

(2000) 12 P&H CK 0152
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13529 of 1999

Satya Dev

APPELLANT

Vs

Haryana Vidut Prasaran Nigam Ltd.

RESPONDENT

Date of Decision : 08-12-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2000) 12 P&H CK 0152

Hon'ble Judges : N.K. Sud, J;M.L. Singhal, J

Bench : Division Bench

Advocate : Mr. S.K. Mittal, for the Appellant; Mr. Shailendra Kashyab, for the Respondent

Judgement

M.L. Singhal, J.—Satya Dev has been working part time water carrier cum mali since 1.2.1981 in the office of respondent No. 4. His duty is to fetch water from a distant place, store the same in the office and serve it to the employees working in the office. Besides, he has also to water the plants in the office and look after them. Though the job being held by him is labelled as part time, it is in fact a whole time job as he has to work whole day long as water carrier and mali. He was appointed on the post of part time water carrier cum mali as contingent staff though against the regular vacant post of water carrier cum mali. Although there was regular vacant post of water carrier cum mali, the respondents used to appoint part time employees instead of regular/daily wages employees for the reason that they have to pay less wages to the part timers. In the year 1983-84, he made representation to the Haryana State Electricity Board that his part time appointment be converted into whole time appointment as wages being paid to him as part timer were very low. His representation was duly recommended by the respondent No. 3 to respondent No. 2 and he sought the permission of respondent No. 2 to appoint him as daily wager. On 28.3.85, respondent No. 3 again wrote to respondent No. 2 that the employees working as part time water carrier cum mali, chowkidars, sweepers on contingent basis should be made regular. List of such employees working on contingent basis since several years

past was also sent with that letter. It was also mentioned in that letter that these persons be made regular against the posts of sweepers, water carriers and chowkidars, etc. His name finds mention in that list at serial number 4. On 28.8.85, respondent No. 3 granted approval to respondent No. 4 for appointing him as mali on daily wages basis at 1332 KV Sub-station Ateli and prescribed that he will also discharge the duties of part time water carrier in the office of respondent No. 3 without any extra remuneration and he will be paid daily wages as per the rates fixed by the Deputy Commissioner, Narnaul. The said letter is Annexure P-3. Letter was not given effect to by respondents 3 and 4 saying that respondent No. 2 has not approved their recommendation. He continued as part time employee and was paid as part timer. Initially, when he was appointed part time employee, he was being paid Rs. 200/-. In the year 1987, he was paid Rs. 300/-. In the year 1993, he was paid Rs. 428/-. In the year 1998, he was paid Rs.660/- per month. This amount of salary is highly inadequate keeping in view the duties performed by him and the high price index prevailing.

2. Respondent No. 1 (erstwhile Haryana Stale Electricity Board) framed policy regarding regularisation of those working on daily wages, ad hoc basis and contingent basis. No policy was, however, framed for regularisation on 27.12.1996. Annexure P-5 for regularisation of his part time service in view of the instructions pertaining to regularisation of daily wagers contending that he was working like a whole time daily wager but was being paid a very meagre salary of Rs. 660/- per month. Respondent framed a policy for regularisation of part time class IV employees vide office order dated 20.7.99. According to this policy, a part time class IV employee who is working and has completed 5 years of continuous service on the date of issuance of this policy only shall be given preference for being considered for regular appointment against the post and whenever the competent authority decides to fill up such vacant post through direct recruitment, such part time employee will have to apply for such post when ever the same is advertised. Part lime worker has also to fulfil certain conditions viz. if he was recruited through employment exchange, he must have three years experience on his post. He should possess the prescribed qualifications for the post and his work and conduct should have been satisfactory for regularisation of class IV employee.

3. Petitioner's contention is that this policy Annexure P-6 is a farce and merely an eye wash. The said policy is unfair and violative of Article 14 of the Constitution of India. He made representation in the light of the said policy for regularising his services. His representation was rejected through Annexure P-7.

4. Through this civil writ petition filed under Article 226/227 of the Constitution of India, the petitioner has prayed for the quashing of policy dated 20.7.99 Annexure P-6 pertaining to regularisation of part lime class IV employees being unreasonable and violative of Article 14 of the Constitution of India. He has further prayed for the quashing of order dated 13.8.99 Annexure P-7 vide which his representation was rejected. He has further prayed for the issuing of writ

directing the respondents to regularise his service on which he has been working for the last 18 years. Respondents contested this writ petition urging that his case for regularisation was considered in the light of the policy and was rejected.

5. Petitioner has been working as part time water carrier cum mali (a class IV post) since 1.2.1981 with the respondents. When he was appointed on 1.2.1981 on the post of water carrier cum mali, the volume of work might not have been adequate enough as to justify a whole timer on the post of water carrier cum mali. In the course of time if the volume of work on the job of water carrier cum mali has increased to the extent that a whole timer is required, the petitioner cannot be called upon to compete with others for the post of water carrier cum mali. He has to be regularised keeping in view his work and conduct as part time water carrier cum mali. If the post of water carrier cum mali on whole time basis is thrown open for recruitment, everybody eligible will apply for that post and in competition the petitioner might not be able to make the required grade. A part timer is required to be regularised and made whole timer if the volume of work justifies that his should be a whole time job. It was held in C WP No. 10774 of 1999 decided on 4.2.2000 by a Division Bench of this Court that those of the petitioners who have rendered sufficient service with the respondents deserve to be regularised on their respective posts. At the time they claim to be regularised, it cannot be seen whether he was recruited through employment exchange or he was fulfilling the age criteria.

6. In this case, the petitioner has put in 18 years of service as part timer, his job has to be converted into a whole time job if the volume of work justifies. If the volume of work justifies, the job has to be upgraded to a whole time job and regularised. So, this writ petition is allowed and writ in the nature of mandamus is issued to the respondents to regularise his services against the post of water carrier or mali and upgrade it to a whole time job provided his work and conduct has been satisfactory. Annexure P-6 is quashed in so far as it has affected the claim of the petitioner for being regularised on the post of water carrier or mali (whole time). Annexure P-7 is quashed. In case of the petitioner, nothing shall be seen while considering his claim to regularisation on the post of water carrier or mali (whole time) except his work and conduct on the post in the past. If his work and conduct on the post has been satisfactory in the past, he shall be regularised on the post of water carrier or mali (whole time) without any demur by the respondents irrespective of what their policy is in re regularisation of part timers.

7. Petition allowed