

Before G.S. Singhvi & Iqbal Singh, JJ

SANJAY KUMAR,—*Petitioner*

versus

HARYANA URBAN DEVELOPMENT AUTHORITY
& ANOTHER,—*Respondents*

C.W.P. No. 1407 of 2000

4th February, 2000

Constitution of India, 1950—Arts 14, 16, 16(4), 226 and 309—The Employment exchanges (Compulsory Notification of Vacancies) Act, 1959—Haryana Government. Notification No. GSR/39/Const./Art./309/94 dated 11th May, 1994—Executive instructions, letters No. 6/38/95-2GSI dated 7th March, 1996 and No. 6/38/95—2GSI dated 18th March, 1996—Plea of discrimination—State Government framing policy regarding regularisation of services of work-charged/casual/daily rated employees subject to fulfilling conditions stipulated in the notification/letters—Petitioner originally engaged on daily wages on Class IV post but was discharging the duties of Class III post—His services regularised on Class IV post—Petitioner claiming regularisation on Class III post—Simply because the petitioner may have been assigned the duties of Class III post, he cannot claim regularisation on that post—Petitioner not entitled to be regularised on Class III post in terms of the policy—High Court accepting claim of some similarly situated persons without adverting to the policy instructions—Whether discriminatory & violative of Articles 14 & 16 of the Constitution—Court cannot amend or modify the conditions of eligibility prescribed by the State Government—The decisions of the Court cannot be treated as laying down a proposition that the petitioner is entitled to be regularised de hors the conditions.

Held that, as per the policies framed by the State Government the services of a person originally appointed/engaged on/against a Class IV post cannot be regularised on a Class III post simply because he may have been assigned the duties of Class III post or he may have worked against a Class III post for a particular length of time. Admittedly, the petitioner had been engaged on 23rd September, 1992 as Mali-cum-Chowkidar on temporary muster roll. Therefore, the regularisation of his services on a Class IV post is quite consistent with the policy instructions issued by the State Government which were made applicable to the HUDA services,—*vide* memo dated 15th April, 1997 and the mere fact that he had been asked to discharge the duties of clerk cannot enure to the petitioner's benefit because by issuing a

direction under Article 226 of the Constitution of India, the Court cannot amend or modify the conditions of eligibility prescribed by the State Government for regularisation of services of *ad hoc*, work-charged, casual and daily rated employees.

(Paras 11 & 12)

Further held, that by issuing a direction under Article 226 of the Constitution of India, the High Court cannot perpetuate the illegal actions of the executive authorities and direct regularisation of *ad hoc*, work-charged, casual and daily rated employees, irrespective of the fact that the petitioner does not satisfy the conditions stipulated in the policy of regularisation.

(Para 13)

Further held, that a careful perusal of the orders passed in the cases relied upon by the petitioner shows that in none of them attention of the Court was not drawn to the instructions issued by the State Government for regularising the services of class III employees and, therefore, without adverting to the same, the Court granted relief to the petitioners on the premise that they were discharging the duties as Class III employees on the cut-off date. In none of those cases, the Court was called upon to consider the conditions embodied in the notification dated 11th May, 1994 and the circular letter dated 7th March, 1996. Therefore, those decisions cannot be treated as laying down a proposition that a work-charged/casual/daily rated employee is entitled to be regularised de hors the conditions laid down by the Government.

(Para 14)

K.L. Arora, Counsel for the petitioner.

JUDGMENT

G.S. Singhvi, J.

(1) The Preamble to the constitution sets out the goals, the achievement of which was envisaged by the people of free India. One of those goals is the equality of status and of opportunity. for achieving this goal in matters relating to public employment, Articles 14 and 16 have been engrafted in chapter relating to fundamental rights. Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. It embodies the fundamental guarantee that there shall be equality of

