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**(2021) 10 P&H CK 0090**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No.7370 Of 1997 (O&M)**

Anil Kumar Mehta

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

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**Date of Decision : 14-10-2021**

**Acts Referred:**

**Citation : (2021) 10 P&H CK 0090**

**Hon'ble Judges : Arun Monga, J**

**Bench : Single Bench**

**Advocate : J. S. Maanipur, Rajni Gupta**

**Final Decision : Allowed**

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## **Judgement**

Arun Monga, J

1. Grievance of the petitioner herein is qua the order dated 28.04.1997 (Annexure P-19) issued by respondent No. 3 withdrawing his earlier order dated 31.05.1995 for regularisation of the petitioner's services as Water Pump Operator Grade-II in group 'C' and instead bringing him on regular establishment in lower group 'D' to the post of Helper to Electrical Chageman/Electrician.

2. Succinct facts first. Petitioner claims that he is a Matriculate and joined service as daily wager on 01.09.1987 under the respondents. Since then, he had been working as Water Pump Operator Grade II on class III group C post. Haryana Government issued order dated 27.05.1993 Annexure P-4 creating 4278 additional posts for regularization of work-charged/daily wage employees who had completed 5 years service on 31.03.1993. Vide notification dated 11.05.1994 Annexure P-5, the Government decided/clarified that the daily wagers who had completed five years' service on 31.03.1993 should be regularised against their respective class III posts provided they fulfil the requisite qualifications and were originally appointed on class III posts. Pursuant thereto and after verification of records and finding the petitioner eligible and suitable for regularisation on class III post as Water Pump Operator Grade II, his

services were regularised as such on class III post vide order dated 31.03.1995 Annexure P-16. Later, however, the impugned order dated 28.04.1997 (Annexure P-19) was issued by respondent No. 3 withdrawing his own earlier order dated 31.03.1995 regularising the petitioner's services in group 'C' and instead of that bringing him on regular establishment in lower group 'D' to the post of Helper to Electrical Chargeman/Electrician. The petitioner seeks quashing of the impugned order dated 28.04.1997 (Annexure P-19) with a direction to regularise his services in group C on class III post as Water Pump Operator Grade II from 01.04.1993 with consequential benefits.

3. Respondents admitted that the petitioner joined service as daily wager on 01.09.1997 and that pursuant to Government instructions dated 17.12.1993 Annexure P-3, his services were regularised on class III post as Water Pump Operator Grade II vide order dated 31.05.1995 Annexure P-16. They, however, pleaded that it was later discovered that the petitioner had been engaged and was paid as daily wager unskilled worker in class IV group D category and not as Water Pump Operator -II on class III group C post. He had been inadvertently regularised on class III post in group C, though he was not eligible for the same. Order dated 28.04.1997 (Annexure P-19) was, therefore issued withdrawing the earlier order dated 31.03.1995 and bringing him on regular establishment in lower group 'D' to the post of Helper to Electrical Chargeman/Electrician. They defended the impugned order dated 28.04.1997 (Annexure P-19). Objection was also taken that the petitioner had given two experience certificates for working with two separate employers and also a doing diploma course simultaneously, showing that they were manipulated and fictitious.

4. I have heard the learned counsel for the parties and with their able assistance have gone through the record.

5. Learned counsel for the petitioner would argue that ever since joining as daily wager on 01.09.1997, he had been working and was paid wages as Water Pump Operator -II on class III group C post. He was found eligible and suitable for regularisation as Water Pump Operator -II on class III group C post and had been rightly regularised as such vide order dated 31.03.1995 Annexure P-16. Without giving any opportunity or issuing any show cause notice to him and on the basis of wrong facts and contrary to the record, the impugned order Annexure P- 19 was issued withdrawing the correct earlier order dated 31.03.1995 regularising the petitioner's services in group 'C' and instead of that wrongly bringing him on regular establishment in lower group 'D' to the post of Helper to Electrical Chargeman/Electrician.

