

Before G.S. Sandhwalia, J.

KULDEEP KUMAR—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.18750 of 1997

May 24, 2013

Constitution of India, 1950 - Art. 226/227 - Writ Jurisdiction - Municipal Services (Integration, Recruitment and Conditions of Service) Rules 1982 - Rl. 2(c) & Entry 64, Appendix C - Post of Fireman - Appointment to - Appointment on 30/89 days daily wage/contract basis - Regularized - Termination of services as appointment not through Employment Exchange and without due procedure - Writ Petition challenging such termination dismissed - Petitioner appointed again on 89 days daily wage/contract basis - Now seeking direction for appointment on regular basis from date of offer of appointment - Services of the Petitioner regularized on 17.02.2004 with effect from 01.10.2003 - Held, once Petitioner duly qualified under the Rules, name sponsored through Employment Exchange, duly interviewed by Competent Authority and selected against vacancies available, appointment on daily wages/contract basis not sustainable - Clause in appointment letter that Petitioner would not claim regularization patently illegal and not binding on Petitioner - Writ Petition allowed.

Held, that the Deputy Commissioner, Sirsa instead of appointing the petitioner on regular basis inspite of the fact that the proper selection had been conducted and the petitioner had duly been selected in view of his qualifications proceeded to appoint the petitioner again on daily wages/contract basis against the vacant posts available with a condition that he would not claim regularisation. The petitioner having no choice at that point of time reported for duty on 22.9.1997, however, in his joining report he took the objection that he had a legal right as per order of this Court dated 21.3.1997. Thereafter, the petitioner filed representation dated 24.9.1997 agitating his grievance that he had been appointed on daily wages for a

period of 89 days inspite of the fact that as per instructions dated 3.7.1997 he was to be appointed on regular basis as Fireman. The said representation obviously fell on deaf-ears of respondents forcing the petitioner to approach this Court. Counsel for the petitioner was, thus, well justified in relying upon clause (i) of instructions dated 3.7.1997 (Annexure P-5) issued by respondent no.2- Director, Local Bodies, Haryana, Chandigarh to show that the persons who had been appointed against available vacancy on regular basis should be kept in service and adjusted against the same.

(Para 10)

Further held, that keeping in view the cumulative facts and circumstances of the present case, it would be clear that once the petitioner was duly qualified under the Rules and his name had been sponsored by the Employment Exchange and he has been duly interviewed by the competent authority and selected against the vacancies available, the appointment on daily wages/contract basis is not sustainable. The respondents cannot be permitted to blow hot and cold since they themselves had taken the stand before this Court that the petitioner had been duly selected in a proper interview. Once that was so the question of appointing the petitioner on daily wages basis against the vacant post could not arise. The appointment order mentioning that the petitioner would not claim regularisation was patently illegal and was not binding upon the petitioner in any manner. Even the petitioner in his joining report objected to said appointment at that point of time.

(Para 11)

Further held, that accordingly, the present writ petition is allowed and direction is issued to respondents no.2 and 3 to consider the case of the petitioner for treating him to be appointed on regular basis in the pay scale of ` 950-1500/-with effect from 16.9.1997 and to grant him all consequential benefits arising there from.

(Para 12)

Kamal Sharma, Advocate, *for the petitioner*.

Gurvinder S. Sandhu, Assistant Advocate General, Haryana for respondents No.1 to 3.

P.K.Mutenja, Advocate for respondent no.4.

G.S. SANDHAWALIA, J.

(1) The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of Mandamus directing the respondents to modify/substitute the appointment letter dated 16.9.1997 (Annexure P-4) by offering appointment to the petitioner as Fireman on regular basis as he fulfills the qualifications prescribed by the respondents for the post of Fireman and is fully eligible for regular appointment as Fireman.