opportunity for all citizens in matters relating to employment or appointment to any office under the State. The egalitarian goal of equality in the matters relating to employment envisage that appointment in public services should be made strictly on the basis of open invitation of applications and merit subject to the policy of reservation enshrined in Article 16(4). For giving effect to the aforesaid rule, Acts and Rules have been framed under Article 309 of the constitution of India. The Employment exchanges (Compulsory Notification of Vacancies) Act, 1959 is one such piece of legislations. However, in the last two decades, it has become a common practice to ignore the provisions of the said Act and to give employment directly to those who are either not registered with the employment exchange or who, though registered, are lower in the long waiting list in the employment register. In this manner, a large number of appointments on Class-III and Class-IV posts have been made for various illegal considerations including money. The employment is given first for temporary periods with artificial breaks to circumvent the relevant rules and then in the name of compassion and in the garb of taking action keeping in view the ground realities, the governments come out with the populist policies of regularising illegal and unconstitutional appointments. In this manner, a good deal of illegal employment market has developed resulting in new source of corruption. This cause frustration to those who wait at the employment exchanges for years together.

(2) In the eighties, the Courts had not only approved the policies framed by the governments for regularisation of the services of *ad hoc*, temporary, daily wager and casual employees on the premise that they had served for long periods but, in some cases, directed them to frame such policies. However, after having taken note of the fact that the attitude of compassion shown in the matter is encouraging the governments and public authorities to indulge in large scale violation of the provisions contained in Articles 14 and 16 of the Constitution and the relevant service rules, the Courts have lately leaned against the regularisation of the services of illegal appointees. This trend is evident from the decision of the Supreme Court in *Delhi Development Horticulture Employees Union v. Delhi Administration, Delhi and others*, (1) and *State of Haryana and others v. Piara Singh and others*, (2). In the latter decision, their Lordships of the Supreme Court after

(1) AIR 1992 SC 789

(2) AIR 1992 SC 2130

examining the instructions issued by the Governments of Punjab and Haryana between 1969 and 1987 for regularisations of the services of *ad hoc* employees, reversed the directions given by a Division Bench of this Court for regularisation of the services of all those who had completed one year's service. While doing so, their Lordships of the Supreme Court observed that it is the exclusive prerogative of the Executive to frame policy for regularisation of the services of temporary, *ad hoc*, work-charged and daily rated employees and in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court cannot direct regularisation of the services of the employees dehors the policy framed by the government. Their Lordships of the Supreme Court further held that services of only those employees can be regularised who fulfil the conditions laid down by the government.

(3) After the decision of Piara Singh's case (*supra*), the State Government issued notification no. GSR/39/Const./Art./309/94 dated 11th May, 1994 for regularisation of the services of Class-III employees who had served for a minimum period of 2 years as on 31st March, 1993 and two years thereafter it issued executive instructions,—*vide* letter No. 6/38/95-2 GSI dated 7th March, 1996 and letter No.6/38/95-2GSI dated 18th March, 1996. For the sake of convenience, extracts of the notification dated 11th May, 1994 and the two letters dated 7th March, 1996 and 18th March, 1996 are reproduced below :

“Notification Dated 11th May, 1994

Haryana Government

General Administration Department

General Services—I

Notification

The 11th May, 1994

No. GSR/39/Const./Art./309/94.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with the proviso to clause-6 of Haryana Government, General Administration Department (General Services), Notification No. 523-3 GS—70/2068 dated the 28th January, 1970, and all other powers enabling him in this behalf and in supersession of Haryana Government, General Administration (General Services—D), Notification No. GSR/31/Const./Art. 209/93 dated the 1st June, 1993, the Governor of Haryana hereby specifies such Class—III posts as have been held for a minimum period of two or five years on the 31st March, 1993, by Class III employees on *ad hoc* or daily wages basis to be taken out of

the purview of the Subordinate Services Selection Board, Haryana, and their services shall be regularised if they fulfil the following conditions, namely :—

1. Adhoc employees.—(i) that only such *ad hoc* employees as have completed a minimum of two years service on 31st March, 1993, should be made regular. However, break in service rendered on *ad hoc* basis up to a period of one month may be condoned excluding breaks occurring because of the concerned employee having left of his own volition or where the *ad hoc* appointment was against a post or vacancy for which no regular recruitment was required or intended to be made, i.e. leave arrangements or filling up of other short time vacancies, may not be condoned :

(ii) that the employees have completed two years service on the 31st March, 1993, and were in service on the 31st March, 1993.

