
(2014) 01 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 9899 of 1996 (O and M)

Ved Pal

APPELLANT

Vs

Municipal Corporation Faridabad and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citation : (2014) 01 P&H CK 0083

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : R.S. Sihota and Mr. B.R. Rana, for the Appellant; Mohnish Sharma, for the Respondent

Final Decision : Disposed Off

Judgement

Ritu Bahri, J.—In the present writ petition, directions are being sought to issue a writ in the nature of mandamus directing the respondents not to remove the petitioner from the post of Baledar. The case of the petitioner is that he was appointed on Mustar roll on 01.10.1995 in Sector 18, Faridabad. However, no appointment letter was issued to the petitioner. The M.C. Faridabad-respondent No. 1 issued an order/instructions dated 03.02.1995 directing that all the daily wagers who had completed 180 days but had not completed 240 days, could not be retained in the Corporation. The service of these employees who have completed 240 days for the last 12 months should not be terminated. This decision was taken as some of the workman were allowed to complete 240 days so that they could not be removed from the service of the Corporation. The petitioners service on mustar roll stands sanctioned up to 12.07.1996. The apprehension of the petitioner was that after 12.07.1996, he will not be allowed to work on mustar roll and he will be replaced by any other daily wager. This was against the spirit of Industrial Disputes Act, 1947.

2. The present writ petition was admitted on 29.07.1997 and status quo with regard to the service of the petitioner was ordered. Learned counsel for the petitioner has placed on record the policy dated 01.10.2003 (P-5). As per policy,

the State had issued instructions of regularisation of Group "D" employees who had completed 3 years of service of Group D as on 31.01.1996 and have worked for 240 days in each year. The petitioner was still continuing in service and has put in almost 16 years of service with the Corporation. The service of the many daily wagers have been regularized by the Corporation on 01.10.2003. In compliance of order dated 22.02.2003, the respondent-Corporation has filed an affidavit dated 13.03.2013. Reference has been made to the instructions dated 01.10.2003 and Haryana Government Policy dated 10.02.2004 (amended) wherein it has been stated that service of only those daily wagers shall be regularized who had been engaged before 31.01.1996 provided that they fulfill other conditions. The list of the employees who have been regularized pursuant to these instructions is Annexure R-1 colly. Learned counsel for the petitioner has referred to 3 Beldars mentioned below whose services have been regularized:-

3. The petitioner's case has not been considered and he was eligible to be regularized in view of the Government Instructions dated 01.10.2003.

4. Learned counsel for the respondent on the other hand he stated that the service of these three beldars have been regularized as they fulfill all the conditions as prescribed in the instructions dated 01.10.2003 and amended notification dated 10.02.2004. They fulfill the qualifications for the post of Beldars as per the Municipal Corporation Employees (recruitment and conditions) service Rules, 1998 (for short "Rules 1998"). The qualification reads as under:-

1. Middle Pass;

2. Knowledge of Hindi upto middle standard.

5. The petitioner does not fulfill the requisite qualification for the post of Beldar as he is only 6th pass and is thus not entitled to be regularized as per the policy of 2003 and 2004 (amended). The petitioner was engaged on mustar roll purely on temporary basis w.e.f. 15.06.1996 by the Corporation and the sanction for continuing the petitioner service was upto 14.07.1996 and the petitioner continued in the service of the Corporation in pursuance to the stay order granted by this Court. Pursuant to the instructions issued by the for regularisation, the petitioner should have been in service before 31.01.1996. The case of the petitioner is not covered by the Government Instructions. He has no right to seek regularisation of his service.

6. It is not disputed that the essential qualification as per Rules 1998 is Middle Pass. However, the petitioner was working as Beldar w.e.f. 15.06.1996 and the essential qualification as per the Haryana Municipal Services (Integration, Recruitment & ...) Rules, 1982, Appendix which prevalent at that time was for the post of Beldar that the person should be able to read and write. The essential qualification reads as under:-

7. Hon'ble the Supreme Court in a case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, wherein it has been held that no mandamus can

be issued to regularise and absorb those in regular service who were engaged on daily wages/adhoc without following the procedure prescribed by the Rules applicable for recruitment. In paragraph 26, it has been held as under:-

26. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.

8. Hon''ble the Supreme Court in a case of Union of India (UOI) and Others Vs. Vartak Labour Union, set aside the order of the High Court wherein High Court had given a direction to regularize employees of Union who had put in about 30 years of service with the BRO. However, Hon''ble the Supreme Court gave a directions to the Union of India to consider enacting an appropriate regulation/ scheme for absorption and regularization of the services of the casual workers engaged by BRO for execution of its on-going project.

9. A Division Bench of this Court in a case of Union of India and others vs. Surinder Pal and others, 2012(3) SLR 433 affirmed the decision of the learned Single Judge giving direction to the respondents to frame a scheme in terms of the directions issued by Hon''ble the Supreme Court in Vartak Labour Union''s case (supra).

10. In the facts of the present case, the petitioner was appointed as Beldar on 15.06.1996 and as per the Rules applicable at that time, he was not required to be Middle Pass qualification. He was eligible to be appointed on the post. He has put in almost 16 years of service.

11. The only objection taken by learned counsel for the respondents while referring to Annexure R-1 colly whereby service of 141 safai karamcharis, 9 beldars and 2 Sewerman had been regularized and that the petitioner is not qualified. This objection is no longer subsists as on the date of the appointment he was not required to be Middle pass qualification. The amendments in Rules, 1998 will not be applicable to the facts of the present case.

12. In view of the above, the respondents are directed to consider the case of the petitioner for regularization of service in view of the policy dated 01.10.2003 (P-5) and Haryana Government Policy dated 10.02.2004 (amended) and pass appropriate orders, in accordance with the law. The petition stands disposed of accordingly.