(2) The case set up in the writ petition is that the petitioner was working as Fireman in the Municipal Council, Sirsa-respondent no.4 and had passed his matriculation examination with science and also passed the basic course of Elementary Fire Fighting conducted by the Haryana State Fire Fighting Training Centre, Ambala Cantt in December, 1994. The petitioner also fulfills the various other terms and conditions prescribed under the Haryana Municipal Services (Integration, Recruitment and Conditions of Services), Rules, 1982 (hereinafter referred to as "the 1982 Rules") for the post of Fireman. The petitioner along 6 others persons were engaged as Firemen by respondent No.3 on 30 days basis and some time on 89 days basis through the Employment Exchange by a duly constituted Selection Committee. The petitioner was appointed as Fireman by respondent no.4 in the regular pay scale of Rs. 950-1500/- against a vacant post on probation for a period of 89 days vide appointment letter dated 17.12.1996 (Annexure P-3) after which regular appointment was to be given to the petitioner. In the month of January, 1997, the respondents decided to terminate the services of the petitioner as also that of other 6 persons who were appointed as Firemen along with the petitioner and, therefore, the petitioners and his 6 others colleagues challenged the action of the respondents by filing Civil Writ Petition No.1692 of 1997 Rajender Kumar and others Vs. State of Haryana and another. The said writ petition came up for hearing on 21.3.1997 wherein it was noticed that the petitioner no.2 in the said writ petition was the only one who was found eligible and the fresh selection was to be made for the rest of 6 posts. Reference was made to the averments in the said writ petition to plead that in the selection process on 31.1.997, the petitioner had been duly selected. Accordingly, it was further averred that large number of posts of firemen were lying vacant with respondent no.4-Municipal Council, Sirsa and inspite of that the petitioner had been offered appointment for a period of 89 days on daily wages basis/ contract basis vide order dated 16.9.1997. The petitioner had been appointed

in the regular pay scale of Rs. 950-1500/- during the State-wide strike by the municipal employees of the Haryana State and as per instructions of the Government dated 3.7.1997 (Annexure P-5) persons who were appointed in the Municipal Committees/Councils were to be offered appointments on regular basis against the available vacancies. Action of the respondents in giving the appointment to the petitioner on daily wages/contract basis was violation of instructions dated 3.7.1997 (Annexure P-5) and the petitioner had joined the post offered subject to his legal rights in view of the earlier judgment dated 21.3.1997. Accordingly, it was pleaded that the action of the respondents was not justified in appointing the petitioner on daily wages/contract basis for a period of 89 days.

(3) In the written statement filed on behalf of respondents No.1 to 3, it was pleaded that the petitioner and three other persons were appointed as Firemen for a period of 89 days on daily wages/contract basis through Employment Exchange with effect from 6.2.1996 and were allowed to work for 30 days and their services were terminated on 6.3.1996. During the strike period, the petitioner and some other persons had been appointed by the Executive Officer of respondent no.4 without following the due procedure and not through the Employment Exchange in regular pay scale, who was not competent for making such type of appointments. Accordingly, these appointments were declared null and void by respondent no.3-Deputy Commissioner, Sirsa. The employees were to be appointed only on daily wages basis to meet out the situation during the strike period as per instructions of the Government. The writ petition No.1692 of 1997 Rajender Kumar and others Vs. State of Haryana and another filed by the petitioner and six other persons was dismissed on 21.3.1997. The selection of petitioner was made for a period of 89 days on daily wages basis and not on regular basis. After the decision of the writ petition, the petitioner was appointed on daily wages for a period of 89 days on contract basis. Respondent No.3 was not competent to fill up these posts on regular basis and the regular appointments could only be made on the recommendations of the Haryana Subordinate Services Selection Board (hereinafter referred to as "the Board"). The appointment made by respondent no.4 was declared null and void. It was admitted that there were 8 regular posts which were vacant but the said posts could not be filled up since these were to be filled up on the recommendations of the Board and the financial position of respondent no.4 was weak.

(4) Similarly in written statement filed on behalf of respondent no.4, it was pleaded that the Deputy Commissioner was the appointing authority of Fireman and he on the instructions received from the Commissioner & Secretary to Govt. Haryana, Local Govt. Department had authorised Executive Officer to recruit/appoint on daily wages the necessary staff for securing public services maintenance of sanitation as per order dated 13.12.1996. As per Rule 2(c) read with entry 64 of Appendix 'C' of the 1982 Rules, the appointing authority was the Deputy Commissioner and when it was brought to his notice that the petitioner had been appointed on 17.12.1996, he had passed order dated 9.1.1997 declaring the said appointment null and void. The financial position of respondent no.4-Municipal Council, Sirsa was not good and, therefore, it did not deem it fit to fill up regular posts. The persons appointed on regular basis and on daily wages basis could be paid different pay scales and accordingly, it was pleaded that the writ petition be dismissed.

