
(2015) 11 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 15820 of 1998 and 5926 of 2013

Sanjeev Sharma and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Citation : (2015) 11 P&H CK 0133

Hon'ble Judges : Deepak Sibal, J.

Bench : Single Bench

Advocate : Ravinder Malik (Ravi), Advocate, for the Appellant; Shruti Jain Goyal, AAG, for the Respondent

Final Decision : Allowed

Judgement

Deepak Sibal, J.—The present judgment adjudicates upon two writ petitions being C. W.P. No. 15820 of 1998 and C. W.P. No. 5926 of 2013 as the issues of law and fact raised in both these petitions are similar. However, for the sake of convenience, facts are being extracted from C. W.P. No. 5926 of 2013 - Subhash Chand and others v. State of Haryana and others.

2. The uncontroverted facts emerging from the perusal of the record and from the arguments advanced by the learned counsel for the parties are that between the years 1989 to 1992, the petitioners were engaged as Water Pump Operators/ Assistant Pump Operators on daily wages basis. On the basis of policy dated 18.03.1996, the cases of all the petitioners were considered and their services were regularized w.e.f. 01.02.1996. However, they were not regularized as Water Pump Operators/Assistant Pump Operators, which is a Class-III post, but as Pump Attendants - a Class-IV post. The petitioners protested against such action on the part of the respondents and when their protests remained unresponded, they approached this Court through C. W.P. No. 15992 of 1999, which was admitted for regular hearing. While the writ petition of the petitioners was pending, the respondents favourably considered the representations of identically placed employees and vide order dated 22.04.2011, granted them relief, as was

being claimed by the petitioners. Appending therewith the order dated 22.04.2011, the petitioners moved an application in the pending writ petition filed by them and prayed for disposal of the same by directing the respondents to consider their claim in the light of order dated 22.04.2011 passed in the case of identically placed persons. This Court favourably considered the prayer made by the petitioners and vide order dated 22.03.2012, disposed of the writ petition with a direction to respondent No. 1 therein to consider the claim of the petitioners in the light of the order dated 22.04.2011.

3. In compliance with the aforesaid order of this Court, the claim of the petitioners was considered, but rejected. It was mentioned that the Government had re-considered the relief granted to the identically placed persons through order dated 22.04.2011 and had withdrawn the same. The present petition has been filed impugning the rejection of their representation.

4. It is the admitted position that all the petitioners, since the years 1989-1992, were working as Water Pump Operators/Assistant Pump Operators, which is a Class-III post. It is further not disputed that they had the requisite number of years of service for being favourably considered under the regularization policy. The only reason given by the respondents in the counter filed to the writ petition for not regularizing the services of the petitioners as Water Pump Operators/Assistant Pump Operators, but as Pump Attendants, is that the petitioners were not possessing the qualification of ITI.

5. The aforementioned reason cannot stand between the petitioners and their claim for regularization on the posts of Water Pump Operators/Assistant Pump Operators as this issue is no longer res integra. Two Division Benches of this Court have considered and answered the question raised in the writ petition against the respondents. In C. W.P. No. 18974 of 1998 - Abdul Kayyum and another v. State of Haryana and others, decided on 26.09.2000, a Division Bench of this Court has held as under:--

"The primary reason for denial of the relief of regulation 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 regulation 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-1 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. Regulation of services of an employee by itself implies the regulation 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."

6. Similarly, in C. W.P. No. 19708 of 1998 - Tej Parkash Gaur and another v. State of Haryana and others, decided on 14.09.1999, which is also a judgment rendered by a Division Bench of this Court, 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 regulation 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 regulation 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."

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

8. Learned State counsel raised the issue of estoppel to urge that the petitioners, having accepted their order of regularization on Class-IV posts, cannot be allowed to raise the claim made in the present petition for regularization of their services on Class-III posts of Water Pump Operators/Assistant Pump Operators. In support of her argument, a judgment of the Apex Court in Surendra Kumar and Others Vs. Greater Noida Industrial Development Authority and Others was cited.

9. The petitioners have been agitating their claim on Class-III posts since the year 1998. In fact, they had earlier approached this Court through C. W.P. No. 18974 of 1998 which remained pending and disposed of only in the year 2012, directing the respondents to consider the case of the petitioners. In compliance with the orders of this Court, the case of the petitioners was considered but

rejected. Assailing such action, they approached this Court through the present writ petition. In the aforementioned facts, the principle of estoppel would not apply to the case in hand. Even the judgment of the Apex Court in Surendra Kumar's case (supra) is based on entirely different facts. The issue, which was considered and decided in that case, was whether the policy decision extending the benefit of regularization to contractual employees against vacant posts would be deemed to regularize their posts from a retrospective date i.e. when the said posts were first advertised. Such issue does not arise in the present case.

10. In view of the aforesaid position on facts and the settled position of law, these writ petitions being C. W.P. No. 15820 of 1998 and C. W.P. No. 5926 of 2013 are allowed. The respondents are directed to regularize the services of the petitioners on Class-III posts of Water Pump Operators/Assistant Pump Operators in term of the regularization policy of the Government dated 18.03.1996, with all consequential benefits.

11. The needful be done within three months from the date of receipt of a certified copy of this order.