

2025:PHHC:011957



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

209-1

CWP-3308-2018

SANJEEV KUMAR (SINCE DECEASED) THR. LRs

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

A N D

209-2

CWP-11692-2019

Date of Decision: 27.01.2025

JAG RAM

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Akshay Jindal & Mr. Bhavya Vats,
Advocates for the petitioner in CWP-3308-2018,

None for the petitioner in CWP-11692-2019.

Mr. Tapan Kumar, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Raising identical issues, both these writ petitions are being decided
by a common order, with the consent of learned counsel for the parties.

For the facility of reference, the facts are being extracted from **CWP-3308-2018** titled as ***Sanjeev Kumar (since deceased) through LRs Versus State of Haryana and others.***

The above petition seeks setting aside of the order dated 30.07.1996 to the extent whereby services of the petitioners were regularized in Class-IV category instead of Class-III even though the petitioner claims to be working on a Class-III post in the department.

Learned counsel for the petitioner contends that the petitioner was appointed as Water Pump Operator on daily wages, which is a Class III post, with the official respondents in June 1988 at Ambala. The case of the petitioner was considered by the then Govt., as per the erstwhile policy, and the services of the petitioner were regularized under the Regularization Policy dated 18.03.1996 issued by the Government of Haryana w.e.f. 01.02.1996. The services of the petitioner were, however, not regularized as Water Pump Operator/Assistant Pump Operator, which is infact a Class-III post, but as Pump Attendant, which is a Class IV post in the Department. The petitioner, alongwith other persons, whose services were also regularized with such a discrimination, lodged a protest with the respondent-Department against such an illegal action. When the respondents refused to take any decision thereupon, various similarly placed persons approached this Court vide CWP No.15992 of 1999 which was admitted for regular hearing. Even during the pendency of the aforesaid writ petition, the petitioner and other similarly placed persons continued to approach the official respondents by making representation to assert their claims. The respondent-Department favourably considered the representations of identically placed persons and vide order dated 24.02.2011,

granted the relief by regularizing their services from category of Class-IV employees to that of Class-III employees. Accordingly, the petitioners in CWP-15992 of 1999 moved an application before this Court for seeking directions to the respondents to consider their claim in light of the decision taken by the respondent-Government itself and the order having been passed on 24.02.2011 extending such benefit. The said prayer was accepted by this Court vide its order dated 22.03.2012 and the petition No.15992 of 1999 was disposed of with a direction to the respondents to consider the claims of the petitioner in light of the subsequent order passed by the respondent-Government itself. The Government however reconsidered its decision and withdrew its earlier decision dated 24.02.2011 and dismissed the claims of all other petitioners in CWP No.15992-1999.

Hence, fresh writ petitions came to be filed before this Court including CWP No.5926 of 2013 (wrongly mentioned as 2926 of 2013) whereas earlier writ petition remained pending, bearing No.CWP-15820 of 1998.

The objections taken by the respondents to the claim of the petitioners were two-fold i.e. the qualification prescribed for a person to claim appointment as Water Pump Operator/Assistant Pump Operator was Matriculation alongwith ITI Diploma and that the petitioners did not possess the ITI diploma; and second was the plea of estoppel.

Both the said objections raised by the respondent-State were considered by a Single Bench of this Court and after noticing the same in light of the judgment of a Division Bench of this Court in the matter of ***Abdul Qayum and another Versus State of Haryana and others*** dated **26.09.2000**

passed in CWP No.18974 of 1998 as well as the judgment dated 14.09.1999 passed by a Division Bench in the matter of ***Tej Parkash Gaur and another Versus State of Haryana and others*** bearing CWP No.19708 of 1998, the writ petition was allowed and the respondent-Department was directed to regularize the services of the petitioners therein on Class-III post of Water Pump Operator/Assistant Pump Operator in terms of the Regularization Policy of the Government dated 18.03.1996 alongwith all consequential benefits.

Learned counsel for the petitioner contends that the said judgments were subject matter of challenge in a batch of Letters Patent Appeals including an ***LPA No.907 of 2016*** titled as ***State of Haryana and Others Vs. Subhash Chand and others***. The Division Bench of this Court dismissed the said LPA filed by the respondent-State and affirmed the judgment passed by the learned Single Judge.

