

(2015) 12 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 21929, 23974 of 2012 and 14652 of 2013

Sanjeev Bagga and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-12-2015

Acts Referred:

Citation : (2015) 12 P&H CK 0104

Hon'ble Judges : Deepak Sibal, J.

Bench : Single Bench

Advocate : J.S. Maanipur, Ravinder Malik and Jastej Singh, Advocates, for the Appellant; Shruti Jain Goyal, AAG, for the Respondent

Judgement

Deepak Sibal, J.—The present judgment decides three writ petitions being C. W.P. Nos. 21929, 23974 of 2012 and 14652 of 2013 as the issues of law and fact raised in them are the same. However, for the sake of convenience, facts are being extracted from C. W.P. No. 21929 of 2012 - Sanjeev Bagga and others v. State of Haryana and others

2. The relevant facts, which need to be stated for adjudicating upon the issues raised in the petition are that the petitioners between the years 1989 to 1990 were engaged as Water Pump Operators (WPOs) on daily-wage basis. On the basis of policy dated 18.03.1996, their services were ordered to be regularized with effect from 01.02.1996, but not as WPOs, which is a Class-III post, but as Pump Attendants - a Class-IV post. In the year 2008, the petitioners represented against such action, which was favourably considered by the respondents, who, after creation of new posts of WPOs with effect from 01.02.1996, ordered regularization of the services of the petitioners as WPOs retrospectively with effect from the aforementioned date.

3. Similarly situated persons like the petitioners, namely Subhash Chand and others had, at an earlier point of time, impugning the action of regularization of their services on Class IV posts, in spite of the fact that they, like the petitioners,

were appointed and were discharging their duties on the posts of WPOs - a Class III post, knocked the doors of this Court through C. W.P. No. 15112 of 1999 - Subhash Chand and others v. State of Haryana and others, which was admitted for regular hearing. On coming to know of the order passed in the case of the petitioners, the aforesaid Subhash Chand and others, through an application moved in the pending case, sought and got a direction issued to the respondents to consider their cases also in the light of the order passed regularizing the services of the petitioners on Class III posts of WPOs. However, while considering the cases of Subhash Chand and others, not only was their claim rejected, through the impugned order dated 12.10.2012 (Annexure P-16), the respondents also withdrew the benefit of regularization of the services of the petitioners as WPOs.

4. I have heard counsel for the parties and with their able assistance, have also gone through the entire record of the case.

5. Once the benefit of regularization of services of the petitioners on the posts of WPOs had been given to them, the same could not have been withdrawn without following the principles of natural justice. It is the admitted case that no notice or any opportunity of hearing was given to the petitioners before withdrawal of the benefit of regularization granted to them on the posts of WPOs with effect from 01.02.1996. The impugned action, being in violation of principles of natural justice, is thus illegal.

6. perusal of the impugned order further shows that the same is bereft of any reason. On that ground also, the impugned order cannot be sustained.

7. Even otherwise, on merits also, the position is no different. A Division Bench of this Court in C. W.P. No. 18974 of 1998 - Abdul Kayyum and another v. State of Haryana and other, decided on 26.09.2000, while considering a similar issue, has held as under :--

"The primary reason for denial of the relief of regularisation as explained by the respondents is that though the petitioners were Matriculates but they did not possess the technical qualification of ITI certificate and, therefore, they could not be considered for regularisation on class-III post of Water Pump Operator. Another reason for declining the relief was that the petitioners were recruited as daily rated employees in the category of skilled workers on muster rolls and not as daily rated class-III employees as is being claimed by them. On the face of the above, the plea taken by the respondents is against the requisite qualification prescribed for the post of Water Pump Operator Grade-II as indicated in Annexure R-1. It is further indicated in Annexure R-I that in the absence of ITI certificate the requirement is only of being a literate with a minimum of five years experience. Admittedly, the petitioners are Matriculates and they had been working on the post of WPO-II/APO continuously for five years on daily wages on the date when their cases for regularisation were considered. Regularisation of services of an employee by itself implies the regularisation of services he has