(5) Counsel for the petitioner has accordingly contended that once this Court had earlier opined in its decision dated 21.3.1997 in Civil Writ Petition No.1692 of 1997-Rajender Kumar and others Vs. State of Haryana and another wherein it was held that petitioner no.2 was the only person, who was properly selected, he was entitled for regularisation from 16.9.1997. Since the said offer was in pursuance of the selection approved by this Court and it should have been on regular basis instead of daily wages/contract basis for a period of 89 days. Reference has also been made to the instructions dated 3.7.1997 (Annexure P-5) issued by the Director, Local Bodies, Haryana, Chandigarh that persons who were being appointed during the strike period on regular basis, they should be kept in service and adjusted against available vacancies.

(6) Counsel for the respondents on the other hand submitted that the Deputy Commissioner was appointing authority as per rules and the appointment of the petitioner on 17.12.1996 in regular pay scale by the Executive Officer of respondent no.4-Municipal Council, Sirsa was without authority and had not been approved by the Deputy Commissioner, Sirsa on 9.1.1997. It was further submitted that services of the petitioner and other six persons were already terminated when they approached this Court and their writ petition was dismissed. Thus, the petitioner was entitled for

regularisation as per Clause 2(ii) of the instructions dated 3.7.1997 (Annexure P-5) which provides that the persons who were appointed on daily wages/ adhoc basis were liable to be adjusted against the vacancies available in the district and to be regularised according to the instructions of the Chief Secretary as and when such situation arises. Accordingly, it was submitted that the petitioner stood regularised on 17.2.2004 with effect from 1.10.2003 and placed reliance upon order dated 8.6.2007 placed on record as Mark-A during the arguments wherein his inter-sc seniority had been fixed. The photocopy of the relevant page of his service book showing his date of regularisation with effect from 1.10.2003 was also placed on record as Mark-B.

(7) After hearing counsel for the parties, this Court is of the opinion that the petitioner has been able to show that he was selected in a proper procedure and his name was sponsored by the Employment Exchange, Sirsa in the interview held on 31.1.1997 by a committee constituted by the Deputy Commissioner, Sirsa, who was the appointing authority. This fact has been admitted by the Deputy Commissioner, Sirsa in the reply filed in the earlier writ petition filed by the petitioner along with other employees in which he was arrayed as petitioner No.2. The petitioner fulfilled all the qualifications for the post of Fireman and he was selected against vacant post. This would be clear from the proceedings recorded by the interview committee which reads as under:-

“The candidates, whose names, addresses and other particulars are given in Annexure A, attended the interview for the post of fireman on 31.1.1997. These candidates were interviewed by the Interview Committee. The candidates were also required to undergo practical tests viz: climbing running and swimming etc.

On the basis of physical fitness, knowledge of job skills, practical tests and other requirements under the rules, only one candidate namely Shri Kuldeep Kumar son of Shri Suraj Bhan c/o Haryana Warehousing Corporation, near Suraj Theatre, Sirsa was found suitable for the job and accordingly he is hereby selected.

Sd/
A.D.C.
Sirsa

Sd/
E.O.M.C.
Sirsa

Sd/
Fire Officer
M.C.Sirsa.

(8) The defence taken by the Deputy Commissioner, Sirsa in the earlier writ petition was that the earlier appointment made on 17.12.1996 was not proper by the Executive Officer and, therefore, the petitioner had been called through Employment Exchange, Sirsa and the interview had been held on 31.1.1997. In pursuance of this interview, the petitioner had been duly selected as would be clear from the proceedings of the committee above. A perusal of paragraph No.15 of the written statement filed in Civil Writ Petition No.1692 of 1997 Rajender Kumar and others Vs. State of Haryana and another shows that the plea taken was that petitioner had taken part in the interview held on 31.1.1997 and was thus debarred from challenging the earlier orders of termination. The relevant paragraph of the written statement reads as under:-

“That in reply to para No.15 of the writ petition it is submitted that when all the petitioners have already participated and appeared in the subsequent interview held on 31.1.1997 under the Chairmanship of Additional Deputy Commissioner, Sirsa and after their names were sponsored by Employment Exchange, Sirsa, they have no right now to challenge the said interview in which they all actively participated of their own sweet will, and they have also no right, reason, ground or occasion to challenge the order dated 9.1.1997 because aforesaid interview was held after passing of order dated 9.1.1997. The orders of respondent no.3 dated 17.12.1996 have not been legally and lawfully approved, as it was in violation of Rules and delegated powers. The order dated 9.1.1997 passed by respondent no.2 is quite legal and lawful and is not liable to be quashed as alleged in this para.”