Learned counsel for the petitioner contends that notwithstanding the position in law having been reiterated by the High Court on multiple occasions, the benefit that has already been extended to the similarly placed persons has not been provided to the petitioners.

In response to the above, learned State Counsel refers to the written statement and contends that the petitioners were never engaged as Water Pump Operator or an Assistant Pump Operator but infact had been engaged as daily wager on muster roll basis in the year 1988 and that he was being paid wages as per D.C. rates fixed from time to time. He submits that the qualification of the petitioners at the relevant point of time was Matriculation and they did not possess Diploma from the ITI. It is contended that in the year 1996, when the Government of Haryana notified a policy for the regularization

of services of work charges/casual/daily related employees, the case of the petitioners was duly considered in light of the said policy and an appointment was offered to them as a prompt attempt vide office order No.11404 dated 30.07.1996. It is contended that the petitioners accepted the said order of regularization and joined as Pump Attendant in Public Health Engineering Department. They would thus now be estopped from challenging the order of regularization after a lapse of nearly 22 years.

A vehement argument has also been raised that the petitioners were fence sitters for the entire duration and never chose to file any writ petition whereas the other similarly placed persons specifically approached this Court by espousing their grievances. He contends that the reliance placed by the counsel for the petitioners on the **judgment dated 17.11.2015** passed in the matter of **Sanjeev Sharma and Others Versus State of Haryana and others**, bearing **CWP No.15820 of 1998** as well as **Subhash Chand and Others Versus State of Haryana and Others**, bearing **CWP No.5926 of 2013** would not be applicable to the case of the petitioners; because the plea of estoppel taken by the Government had been declined by the learned Single Judge only on the ground that the petitioners therein had been agitating the matter since the passing of the order and were not fence sitters. It is contended that as the petitioners nowhere approached any forum against the alleged discrimination and instead continued to discharge their duties by accepting the order of regularization, they cannot be permitted at this juncture to re-agitate the entire issue after a lapse of more than 22 years.

He, however, does not dispute that in the said round of litigation, a Division Bench of this Court has already upheld that the requirement of

Diploma of ITI would not be enforced against the persons who have already been working as Pump Operators for a period of more than five years prior to the order of regularization having been passed; and the Division Bench specifically directed regularization of services of such employees on Class-III posts.

Responding to the above, counsel for the petitioners submits that so far as the contention of the petitioners in relation to their having failed to furnish any proof as regards their engagement as a Water Pump Operator is concerned, the same is wrong. Reference is placed upon the Register/ Log-Books (Water Works Ramgarh Majra), Sub Division No.5, wherein the petitioners have counter signed in the column meant for signatures of the Water Pump Operator. He contends that said Register of 1992 specifically reflects that the petitioners had been actually working as Water Pump Operators and were not working against any Group-D post. He further contends that even though the said document alongwith replication had been filed by the petitioner in August 2024, however, no rejoinder or counter, to dispute the contents of the said Register, has been filed by the respondent-State. Hence, the Status of the petitioners having served as Water Pump Operators thus stands duly established from the official record which had been maintained in the regular course of business.

On the issue of estoppel for being a fence sitter and having not approached this Court, learned counsel contends that the said argument is devoid of merit since the position in law as regards extending any benefits to similarly placed persons has been settled by the Hon'ble Supreme Court in the matter of ***State of U.P. and Others Vs. Arvind Kumar Srivastava and Others***

reported as **(2015) 1 SCC 347**. The principles for extending benefit and/or denial of the benefits to the fence sitters have been culled out by the Hon'ble Supreme Court. The said paragraph is extracted as under:

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) *However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”*

Referring to the above, learned counsel contends that the principle of delay and laches would be applicable against a person once the judgment passed by the Court earlier in point of time is not a judgment in rem and is only a judgment in personam. He contends that the law recognizes the cardinal principle that the State is bound to apply the settled legal position to all similarly placed persons and that any such deprivation or denial would be hit by arbitrary discrimination and thus would be in conflict with Article 14 of the Constitution of India.