6. Learned counsel for the petitioner also relied on a Division Bench judgment of this Court in Civil Writ Petition No. 15051 of 1995 Puran Chand and others vs State of Haryana and others decided on 13.08.1996 (Annexure P-20), upheld by Hon'ble the Apex Court vide order dated 19.08.1997 in Special Leave to Appeal (Civil) No. 24700-24702 of 1996 State of Haryana and others vs Puran Chand and others (Annexure P-21). He also relies upon Civil Appeal No. 1579-80-1580

of 1998 Amrit Lal vs State of Haryana and others (Annexure P-23) reported in Amrit Lal v. State of Haryana 1999 AIR (SCW) 4697: 1998 SCC (L&S) 1748 and Division Bench judgment of this Court in Civil Writ Petition No. 18974 of 1998 Abdul Kayyum and another vs State of Haryana and others decided on 26.09.2000 (Annexure A-1).

7. Learned counsel for the respondent vehemently contested these contentions and the applicability of the judgments *ibid* to the instant case. He argued that the petitioner joined the respondent department as unskilled labourer in Group-D on 01.09.1987 and had been paid daily wages in Group-D. He had been inadvertently regularised in the first instance on class III post in group C, though he was not eligible for the same. Impugned order dated 28.04.1997 (Annexure P-19) was rightly issued to correct the mistake by de-regularising the petitioner's services in group 'C' and instead of that bringing him on regular establishment in lower group 'D' to the post of Helper to Electrical Chargeman/Electrician. It was contended that since the petitioner was engaged as unskilled labourer in Group-D and was not having the requisite qualification at the time of his initial appointment and lacks the requisite qualification to be appointed on the post of Water Pump Operator, he cannot be accorded benefit of regularisation on the said post. Reliance is placed on SLP (C) 11261 of 2002 titled as Babu Ram vs State of Haryana and others, wherein Hon'ble the Supreme Court dismissed the Special Leave Petition of the petitioner on the basis that he was not having requisite qualification for the post on which he was claiming regularisation. He submits that in CWP No. 18974 of 1998 Abdul Kayyum and another vs State of Haryana and others, the petitioners had initially joined as Water Pump Operators/ Assistant Pump Operators and worked on the same post. It was pointed out that in the present case the petitioner joined the Department as unskilled daily wage labourer and correctly regularised as Electrician Helper in Group-D in 1993. He also canvassed that judgment passed by this Court in CWP No. 23790 of 2011 Gurmeet Singh and another vs State of Haryana and others, upheld in LPA No. 1051 of 2015 vide order dated 09.02.2016 was challenged before Hon'ble the Supreme Court, in SLP (C) No. 15276 of 2016. Though the SLP was dismissed by Hon'ble Apex Court but the question of law was kept open which itself shows that the said judgment of Hon'ble Apex Court cannot be considered to be final in all the matters of such kind. It was/is only applicable in that particular case. It is also his submission that the judgment passed in Babu Ram's case (*supra*) is per incuriam and was not discussed in Gurmeet Singh's case (*supra*) at any point of time. The petitioner cannot take benefit of the said judgment in Gurmeet Singh's case (*supra*), as the same has no parity with the case of the petitioner. No relief could be given to him on the basis of the above two judgments.

8. Learned State counsel also canvassed that the petitioner is claiming regularisation in Group-C as per Government of Haryana Notification dated 11.05.1994. He pointed out that the said notification alongwith other policies of regularisation had already been withdrawn by the Government vide notification no. GSR 13 const./Art. 309/2007 dated 13.04.2007 and the Government had

decided that all the vacant sanctioned posts presently occupied by the daily wage, contract, part-time, etc. may be filled up through a process of regular recruitment as per provisions of the relevant service rules in. Therefore, when there is no regularisation policy in existence at this stage, on which the petitioner is claiming regularisation in Group-C, no such benefit can be given to him.

9. Having heard both sides at length and gone through the record, I am of the opinion, that the petition merits being allowed for the reasons and discussion in the succeeding paras.

10. The petitioner's case is that ever since he joined service as daily wager on 01.09.1997 under the respondents, he had been working as Water Pump Operator Grade II on class III group C post. Respondents say that the petitioner joined the department as unskilled labourer in Group-D on 01.09.1987 and had been paid daily wages in Group-D.

11. On a careful consideration of the rival contentions and perusal of the record, I am inclined to hold, as asserted by the petitioner, that since joining on 01.09.1997 as daily wager, he had indeed been working as Water Pump Operator -II on class III group C post.