rendered already as daily wager and it is only to be regularised in the case of the petitioners also as they were working on daily wages as WPO-II/APO. At the time of regularisation, they cannot be denied the benefit of regularisation on the same post on the ground that it will fall in class-III post. The petitioners have been regularised on the post of Pump Attendants which is a class-IV post and this on the face of it is contrary to the spirit of the notifications issued by the State Government for regularisation of services of the daily rated employees. A similar controversy has already been settled by this Court in Civil Writ Petition No. 19708 of 1998 (Tej Parkash Gaur and another v. State of Haryana and others) and Civil Writ Petition No. 19709 of 1998 (Harish Chander Versus State of Haryana and others), both decided on 14.09.1998. In both these petitions, the petitioners were inducted into the service of the respondent-Department against the post of Water Pump Operator Grade-II, which was earlier designated as Assistant Pump Operator, on daily wage basis. However, their services were regularised against the post of Pump Attendants, which is a class-IV post. They challenged this action by means of aforesaid writ petitions. The writ petitions were allowed and the respondents were directed to regularise the petitioners in class-III service against the post of WPO-II/APO in terms of the instructions as are contained in Annexures P-3 and P-4 with this petition. It was observed in the aforesaid two decisions that the conclusion arrived at therein was supported by a decision of the apex Court in Civil Appeal Nos. 1579-80 of 1998, titled as Amrit Lal versus State of Haryana and others, decided on 18.3.1998 and from the decisions of this Court in CWP No. 15051 of 1995, titled as Puran Chand and others Versus State of Haryana and others, decided on 13.8.1996.

It goes without saying that the entries contained in the service books of the petitioners which were duly verified by the concerned authorities manifestly show that the petitioners were continuously working as WPO-II/APO and discharging their duties as such to the satisfaction of the authorities. There is thus, no reason why they should be downgraded to Class-IV posts at the time of their regularisation.

For the reasons aforesaid, these writ petitions are allowed. The respondents are directed to regularise the services of the petitioners on class-III post of Water Pump Operator Grade-II/Assistant Pump Operator in terms of the instructions dated 7.3.1996 and 18.3.1996. The petitioners shall also be entitled to all consequential benefits that may flow on their regularisation as directed above. These directions shall be complied with within a period of three months from the date of receipt of a copy of this order."

8. To the same effect is another Division Bench judgment of this Court rendered in C. W.P. No. 19708 of 1998 - Tej Parkash Gaur and another v. State of Haryana and others, decided on 14.09.1999, wherein it has been held as under :--

"We find no justification in the action of the authorities in regularising the petitioners against the post of Pump Attendants. The claim of the petitioners for regularisation was liable to be considered against the post on which they had

been engaged by the authorities. It is not disputed that the petitioners had actually been engaged to discharge duties as Water Pump Operator Grade-II/ Assistant Pump Operator. They have duly discharged duties as such with effect from August 1989 and May 1990, respectively. They have also been paid emoluments for discharging duties against the aforesaid post. It is, therefore, wholly unreasonable to consider the claim of the petitioners for regularisation against a post inferior to the post against which they have been discharging their duties. The instructions dated 7.3.1996 and 18.3.1996 lay down terms and conditions for regularising services on Class III and Class IV posts. The petitioners have been discharging their duties against class III post of Water Pump Operator. They fulfill all terms and conditions stipulated in the aforesaid instructions. They also possess the essential qualifications stipulated for appointment to the post in question. In the aforesaid view of the matter, the petitioners are entitled to regularisation against the post of Water Pump Operator Grade II/Assistant Water Pump Operator in class III service.

The conclusion drawn hereinabove, finds support from the decision of the Apex Court in Civil Appeal Nos. 1579-80 of 1998, titled as Amrit Lal versus State of Haryana and others decided on 18.3.1998, and from the decision of this Court in CWP No. 15051 of 1995 titled as Puran Chand and others v. State of Haryana and others, decided on 13.8.1996.