He further submits that similar benefit has also been earlier granted by this Court even to the persons who approached this Court later in point of time in **CWP No.16271 of 2014** titled as ***Rajesh Kumar and Another Versus***

State of Haryana and Others, decided on 06.12.2022 by relying upon the judgment of **Ajesh Kumar and Others Vs. State of Haryana and Others** passed in **CWP No.6673-1998 decided on 28.04.2022**. The interest of the State was protected by restricting the monetary benefit to a period of 38 months prior to filing of their writ petition. He contends that the petitioners alongwith other similarly placed persons have been regularized by a common office order dated 30.07.1991 and that the benefit of regularization against Class-III/Group-C posts has already been extended to various other similarly placed persons. He further contends that cases of all these persons were declined by the Government for the same reason i.e. the persons not possessing the ITI Diploma, which such decision of the Government has again been clarified by a common order. He thus contends that the declaration about rejection of the entitlement of the petitioners to be regularized against Group-C/Class-III posts was passed by a common order and that the benefit at par with them thus ought to have been extended to the petitioners by applying the ratio of the said judgment in rem. The act of the respondent-State to compel every similarly placed individual to approach the Court for similar relief deserves to be deprecated.

He further contends that similarly placed persons were granted the benefit vide **judgment dated 28.04.2022** in **CWP No.6673 of 1998** titled as **Ajesh Kumar and others Versus State of Haryana and Others**, which was relied upon by this Court in **CWP-16271 of 2014** titled as **Rajesh Kumar and Another Versus State of Haryana and Others** decided on **06.12.2022**, wherein the petitioners had approached this Court only in the year 2014 and not prior thereto, in relation to the same order of regularization.

Reliance is also placed on the judgment of the Hon'ble Supreme Court in the matter of ***Lt. Co. Suprita Chandel Versus Union of India and Others*** bearing ***Civil Appeal No.1943 of 2022*** decided on **09.12.2024** and reported as **2024 INSC page 942**. The relevant extract thereof reads thus:

*“14. It is a well settled principle of law that where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court. [See ***Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others***, (1975) 4 SCC 714]*

*15. In ***K.I. Shephard and Others vs. Union of India and Others***, (1987) 4 SCC 431, this Court while reinforcing the above principle held as under:-*

“19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners.”

(Emphasis Supplied)

16. No doubt, in exceptional cases where the court has expressly prohibited the extension of the benefit to those who have not

approached the court till then or in cases where a grievance in personam is redressed, the matter may acquire a different dimension, and the department may be justified in denying the relief to an individual who claims the extension of the benefit of the said judgment.”

No other argument has been advanced either by the counsel for the petitioner or by the learned State Counsel. No judgment has also been referred to by the learned State Counsel.

I have heard the learned counsel for the respective parties and have gone through the documents and other material available on record with their able assistance.

Undisputedly, the other factors as regards the order of regularization of the petitioner alongwith the similarly placed persons and also the writ petition having been allowed in favour of the similarly placed persons and the benefit having been extended to them is not denied. The objection that has been vehemently taken by the learned State Counsel is that on account of the petitioner being a fence sitter and having accepted the order of regularization for more than 22 years before approaching this Court, the present petition would be barred by delay and laches and cannot be permitted to challenge the initial order of regularization.

Much reliance has been placed on the operative part of the **order dated 17.11.2015** passed by this Court in **CWP-15820-1998 (supra)** and **CWP-5926-2013 (supra)** and to the observation recorded therein while dealing with the plea of estoppel/delay raised by the respondent-State to the effect that the petitioners had been pursuing their rights before the Court.

The principle of law which emerges from the catena of judgments is that the policy of regularization is applicable in rem and benefits admissible to each individual, who is similarly placed, had to be extended by the respondent-State without any discrimination. A large number of similarly placed persons, who were working as Water Pump Operators/ Assistant Pump Operators in different places in the State of Haryana had been regularized on Group-D post by a common order. Numerous persons challenged the said order of regularization before this Court and that in the meanwhile, the Govt. on its own initiative, took a decision to extend the benefit of regularization to certain employees on Class-III post, on the basis whereof, the writ petitions filed earlier were disposed of directing the respondent-State to take a fresh decision. It was on such realization that the Govt. decided to roll back its earlier decision of extending the benefit, which such subsequent decision again came to be challenged before this Court in subsequent writ petitions. The said writ petitions were eventually allowed by a Single Bench of this Court and all the admissible benefits including the entitlement of the petitioners therein to claim regularization against Group-C/Class III post was upheld. A specific direction was also issued to the respondent-State to ensure that the appointments of the petitioners therein be made to a Class-III post without insisting upon the educational qualification mandating the possession of Diploma of ITI. The said judgment of the Single Bench was a subject matter of challenge before a Division Bench of this Court in a bunch of Letters Patent Appeals including the **LPA No.907 of 2016** titled as ***The State of Haryana and others Versus Subhash Chand and others***, and the same was also dismissed. The State did not prefer any SLP against the said order of dismissal in LPA and hence, the

judgment dated 17.11.2015 passed by the Single Bench of this Court has attained finality.

