acquainted with him in private life;

(b) is not less than 16 years and not more than 35 years of age on the date of appointment.

(c) has not more than one wife living and in the case of a woman, is not married to a person already having a living

wife :

Provided that the Government may, if satisfied that there are special grounds for doing so, exempt any person from the operation of this clause; and

(d) possesses the requisite knowledge of the regional language and of English as may be prescribed by the Government from time to time.

Provided that the appointing authority may, if it is of the opinion that the candidate is otherwise fit to discharge his duties satisfactorily, relax any of the qualification prescribed under this clause.

Amended Rule

5. (d) has passed examination of middle standard with Punjab Language as one of the subject from recognized Educational Institution.

Provided that the Educational Qualification shall be 5th Standard with Punjabi Language in case of person appointed to service on compassionate ground, as a dependent of deceased Govt. employee.”

4. The respondent by order dated 31.12.2016 considered case of the petitioners for regularization in terms of notification dated 30.12.2016. The respondent formed an opinion that no employee can be regularized who is not possessing minimum qualification of 8th Class with one subject of Punjabi.

5. Mr. Fateh Singh Dhillon, Advocate submits that condition of 8th Class with Punjabi as one of subject cannot be applied to petitioners because 1963 Rules were amended after joining of petitioners. There was no requirement of 8th standard with Punjabi as one of subject in the original rules. The respondent amended 1963 Rules in 2003 and as per amended rule, there is requirement of 8th standard with Punjabi language as one of the subject. The rules are not retrospective in nature. The

respondent has rejected claim of petitioners as per policy of 2016, however, their claim needs to be considered as per policy of 2023 because they are working with respondent since 1997-1998.

6. Per contra, learned State counsel submits that amendment of 1963 Rules is prospective in nature, however, a candidate who seeks regularization is required to meet requirement at the time of his consideration. The 2016 policy required that every candidate must possess minimum qualification. The minimum qualification at that point of time was 8th pass with Punjabi language as one of subject for a Class-IV employee. The petitioners as contingent paid employees were not supposed to possess minimum qualification, however, for the purpose of regularization, they were bound to possess minimum qualification.

7. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

8. The petitioners are concededly working with respondent since 1997-1998. They are contingent paid employee and working on temporary basis. They are Class-IV employees and getting DC rate. They have not been considered for regularization as per 2016 Policy because they do not possess minimum education qualification.

9. This Court vide judgment dated 26.02.2024 has decided a Bench of petitions involving identical issue in ***Civil Writ Petition No.19238 of 2013*** titled as '***Amrish Sharma and others Vs. State of Punjab and others***'. In para 47 of the judgment conclusion has been recorded which is reproduced as below:

“47. In the wake of above discussion and findings, this Court comes to conclusion as below:

- i) *This Court in the normal course cannot ask State to create or sanction posts.*
- ii) *The petitioners who had completed service of 10 years by the end of December' 2006, either at present are in service or have already retired, are entitled to regular post and they cannot be denied regularization on the ground of lack of sanctioned post or minimum education qualification. To avoid burden on State exchequer, it is clarified that from the deemed date of their regularization, they shall be entitled to minimum of pay scale plus dearness allowance and grade pay till the date of this order and thereafter regular pay scale.*
- iii) *The petitioners who are still in service but did not complete service of 10 years by the end of December' 2006 would form part of dying cadre created by 2023 Policy. The State, in view of long service of these employees, would not insist for minimum qualification. They from the date of completing service of 10 years would be entitled to minimum of pay scale plus dearness allowance plus grade pay till the date they are regularized in terms of 2023 Policy.*
- iv) *The petitioners who did not complete service of 10 years by the end of December' 2006 and during the pendency of present litigation have superannuated or passed away would be entitled to minimum of pay scale plus dearness allowance and grade pay from the date of completing service of 10 years till the date of their retirement or death.*
- v) *The petitioners who have already been regularized by 31.12.2016 shall not be entitled to any additional financial benefit because they are already getting higher amount of salary for last couple of years.*

vi) *The respondent-State shall not be liable to pay interest on arrears arising on account of re-fixation of pay.”*

10. The petitioners are conceding that they may not be eligible under 2016 policy, however, they must be considered as per policy of 2023 because, they have already served for more than 25 years and it would be travesty of justice, if they are not considered as per 2023 policy. The respondent by 2023 policy has created a dying cadre. The petitioners are working as Class-IV employees and their work and conduct is satisfactory which is prima facie evident from the fact that they are uninterruptedly working since their appointment.

11. This Court finds that case of petitioners need to be considered in the light of 2023 policy and without insisting for minimum education qualification of 8th standard.

12. The petition is hereby disposed of with a direction to respondents to consider case of petitioners within 6 months from today in the light of above observations.

13. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

20.03.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>