

(2014) 03 P&H CK 0190
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2368 of 1992

Raghubir Singh

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Citation : (2014) 03 P&H CK 0190

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : J.S. Yadav, for the Appellant; D.S. Nalwa, Addl. A.G., Haryana for the State, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioner has approached this Court, praying for issuance of a direction to the respondents to regularize his services with effect from 23.07.1984 i.e. the date of his initial appointment on adhoc basis as Stenotypist. It is the contention of counsel for the petitioner that the petitioner was initially appointed as a Bearer in Medical College and Hospital, Rohtak on 14.06.1978. The Director-Principal of the Medical College, Rohtak, vide order dated 28.10.1983 (Annexure P-1) decided that in future all higher grade posts in Class III and IV establishment of the Institution will be filled in by the departmental candidates, possessing the required qualification and experience for the relevant post in accordance with the policy of promotion by transfer from one post to another in the same Department. In case no such departmental candidate is available, the post would be advertised.

2. Petitioner, being eligible for consideration for appointment to the post of Stenotypist, applied for the same. In pursuance to the application submitted by him, a test was held, which he cleared and as a consequence thereof, the petitioner was appointed as a Stenotypist on adhoc basis vide order dated 21.07.1984 (Annexure P-2) by the Director-Principal of Medical College and Hospital, Rohtak. As per the counsel for the petitioner, the petitioner was entitled

to regularization of his services in pursuance of the policy decision of the Government of Haryana dated 16.02.1987 (Annexure P-3), according to which, those adhoc employees who had completed two years of service as on 01.11.1986 and were in service on that day, were entitled to be considered for regularization, provided the posts were taken out of the purview of the Subordinate Services Selection Board, Haryana (for short, "the Board"). Instead of regularizing the services of the petitioner from the said date, his claim for regularization was considered under the policy dated 28.02.1991 (Annexure P-5) and his services regularized with effect from 01.01.1991. Petitioner came to know that similarly placed employees of the same Institution, who had also been appointed on adhoc basis as Stenotypist alongwith him, including one, namely, Smt. Kamlesh Kumari, who was working on the post of a Clerk on regular basis, had been regularized with effect from 01.11.1986, which motivated him to file a representation for granting him the benefit of regularization of his services with effect from 23.07.1984 i.e. the date of his initial appointment on adhoc basis as a Stenotypist. When, the claim of the petitioner was not considered, he approached this Court by filing the present writ petition.

3. It is the submission of counsel for the petitioner that in the light of the above factual assertions and the fact that a similarly placed employee, (Smt. Kamlesh Kumari) who was also appointed in the same fashion as the petitioner on the post of Stenotypist on adhoc basis, has been regularized as per the policy of the Government of Haryana dated 16.02.1987, the petitioner was also required to be considered and regularized as per the said policy instead of policy instructions of Government of Haryana dated 28.02.1991. He, therefore, prays that the petitioner deserves to be regularized with effect from 01.11.1986 as per the policy instructions dated 16.02.1987.

4. With regard to the withdrawal of the posts from the purview of the Board, reference is made to the communication dated 01.02.1984 (Annexure A-1), where the posts have been taken out of the purview of the Board. He, therefore, contends that on the date when the petitioner was to be considered for regularization, all the conditions, as provided for in the policy instructions dated 16.02.1987, stood fulfilled.

5. On the other hand, counsel for the State vehemently argues that the petitioner was appointed on the post of Stenotypist on adhoc basis, which was based upon the recommendation of the Local Selection Committee. He was not appointed through Employment Exchange and, therefore, his claim for regularization of his service under the policy dated 16.02.1987 could not be granted. With regard to the claim of the petitioner that he has been discriminated vis-?-vis Kamlesh Kumari, he contends that she has already been working as a Clerk on regular post and, therefore, she has rightly been regularized with effect from 01.11.1986. He, thus, contends that this is the basic impediment which dis-entitles the petitioner for grant of claim as made in the present writ petition.

6. I have considered the submissions made by counsel for the parties and with their assistance have gone through the records of the case.

7. The decision of the Director-Principal of the Medical College and Hospital, Rohtak, dated 28.10.1983 clearly shows that higher graded posts in Class III and Class IV establishment of the Institution were to be filled up through departmental candidates possessing the requisite qualification and experience for the relevant post by way of promotion by transfer. Petitioner, who was an employee of the Institution and was working as a Bearer in the Medical College and Hospital, Rohtak, with effect from 14.06.1978, being fully eligible for consideration for appointment to the post of Stenotypist, participated in the test, which was held by the Local Departmental Selection Committee of the Institution. The petitioner having been found fit and cleared the test was recommended for appointment as a Stenotypist on adhoc basis and accordingly was issued the appointment letter dated 21.07.1984 (Annexure P-2). He continued as such on the said post, when policy dated 16.02.1987 was issued by the Government of Haryana for regularization of Class III employees other than the teachers, who were working against the posts which have been taken out of the purview of the Board.

8. A perusal of the order dated 01.02.1984 (Annexure A-1/A) would show that all Class III posts in the Medical College and Hospital, Rohtak were taken out of the purview of the Board. The petitioner, therefore, fulfilled the requirement for regularization as mandated in the policy instructions dated 16.02.1987, which required the posts to have been taken out of the purview of the Board and who have completed two years service as on 01.11.1986.

9. The objection, which now has been taken by the respondents, is that the name of the petitioner was not sponsored by the Employment Exchange and, therefore, he could not have been regularized under the said policy. This ground, as taken by the respondents, cannot be accepted in the light of the fact that the petitioner was appointed through transfer as per the decision dated 08.10.1983 by the Director-Principal of the Medical College and Hospital, Rohtak and he, being in service employee, could not have been required to be either registered with the Employment Exchange or name recommended from the said Exchange. The ground, therefore, pressed into service by the respondents for denying the benefit of regularization to the petitioner cannot sustain. Petitioner, being fully eligible as per the policy dated 16.02.1987, should have been regularized in service with effect from 01.11.1986, the date which was fixed in the policy instructions itself.

10. The distinction, which has been sought to be drawn by the respondents between the case of the petitioner and that of Kamlesh Kumari that she was working as a Clerk on regular basis in the Department and, therefore, was regularized from the date of her appointment, cannot be accepted in the light of the fact that her appointment as a Stenotypist was also on adhoc basis as is the case of the petitioner and she was similarly selected by the same Departmental

Selection Committee as the petitioner was and for the same post i.e. Stenotypist. There being no distinction on this count between the petitioner and Kamlesh Kumari, the claim of the petitioner cannot be said to be distinguishable and, therefore, this ground instead of going against the petitioner rather helps the petitioner for claiming regularization of his service atleast with effect from 01.11.1986 as per the policy instructions dated 16.02.1987.

11. In view of the above discussion, the stand of the respondents on both the counts cannot be sustained and is, therefore, rejected. In view of the above, the present writ petition is allowed. Petitioner is held entitled to regularization of his services with effect from 01.11.1986 on the post of Stenotypist. Consequential benefits be released to the petitioner within a period of three months from the date of receipt of certified copy of the order. However, payment of arrears, if any, shall be restricted from the date of filing of the writ petition.