12. Following documents show that the petitioner was engaged on class III post of WPO-II/APO:

(i) Annexure P-1 Muster Roll of wages paid for February, 1988,

(ii) Annexure P-2 Muster Roll of wages paid for January, 1990.

(iii) Annexure P-3 Muster Roll of wages paid for February, 1990.

(iv) Annexure P-11 letter dated 21-11-1994 sent by the Executive Engineer, Public Health Division, Ambala Cantt to the Superintending Engineer, PWD. PH, Ambala Cantt for regularization of services of the petitioner saying that he was appointed on 01.11.1987 as APO.

(v) Annexure P-13 letter dated 30.03.1995 sent by the Executive Engineer, Public Health Division, Ambala Cantt to the Superintending Engineer, PWD. PH, Ambala Cantt re-iterating the recommendation for regularization of services of the petitioner sent vide his letter Annexure P-11 letter dated 21-11-1994.

(vi) Annexure P-14 letter dated 30.03.1995 sent by the Superintending Engineer, PWD. PH, Ambala Cantt to the Engineer-in-Chief, Haryana, PWD, Public Health Branch, Chandigarh saying that the petitioner was working as WPO grade II, had completed five years service as on 31.03.1993 and was performing his duties satisfactorily and recommending that sanction to his regularization in this category be arranged.

(vii) Annexure P-15 letter dated 31.03.1995 sent by the Engineer-in-Chief, Haryana, PWD, Public Health Branch, Chandigarh to the Superintending Engineer, PWD. PH, Ambala Cantt to saying that as recommended by the latter, the

services of the petitioner may be regularised as WPO II under group C.

(viii) Annexure P-16 office order dated 31.03.1995 issued by the Superintending Engineer, PWD. PH, Ambala Cantt bring the petitioner on to regular establishment with effect from 01.04.1993.

(ix) Annexure P-12 tentative seniority list of regular mechanic establishment as on 01.04.1993 shows that issued by the Superintending Engineer, PWD. PH, Ambala Cantt. shows that the petitioner was initially appointed into Government service as WPO on 01.09.1987 and regularized from 01.04.1993.

13. This is own record of the respondents and it negates and flies in the face of their stand that the petitioner joined the department as unskilled labourer in Group-D on 01.09.1987 and had been paid daily wages in Group-D.

14. The respondents have not produced by any other record to support their stand that the petitioner had been engaged and was paid as daily wager unskilled worker in class IV group D category and not as Water Pump Operator - II on class III group C post.

15. Even if for a moment it is assumed without holding so, as asserted by the respondents, that the petitioner had been engaged and was paid as daily wager unskilled worker in class IV group D category, it would obviously mean that the aforesaid record ( comprising of Annexures P-1 to P-3 and P-11 to P-16) prepared by the concerned officials of the respondents was/is incorrect. It is also not even averred, much less shown on record if any action at all was taken for the same against the concerned erring officials. This situation also puts a big question mark against the respondents stand that the petitioner had been engaged and was paid as daily wager unskilled worker in class IV group D category.

16. In these circumstances, I am unable to accept the respondents' bald plea that the petitioner had been engaged and was paid as daily wager unskilled worker in class IV group D category and not as Water Pump Operator -II on class III group C post. Accordingly, it is so held, as asserted by the petitioner, that since joining on 01.09.1997 as daily wager, he had been working as Water Pump Operator -II on class III group C post.

17. Adverting now to the relevant part of the Government notification dated 11.05.1994 Annexure P-5, reproduced herein below:

"xxxx xxxx

But it has come to the notice of Government in some departments daily wagers are also working on class III posts such as clerks, steno-typist and drivers etc. The question whether such daily wagers should be regularised in group D or group C scale has been engaging the attention of Government for some time past and after careful consideration it has now been decided that the daily wagers who had completed five years' service on 31.03.1993 should be

regularised against their respective class III posts provided they fulfil 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 ground like other daily wagers."(emphasis supplied)

18. The above language of the notification, particularly the underlined text, shows that for the purpose of regularisation, 31.03.1993 was the relevant date of possessing the requisite qualifications, fulfilling other conditions and the continuity of service. Further, it was/is a beneficent policy decision/notification to mitigate the hardship of the daily wagers. In view of this, and the absence of anything contrary in the text of the notification, to my mind, it would be fair and reasonable to infer that the fulfilment of the conditions of requisite qualifications and experience for regularisation were/are to be seen as on 31.03.1993.

