

(2015) 05 P&H CK 0497

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 18451 of 2003, 12409 of 2004, 20021 of 2006, 7992 of 2008, 2705 of 2010, 3408 of 2010, 6317 of 2010, 4280 of 2010 and 20394 of 2010 (OandM)

Raja Ram and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 05 P&H CK 0497

Hon'ble Judges : Daya Chaudhary, J.

Bench : Single Bench

Advocate : D.S. Patwalia, Sr. Advocate and Kannan Malik, Advocate, for the Appellant; Harish Rathee, Senior D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—By this judgment, nine cases bearing CWP Nos. 18451 of 2003, 12409 of 2004, 20021 of 2006, 7992 of 2008, 2705, 3408, 6317, 4280 and 20394 of 2010 shall stand disposed of as common question of law and issues are involved. However, for the sake of convenience, the facts are being extracted from CWP No. 18451 of 2003.

2. The present writ petition has been filed under Articles 226 /227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated nil (Annexure P-4) and order dated 20.11.1995 (Annexure P-5), vide which, the private respondents have been regularized in service with effect from 01.11.1986 and have been made senior to the petitioners. A further prayer has also been made for issuance of direction to official respondents to treat the private respondents as junior to the petitioners as the petitioners were directly recruited whereas the private respondents had failed after competing with the petitioners and also for quashing of order dated 10.07.2003 (Annexure P-12) passed in pursuance of directions issued by this Court on 23.01.2003.

3. Briefly, the facts of the case are that in the Development and Panchayat Department, Haryana, several posts of Junior Engineers were lying vacant since the year 1980-1981. For that purpose, an Advertisement No. 8/81 was issued by the Subordinate Services Selection Board, Haryana (hereinafter called as "The Board") but the regular selection could not take place because of one or the other reason and ultimately, the said posts were filled up by appointing some of the petitioners as well as all the private respondents on ad-hoc basis. Thereafter, again the vacancies were advertised by the Board in March, 1988 vide Advertisement No. 3/88 and in response thereto, the petitioners along with private respondents and some other persons, who were working as Junior Engineers on ad-hoc basis, in the respondent-Department participated in the selection process. The Board recommended a list of 81 candidates to the Department on 08.06.1989, whereby, the petitioners were selected whereas the private respondents could not be selected. Thereafter, on 15.06.1989, another list comprising of 87 candidates was recommended by the Board and the selected candidates including some of the petitioners were appointed in the Department from time to time. The petitioners have been working continuously since their appointment.

4. The seniority list of Junior Engineers was also circulated from time to time. In the earlier seniority list dated 18.10.1995, the petitioners were placed above the private respondents and other persons who were appointed on ad-hoc basis and were allowed to continue. Thereafter, the State Government framed a Policy dated 30.09.1998 for regularizing all the Class III employees who had completed two years of ad-hoc service as on 30.09.1988. Subsequently, another Policy dated 28.02.1991 was issued whereby private respondents were regularized in service with effect from 31.12.1990. The petitioners were ranked senior to the private respondents as they were appointed directly whereas the private respondents were regularized subsequently. On 17.11.1995 and 20.11.1995, the services of private respondents were regularized with effect from 01.11.1986 in view of directions issued by Hon"ble the Apex Court in "State of Haryana vs. Piara Singh" and revised seniority list was issued. Resultantly, the petitioners, who were directly recruited through the Board and were also senior to the private respondents, were ranked junior to the private respondents vide seniority list circulated on 21.05.2002.

5. The petitioners have challenged their seniority viz-a-viz private respondents by raising various grounds.

6. Learned counsel for the petitioners submits that the private respondents were regularized retrospectively. They have been ranked senior by pushing the petitioners and this action of the respondents is contrary to the settled position of law. Moreover, the private respondents were working on ad-hoc basis and they could not be selected in the cadre of regular employees like the petitioners. Learned counsel further submits that the private respondents, who were rejected candidates, cannot be given seniority over and above the selected candidates by

granting the benefit of retrospective regularization on the basis of executive instructions. The posts were advertised in the year 1981 but the vacancies were filled up by making ad-hoc appointments. Some of the petitioners and all the private respondents were appointed on ad-hoc basis. The private respondents could not be selected and they were allowed to work on ad-hoc basis whereas the petitioners were selected as well as appointed and were ranked as senior but subsequently, in the revised seniority list, the petitioners have been ranked as juniors to the private respondents. It is also the argument of learned counsel for the petitioners that the private respondents and other ad-hoc appointees were not appointed by following the proper procedure as no selection committee was constituted at the time of their recruitment. Learned counsel for the petitioners have also relied upon judgments of Hon"ble the Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, , *State of W.B. and Others Vs. Aghore Nath Dey and Others*, , *R.S. Garg Vs. State of U.P. and Others*, , *Excise Commissioner, Karnataka and another Vs. V. Sreekanta*, as well as judgment of this Court in *V.K. Chhibber vs. State of Punjab*, 1995(2) SCT 159 in support of their contentions.

7. Written statements on behalf of State as well as the private respondents have already been filed, which are on record.