(9) In view of the aforesaid stand taken by the Deputy Commissioner, Sirsa, this Court passed the order dated 21.3.1997 wherein this Court noticed that the petitioner was the only one eligible candidate and thereafter dismissed the writ petition. The order dated 21.3.1997 reads as under:-

“The petitioners were duly interviewed by a committee for the post of fireman to be filled on regular basis. All the seven petitioners along with three others were interviewed. Apart from the petitioner no.2 all other applicants were found either ineligible because of physical standard/fitness or they were not found suitable during the interview. In other words, one out of the ten was selected. The posts were seven in number. Learned counsel for the respondents say that there will be fresh selection for the rest six posts. Since the petitioners have been duly considered and one of them has also been selected,

we do not find that any case of interference is made out under Articles 226/227 of the Constitution of India. Dismissed. There is a serious dispute regarding the factum of the petitioners having earlier worked after the passing of the stay order by this Court. The petitioners may make necessary representation to the respondents to prove that they actually worked for the period they are claiming the wages. The respondents would decide the representation in accordance with law. March 21, 1997.

Sd/ R.S.Mongia
Sd/ M.L.Singhal
Judges.”

(10) The Deputy Commissioner, Sirsa instead of appointing the petitioner on regular basis inspite of the fact that the proper selection had been conducted and the petitioner had duly been selected in view of his qualifications proceeded to appoint the petitioner again on daily wages/ contract basis against the vacant posts available with a condition that he would not claim regularisation. The petitioner having no choice at that point of time reported for duty on 22.9.1997, however, in his joining report he took the objection that he had a legal right as per order of this Court dated 21.3.1997. Thereafter, the petitioner filed representation dated 24.9.1997 agitating his grievance that he had been appointed on daily wages for a period of 89 days inspite of the fact that as per instructions dated 3.7.1997 he was to be appointed on regular basis as Fireman. The said representation obviously fell on deaf-ears of respondents forcing the petitioner to approach this Court. Counsel for the petitioner was, thus, well justified in relying upon clause (i) of instructions dated 3.7.1997 (Annexure P-5) issued by respondent no.2- Director, Local Bodies, Haryana, Chandigarh to show that the persons who had been appointed against available vacancy on regular basis should be kept in service and adjusted against the same. Clause (i) of the said instructions reads as under:-

“No.DLB-97/3-E/39230-327 dated 3.7.97.

Copy of letter addressed to Administrators/Executive Officers/ Secretaries from the Director, Local Bodies through all the Deputy Commissioners.

Sub: Regarding payment of salaries to the employees appointed on regular basis during the strike.

Reference this directorate memo No.DLB-97-31/28061 dated 13.5.1997 on the subject noted above.

2. A number of queries are being asked regarding the payment of salary etc. to the employees who were appointed in the municipal committees/council on regular basis during the strike. On this matter, the position is clarified on the following points.

(i) According to Government orders, those employees who were appointed in the municipalities on regular basis, they should be kept in service and adjusted against the available vacancies. If it is not possible to adjust them for want of vacancies then list of the employees, according to their seniority should be supplied to this Directorate. Till arrangements are made to adjust such employees in any other municipality the payment of their salaries by the concerned municipality should be ensured.”

(11) Accordingly, keeping in view the cumulative facts and circumstances of the present case, it would be clear that once the petitioner was duly qualified under the Rules and his name had been sponsored by the Employment Exchange and he has been duly interviewed by the competent authority and selected against the vacancies available, the appointment on daily wages/contract basis is not sustainable. The respondents cannot be permitted to blow hot and cold since they themselves had taken the stand before this Court that the petitioner had been duly selected in a proper interview. Once that was so the question of appointing the petitioner on daily wages basis against the vacant post could not arise. The appointment order mentioning that the petitioner would not claim regularisation was patently illegal and was not binding upon the petitioner in any manner. Even the petitioner in his joining report objected to said appointment at that point of time.

(12) Accordingly, the present writ petition is allowed and direction is issued to respondents no.2 and 3 to consider the case of the petitioner for treating him to be appointed on regular basis in the pay scale of Rs. 950-1500/-with effect from 16.9.1997 and to grant him all consequential benefits arising therefrom. The said consequential benefits be paid to the petitioner within two months from the date of receipt of certified copy of this order.