

(2013) 07 P&H CK 0841
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2230 of 2011

Rameshwar Dayal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0841

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Ram Niwas Sharma, for the Appellant; Harish Rathee, D.A.G.
Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—The petitioners served the Haryana Roadways of the Transport Department, Haryana as Conductors on ad-hoc and then temporary basis from 1986-1987 and were regularized from the dates of their initial engagement by retroactive order dated 6.10.2008 passed by the Transport Commissioner, Haryana, Chandigarh. The Director General, State Transport, Haryana, issued a direction dated 15.1.2009 to regularize the services of Drivers and Conductors according to extant regularization policies and the cut-off dates fixed therein for minimum prior service spent on ad hoc/temporary basis. Over the years the Haryana Government issued successive policies to regularize daily wage/ad-hoc service. These Policies are dated 19.2.1979, 1.1.1980, 19.1.1984, 16.2.1987, 28.4.1987, 28.12.1991, 1.6.1993 and 7.3.1996. Each of these Policies required completion of two years of continuous service on the cut-off date fixed in the policies. The orders dated 24.10.2008 and 31.10.2008 issued by the Transport Commissioner, Haryana were found to have been issued not in accordance with the instructions/policies applicable from time to time. The petitioners were thus served a show cause notice dated 6.9.2010 containing reasons necessitating change of date of regularization. An opportunity of hearing was offered to the petitioners which they availed of. Thereafter, feeling aggrieved

they served a legal notice dated 4.6.2010 (P-7) containing their statement of the case.

2. In the above background, the impugned order dated 12.5.2010 was passed. The operative part of the order reads as follows:

Subject: Regularization of services Drivers & Conductors-are re-fixation of seniority thereof

Reference on the subject cited above.

The matter regarding regularization of services of Drivers/Conductors of Haryana Roadways has been considered at length and it has been decided by the Govt. that only for the promotion sake the inter-se-seniority of the Drivers/Conductors who have been/or are to be regularized after 19.02.1979 as per Govt. direction relevant at that point of time may be finalized from completion of 240 days of continuous service from their appointment but their regularization and all other benefits should be as per the Govt. instructions relevant from time to time. In those cases where regularization had wrongly been done, it may be re-done notionally as per Govt. instructions and no recoveries be made of financial benefits already gained to them.

(Emphasis supplied)

3. As a consequence of the show cause, the dates of regularization of the petitioners have been altered from 3.3.1987, 2.10.1987 and 27.10.1988 to 1.1.1991 under the first available Policy dated 28.12.1991. But for the Policy, the petitioners were not capable of being conferred status as full-fledged Government servants much less from the dates claimed in this petition. The alteration of the dates by the impugned order is notional. In doing so the Government has decided not to make recovery by virtue of change of date of regularization. The circular letter dated 12.5.2010 lays down a salutary principle that only for the sake of promotion, the inter se seniority of drivers/conductors who have been or are to be regularized from 19.2.1979 as per Policies issued from time to time may be finalized from the date of completion of 240 days of continuous service from their appointment. However, regularization and all other benefits should be as per Government instructions relevant from time to time. This is how the date of regularization was re-done notionally.

4. Because of change of date of regularization to 1.1.1991, the petitioners complain before this Court that their dates of grant of 2nd ACP scales stands postponed. The Haryana Civil Service (Assured Career Progression) Rules, 1998 grant in lieu of and for lack of promotional chances or avenues to eligible employees as have rendered 10/20/30 years of "regular satisfactory service" the pay scales of the promotional post to avoid stagnation. With the alteration of the date of regularization by correction of the orders passed by the Transport Commissioner, Haryana, it cannot be said that the services rendered prior to 1.1.1991 was legally regular as understood in Secretary, State of Karnataka and

Others Vs. Umadevi and Others, by the constitution Bench of the Supreme Court. The benefit of the 2nd ACP of 20 years regular satisfactory service would count only from 1.1.1991.

5. Be that as it may, it is always open to the State to correct a mistake committed by it, see: Full Bench of this Court decided long ago in *Sunder Lal and Others Vs. The State of Punjab and Others*, . This inherent power is not fettered or curtailed by time. A mistake when brought to the notice of government can always be rectified at any time. There is in fact a legal necessity to do so to maintain purity of government record. Governments work through the agency of man and mistakes happen often without ill will, official bias or malice in fact. There are no limitations on exercise of such powers provided power is exercised reasonably and for good and sufficient reason or cause and does not result in causing substantial injustice to an individual in its correctional aftermath.

6. The petitioners do not, in my view, have a vested and accrued right to the benefit of the 2nd ACP scales of pay from the dates claimed i.e. 3.3.1987, 2.10.1987 and 27.10.1988. The grant of benefit of 1st ACP scale on completion of 10 years of service w.e.f. 3.3.1987, 2.10.1987 and 27.10.1988 by mistake and application of wrong regularization policy not covering the case of the petitioners would not confer any automatic, consequential or protected right in them to the 2nd ACP scale with effect from the earlier dates except maybe in so far as recoveries of money are concerned for which the principles laid down in *Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others*, would apply. The Government is not about to make a recovery from the petitioners of monetary benefits passed on under the 1st ACP scale, therefore, the petitioners stand financially protected and they cannot be said to be adversely affected in law by any wrong committed in 2008 by the State Government in the past. The 2nd ACP has been granted to the petitioners on 1.3.2011 with next increment falling due on 1.7.2011, along with the ACP increment. The respondents are under no statutory or legal compulsion to decide the legal notice 4.6.2010 in case they have not so far. The petitioners do not have a case for interference. No merit. Dismissed.