19. In the context of the same policy decision/ notification dated 11.05.1994 Annexure P-5 of the Haryana Government, the Apex Court noted in *Amrit Lal v. State of Haryana* 1999 AIR (SCW) 4697 (supra) that the qualification prescribed for the post of Water Pump Operator, Grade II is either possessing an ITI certificate or being literate and having minimum experience of five years.

20. In present case, the petitioner was/is a Matriculate. As held above, since joining on 01.09.1997 as daily wager, he had been working as Water Pump Operator-II on class III group C post. It is obvious, therefore, that on the relevant date (31.03.1993), the petitioner was literate with five years' experience and had also completed five years' service as Water Pump Operator -II on class III group C post and thus, he was eligible for regularisation as such. It follows, therefore, that his services were rightly regularised on class III post as Water Pump Operator Grade II vide order dated 31.03.1995 Annexure P-16. In my opinion, it was absolutely wrong on the part of the respondents to pass the subsequent impugned order dated 28.04.1997 (Annexure P-19) and thereby withdrawing the earlier order dated 31.03.1995 regularising the petitioner's services in group 'C' and instead bringing him on regular establishment in lower group 'D' to the post of Helper to Electrical Chageman/Electrician.

21. In the different facts and circumstances of the instant case as brought out above, the judgments relied upon by the learned counsel for respondents are thus not applicable.

22. Admittedly, the impugned order dated 28.04.1997 (Annexure P-19) was passed without granting any opportunity of explanation to the petitioner or showing cause for the same. It is settled law that before passing any adverse order against an employee, the minimum principles/rules of natural justice have to be followed. Reference may be made to *R. Sulochana Devi versus D.M. Sujatha* 2004(4) SCT 475. I find substantial merit in the contention of the learned counsel for the petitioner that the impugned order deserves being struck down, the same having been passed in violation of the principles/rules of natural

justice.

23. As noted above and also mentioned in the impugned order itself, the same was passed only on the basis that after regularisation of the petitioners' services on class III post of Water Pump Operator Grade II, it had been discovered that the petitioner had been engaged and was paid as daily wage unskilled worker in class IV group D category and not as Water Pump Operator -II on class III group C post and that he had been inadvertently regularised on class III post in group C, though he was not eligible for the same. However, respondents have failed to substantiate that ground. In present proceedings, they cannot defend or justify the impugned order on the entirely new ground that the petitioner had given two experience certificates for working with two separate employers and also a doing diploma course simultaneously and that they were manipulated and fictitious.

24. In terms of Government of Haryana Notification dated 11.05.1994, the petitioner was eligible and entitled to be considered for regularisation as Water Pump Operator Grade II in group C as on 31.03.1993. To my mind, this vested right/claim cannot be defeated retrospectively by the subsequent withdrawal of the notification dated 11.05.1994 Annexure P-5 by the Government vide another notification no. GSR 13 const./Art. 309/2007 dated 13.04.2007 and the decision of the Government that all the vacant sanctioned posts occupied by the daily wage, contract, part-time, etc. at the time of withdrawal of the notification dated 11.05.1994 may be filled up through a process of regular recruitment as per provisions of the relevant service rules in compliance. I, therefore, repel the contention of the learned counsel for respondents that since there is no policy in existence at this stage on which the petitioner claims regularisation in Group-C, no such benefits can be given him.

25. As an upshot of the aforesaid, the petition is allowed, the impugned order dated 28.04.1997 (Annexure P-19) issued by respondent No. 3 withdrawing his own earlier order dated 31.03.1995 for regularisation of the petitioner's services in group 'C' and instead bringing him on regular establishment in lower group 'D' to the post of Helper to Electrical Chargeman/Electrician, is set aside and the earlier order dated 31.05.1995 Annexure P-16 regularising the petitioner's services on class III post as Water Pump Operator Grade II is restored. The petitioner shall be entitled to all consequential service benefits. Past arrears of monetary dues shall be paid to the petitioner within six months with interest @ 6% per annum from the due date till actual payment.

26. Pending applications, if any, stand disposed of.