In the said background, certain other persons approached this Court for seeking the said benefit in the year 2014, which such writ petitions were allowed eventually in the year 2022. The issue of delay and laches/estoppel did not stand in the way of extending the said benefits to the petitioner therein too and that the monetary benefits were restricted to a period of 38 months prior to filing of the writ petition(s) to balance the equities.

The judgments of the Hon'ble Supreme Court as extracted above as also the orders passed by the Division Bench of this Court in the earlier round of litigation need no elaboration. The said principles specifically provide that when an order is passed or a policy is framed which is applicable in rem, the benefit of such policy decision and/or judgment has to be extended to all similarly placed persons. The aforesaid principle has been incorporated as an integral part of the regularization policy notified by the State from time to time. The State having emphasized that a benefit has to be applied and extended to all similarly placed persons, such employees ought not be forced to seek identical reliefs by way of filing separate writ petitions and that a holistic approach is required to be taken by the State Agencies as well as employer to extend the benefits to all similarly placed persons irrespective of the fact whether they have taken recourse to institution of a separate litigation or not.

Undisputedly, there was a common order of regularization that was passed and all those people were denied the claim for being regularized on Class-III post on the same set of circumstances and for the same reasons that were set aside by a Single Bench of this Court, which such judgment was

eventually upheld by a Division Bench. It was thus incumbent upon the respondents to apply the said decision (which was a binding adjudication on the reasons relied upon by the respondent-State to deny the benefit to be unsustainable) to all such person to whom such benefit had been denied for the same reasons. However, instead of doing the needful, in terms of its own regularization policy and in terms of the settled position of law, which mandates that the declaratory benefits in rem have to be extended to all similarly placed persons, the respondent-State chose to extend the said benefit only to the petitioners who had taken the shelter of this Court.

In this view of the matter, the position of law as laid down by the Hon'ble Supreme Court in the matter of ***Arvind Kumar Srivastava and others (supra)*** becomes applicable. The principle of delay and laches would thus not be applicable since it was not a case of declaration of individual right, but it was a matter of ruling on certain rights under a policy decision taken by the respondent-State, and held the view of the State to be bad in law and the said declaration has already attained finality. Thus, the claim of the petitioners would rather fall in Note-3 of the guidelines as laid down by the Hon'ble Supreme Court of India and as reiterated in the judgment of ***Lt. Col. Suprita Chandel (supra)*** in the year 2024.

Further, so far as the parting argument of the learned State Counsel about the petitioners having failed to show any material about them having been engaged on Class-III/Group –C post is concerned, the said aspect stands duly rebutted by the counsel for the petitioners by specifically making reference to the Attendance Register. The specific contention of the learned counsel for the petitioners also is that similar attendances were also marked by other similarly

placed persons, who were all regularized by a common order, when the petitioners were regularized, is not disputed. The said attendance Register has also not been denied or disputed by the learned State Counsel and that being a contemporaneous piece of evidence, maintained in the due course of business and the said document being more than 20 years old, this Court takes the same into consideration and accepts the same as sufficient *prima facie* evidence to establish the initial nature of engagement of the petitioners by the respondents.

For the foregoing reasons, the present writ petitions are allowed. The impugned order dated 30.07.1996 is hereby set aside being illegal, unjust, unconstitutional, arbitrary and perverse. Resultantly, the respondents are directed to regularize the petitioners on Class-III post instead of Class-IV post. The petitioners would, as a consequence, be entitled for all consequential benefits including notional fixation of pay and seniority. However, the financial benefits shall be restricted upto 38 months prior to the filing of the present writ petition. Let the needful be done within a period of three months of the receipt of certified copy of this order.

The petitions stand allowed accordingly.

JANUARY 27, 2025.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No