8. Learned State counsel as well as learned counsel for private respondents submits that the claim of the private respondents for regularization was considered as per Policy of the State Government and they were also given the benefit of their ad-hoc service. They were regularized with effect from 01.11.1986 and as such, they were ranked senior to the petitioners. Even in the seniority list circulated on 20.11.1995, the private respondents were ranked senior to the petitioners but that seniority list was never challenged by the petitioners. Thereafter, another seniority list of Junior Engineers was circulated in the year 1999 and 2002 and again private respondents were ranked senior to the petitioners and said seniority list was also not challenged by the petitioners. It has also been argued by the learned counsel appearing for private respondents that the present petitions are liable to be dismissed for non-joinder of necessary parties as all candidates, who were regularized with effect from 30.09.1988, have not been impleaded as necessary parties. Learned counsel for the private respondents also submits that a wrong averment has been made that the private respondents had appeared in the test/interview but they were not selected as some of the private respondents had already been regularized and there was no need for them to participate in the selection.

9. Heard arguments of learned counsel for the petitioners as well as learned State counsel and learned counsel appearing for the private respondents and have also perused the impugned orders as well as other documents available on the file.

10. Admittedly, certain posts of Junior Engineers were advertised in the month of

August, 1981 but regular selection could not take place. The petitioners as well as the private respondents were appointed on ad-hoc basis against the said posts. Thereafter, the posts were again advertised in the month of March, 1988. The petitioners, private respondents and some other persons participated in the selection and total 81 candidates including the petitioners were selected and appointed on ad-hoc basis after due recommendation but the private respondents were not selected. In the seniority list dated 18.10.1995, all the petitioners were ranked senior to the private respondents as well as other persons, who were appointed on ad-hoc basis. Thereafter, as per Policy of regularization dated 16.02.1987 issued by State Government, the employees, who had completed two years of service as on 01.11.1986, were to be regularized subject to certain conditions resulting wherefrom, the private respondents were regularized with effect from 31.12.1990. Subsequently, as per order dated 17.11.1995 and 20.11.1995, the services of private respondents were also regularized retrospectively with effect from 01.11.1986 and accordingly, seniority list was revised. As per revised seniority list, the petitioners were ranked junior to the ad-hoc employees, who were regularized with effect from 01.11.1986. The petitioners filed CWP No. 1002 of 2003, which was disposed of with a direction to official respondents to decide the representation of the petitioners within a period of four months after affording an opportunity of hearing. In view of the said directions, the claim of the petitioners was rejected on 10.07.2003. Now the petitioners by way of filing the present writ petitions have challenged the aforesaid orders dated 17.11.1995, 20.11.1995 and 10.07.2003. One Narender Singh Dalal filed CWP No. 20021 of 2006 wherein order dated 20.09.2006 was challenged. The said writ petition was allowed vide order dated 07.05.2009. Even the LPA filed against the aforesaid judgment was also dismissed on 02.03.2010. Thereafter, the petitioner moved an application for clarification of said order dated 07.05.2009 stating therein that he was declared senior to the private respondents but it was not specifically mentioned that he should be considered for promotion to the post of Sub Divisional Engineer and XEN from the date his juniors were promoted. This Court vide order dated 17.01.2011 clarified that the promotion is a logical corollary of the order dated 07.05.2009, allowing the writ petition but a further direction was also issued that the exercise of promotion be completed within three months. Some of the private respondents filed LPA No. 823 of 2009 and LPA No. 438 of 2010 challenging the order dated 07.05.2009. One person also filed CWP No. 13820 of 2009 for review of order dated 07.05.2009. All three cases were clubbed together and by a common order dated 26.03.2012, the same were dismissed.

11. The petitioners have challenged the retrospective regularization and the resultant ad-hoc promotion of the private respondents whereas the issue in dispute has already been settled. The issue in CWP No. 20021 of 2006 was the same as petitioner- Narender Singh Dalal was appointed on regular basis whereas the private respondents were appointed on ad-hoc basis. The petitioner, who was a regular employee and was claiming seniority over and above the

persons, who were subsequently regularized, was held senior viz-a-viz the private respondents. That judgment of Single Bench dated 07.05.2009 was challenged by State of Haryana in LPA No. 297 of 2010 and the same was dismissed vide order dated 02.03.2010. Thereafter, an application was moved for clarification of order dated 07.05.2009 and the same was disposed of with certain clarifications. Moreover, the services of the private respondents were regularized in view of decision dated 26.09.1988 passed by this Court in LPA No. 1571 of 1987 and that order was never challenged by the petitioners.

12. In view of the facts as mentioned above, the controversy in the present case has already been decided by the Division Bench of this Court in CWP No. 17062 of 2009 and CWP No. 19155 of 2009 decided on 01.09.2010. It is also relevant to mention here that the judgment passed in Narender Singh Dalal's case (supra) was also considered by the Division Bench.

13. Hence, there is no merit in the contentions raised by learned counsel for the petitioners and the writ petitions being devoid of any merit are hereby dismissed.