For the reasons recorded above, this petition is allowed. The respondents are directed to regularise the petitioners in class III service against the post of Water Pump Operator Grade II/Assistant Pump Operator in terms of the instructions dated 7.3.1996 and 18.3.1996. The aforesaid direction shall be complied with within a period of one month from the date of receipt of a copy of this judgment by the respondents. The petitioners will also be entitled to all consequential benefits in the nature of pay and allowances etc. which may accrue to them as a consequence of their regularisation."

9. It is the admitted position that against the aforesaid judgments, Special Leave Petitions preferred by the State of Haryana have been dismissed.

10. The above-quoted judgments rendered by the Division Bench were considered and followed by me in a recent judgment rendered in C. W.P. No. 15820 of 1998 - Sanjeev Sharma and others v. State of Haryana and others, decided on 17.11.2015. Thus, it can be seen that even on merits, the issue has to be decided in favour of the petitioners.

11. A combined reading of the afore-quoted judgments in Abdul Kayyum's case (supra) and Tej Parkash Gaur's case (supra) settles the law in favour of the petitioners as it has been conclusively held therein that persons like the petitioners, who are working as WPOs - a Class III post, are required to be regularized against such posts and not against Class IV posts of Pump Attendants.

12. The issue of delay has been raised on behalf of the State of Haryana to deny relief to the petitioners. Counsel for the State has submitted that the cause of

action in the case of the petitioners arose in the year 1996, whereas the petitioners made their first representation only in the year 2008. To buttress her submission, reliance is placed upon a judgment of this Court in Krishan Kumar and others v. State of Haryana and others - C. W.P. No. 9813 of 2012. decided on 21.11.2014.

13. The facts on record reveal that the representation by the petitioners made in the year 2008 was favourably considered by the State itself and relief of regularization of their services on the posts of WPOs with retrospective effect from 01.02.1996 was granted to them. This benefit granted to the petitioners was withdrawn in the year 2012, which gave them a fresh cause of action. No such situation was there in Krishan Kumar's case (supra) and thus, the cited judgment is distinguishable on facts.

14. Counsel for the State of Haryana has also submitted that the earlier order by the State granting regularization of services of the petitioners as WPOs - a Class-III post with effect from 01.02.1996 was on account of their connivance with the ministerial staff in the office of Engineer-in-chief, Public Health, Engineering Department (Haryana). She submitted that these officials have been charge-sheeted.

15. The charge-sheets issued to the aforesaid officials of their outcome have not been placed on the record of the case. Even otherwise, the benefit granted to the petitioners, which is sought to be withdrawn through the impugned order, was in line with the law already settled by two Division Bench judgments of this Court in Abdul Kayyum's case (supra) and Tej Parkash Gaur's case (supra). These judgments are dated 26.09.2000 and 14.09.1999 respectively and the benefit was granted to the petitioners on 30.06.2011 i.e. much after the law had been settled by this Court. The record of the case further reveals that the order dated 30.06.2011 granting the benefit of regularization of services to the petitioners as WPOs with effect from 01.02.1996 was passed after the same had been scrutinized by the Engineer-in-Chief, as also the Chief Secretary to Government of Haryana. After scrutiny of their cases, before passing of order dated 30.06.2011, the Governor of Haryana, through order dated 22.04.2011, sanctioned the posts of WPOs with effect from 01.02.1996 making way for passing of the order dated 30.06.2011 regularizing the services of the petitioners as WPOs with effect from 01.02.1996.

16. In view of the above, I have little hesitation to allow these three writ petitions being C. W.P. Nos. 21929. 23974 of 2012 and 14652 of 2013. Resultantly, the impugned orders dated 12.10.2012 (Annexure P-16) in C.W.P. No. 21929 of 2012. 12.10.2012 (Annexure P-16) in C. W. P No. 23974 of 2012 and 26.10.2012 (Annexure P-17) in C. W.P. No. 14652 of 2013 are quashed, with all consequential benefits. However, arrears are ordered to be restricted to 38 months prior to the date the petitioners had initially represented their case with the respondents for the first time in the year 2008 claiming regularization of their services as WPOs.

17. No costs.