
(2019) 09 P&H CK 0171
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5782 Of 2014

Balwan Singh

APPELLANT

Vs

Haryana Urban Development Authority And Others

RESPONDENT

Date of Decision : 04-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 09 P&H CK 0171

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Yashpal Malik, Sidhant Bhonsle, Abhilaksh Grover, D.S. Nalwa

Final Decision : Disposed Of

Judgement

Harsimran Singh Sethi, J

1. By this order, two writ petitions bearing CWP No. 5782 of 2014 and CWP No. 22417 of 2014 are being disposed of as both the writ petitions involve same question of law and similar facts. For the sake of convenience, facts are being taken from CWP No.5782 of 2014 :-

In the present writ petition, the grievance which is being raised by the counsel appearing on behalf of the petitioner is that though the petitioner was working as Water Pump Operator i.e. a Class-III post but his services were wrongly regularized on the post of Beldar, i.e. a Class-IV post. The direction being sought by the petitioner is that his services should be regularized as a Water Pump Operator instead of Beldar. In para 4 of the reply, following averments have been made by the respondents:-

"4. That the contents of para 4 are wrong and hence denied. It is incorrect and hence vehemently denied that the petitioner was initially engaged on Class-III post of W.P.O. And that he has been performing his duties as WPO. In fact the petitioner was engaged either as WPO Helper/Beldar, Sewerman, which is a class-IV post and the petitioner was regularized on the said post of beldar. However, it

is submitted that initially, the petitioner was ordered to be regularized w.e.f. 01.07.2004, but later on, vide office endorsement No. 14078 dated 18.06.2013 the petitioner's service has been considered as regularized w.e.f. 1.10.2013 for all intents and purposes and the entire service benefits have been granted to the petitioner with regard to post of Beldar. Copy of the office order vide which the services of the petitioner were regularized as Beldar w.e.f. 01.10.2003 vide letter/Memo dated 18.06.2013 is attached as Annexure R-6. It is submitted that the petitioner had worked on daily wages basis on temporary Muster Roll as W.P.O. Helper w.e.f. 5/1994 to 9/1994, and as Fitter Helper on 10/1994 (one month) and as WPO(H) w.e.f. 11/1994 to 12/1994 and as Sewerman w.e.f. 07/1995 to 09/1996, 11/1996 to 03/1997, 06/1997 to 10/1997, 12/1997 (one month), 02/1998 (one month) 05/1998 to 08/1998, 10/1998 (one month) and as Beldar for the period w.e.f. 12/1998 to 08/1999, 10/1999 to 12/1999, 04/2000 to 08/2000, 10/2000 to 5/2001, 08/2001 to 10/2001, 1/2002 to 08/2004. Accordingly, the services of the petitioner was regularized as Beldar as per notification of the Government of Haryana dated 01.10.2003 with effect from 01.07.2004 vide S.E. HUDA Circle, Karnal letter no. 7756 dated 15.09.2004 in the pay scale of Rs. 2550-3200. The petitioner accordingly joined on 17.09.2004 forenoon. It clearly shows that he has accepted his regularization, without any objection. Moreover, he had availed all the benefits of his post as Beldar. The petitioner applied for grant of Ist A.C.P. Scale which was allowed on 27.05.2014. Therefore, contention of the petitioner is liable to be rejected."

In CWP No. 22417 of 2014 also the respondents have made following averments in para 2 of the reply :-

"2. That in addition to the above, it is submitted that the Govt. of Haryana while relying upon the judgment of Apex Court in the case of State of Karnataka Vs. Uma Devi cited in (2006) 4-SCC-I-44 vide its memo No. 43/31/06-IGSI dated 25.04.2007 (Annexure R-1) and Chief Secretary letter of even number dated 29.05.2007 (Annexure R-2) has rescinded the orders dated 07.03.1996 and dated 18.3.1996 regarding regularization of services of employees from 1.2.1996 (adopted by HUDA from 19.03.1997) meaning thereby that no past cases are required to be reopened under the schemes has already been made but is not sub-judice, it need not to be reopened based on the judgment, but there should be no further regularization of those not duly appointed by the constitutional scheme. As the present CWP has been filed in violation of these instructions so the present petition is not maintainable and is deserved to be dismissed."

Learned counsel for the respondents argues that though, initially, at one point of time, in the year 1994, the petitioner in CWP No. 5782 of 2014 was appointed as a Water Pump Operator but thereafter, he was appointed as a Sewer man and thereafter as a Beldar and starting from the year 1998 till the regularization of his services, petitioner was working on the post of Beldar. Similar objection has been taken in respect of petitioner in CWP No. 22417 of 2014, which is clear from the reply reproduced before.

Learned counsel for the petitioner dispute the said position and states that petitioner was working on a Water Pump as a Pump Driver/Operator and not as a Beldar.

The above facts show that there is a disputed question of facts involved in the present writ petition(s) and this Court is not in a position to resolve the said dispute under Article 226 of the Constitution of India and petitioners have an appropriate remedy before the Civil Court to get the facts cleared by producing evidence in support of their claim.

The present writ petitions are disposed of with the liberty to the petitioners to avail their remedies before the appropriate forum for the redressal of their grievances as the present remedy is not appropriate for the claim as being raised by the petitioners in view of the disputed question of facts involved.