(iii) that the employee shall be regularised against the posts or vacancies of relevant categories. The employees of general category may be regularised in excess of their quota with the clear stipulation that in future recruitments, only the candidates from reserve categories will be appointed until the back log arising out of utilisation of reserve category vacancies by general category *ad hoc* employees is cleared :

(iv) that the employee should have been recruited through the employment exchange or directly appointed by the appointing authority after obtaining the non-availability certificate from the Employment Exchange :

(v) that the work and conduct of such employees shall be of over all good category and no disciplinary proceedings are pending against them ; and

(vi) that the employees possessed the prescribed qualifications for the post at the time of their appointment on *ad hoc* basis.

2. *Daily Rated Employees. (1).*—The Government had issued instructions dated 27th May, 1993, for regularisation of services of all the work-charged, casual and daily wager employees who had completed 5 years service on 31st March, 1993. *In the reference of these instructions, the regularised employees were entitled to the lowest Group D scale of pay and all other allowances and benefits available to regular government employees. But it has come to the notice of Government in some Departments daily wagers are also working on class-III posts such as Clerks, Steno-typists and drivers etc. The question whether such daily wagers should be regularised in Group D or Group C scale*

has been engaging the attention of Government for some time past and after careful consideration, it has now been decided that daily wagers who had completed 5 years service on class-III posts on 31st March, 1993 and were in service on 31st March, 1993, should be regularised against their respective class-III posts provided they fulfil the requisite qualifications and were originally appointed on class-III posts and the posts are available. If the posts are not available, they should be got created from the Finance Department or they should be regularised in Group-D scale on compassionate ground like other daily wagers.

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Letter dated 7th March, 1996.

Subject : Regularisation of work-charged/casual/daily-rated employees.

Sir,

The matter regarding regularisation of Work-charged/Casual/Daily rated employees was engaging the attention of the Government for some time past. After careful consideration it has been decided that the services of the employees of these categories should be regularised as under :

The Work-charged employees who have completed five or more years of continuous service as on 31st January, 1996, and were in service on 31st January, 1996, shall be regularised. On regularisation, these employees shall be liable for transfer in the State of Haryana on any project/work.

Casual/Daily rated employees

The Casual and Daily rated employees who have completed five years service on 31st January, 1996 and were in service on 31st January, 1996 shall be regularised provided they have worked for a minimum period of 240 days in each year and the break in service in any year is not more than one month at a time. The employees who have worked on different posts having different designations in the same department shall also be regularised if they fulfil other conditions. On regularisation, they shall be put in the time scale of pay applicable to the lowest Group 'D' cadre in the Government and they would be entitled to all other allowances and benefits available to regular government servants of the corresponding grade.

Daily-rated employees (Class-III)

That only such daily-wagers who have completed five years service on Class-III posts on 31st January, 1996 and were in service on 31st January, 1996 shall be regularised against their respective Class-III posts provided they fulfil the requisite qualifications and were originally appointed on Class-III posts and the posts are available. If the posts are not available, they should be got created from the Finance Department or they should be regularised in Group 'D' scale on compassionate grounds like other daily-wagers provided further that they have worked for a minimum period of 240 days in each year and break in service in any year is not more than one month at a time.

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Letter dated 18th March, 1996.

From

The Chief Secretary to Government, Haryana.

To

1. All the Heads of Departments,
Commissioner Ambala, Rohtak, Hisar and
Gurgaon Division, all the Deputy Commissioners and
all Sub-Divisional Officers (Civil) in Haryana
2. The Registrar, Punjab & Haryana
High Court, Chandigarh.

Dated, Chandigarh, the 18th March, 1996

Subject : Regularisation of Work-charged/Casual/Daily rated employees.

Sir,

I am directed to refer to Haryana Government letter No. 6/38/95-2GSI, dated 7th March, 1996,—*vide* which government had issued instructions that the services of those Work-charged/Casual/Daily rated employees who have completed 5 years service on 31st January, 1996 and fulfil other conditions laid therein, should be regularised.

2. This matter has further been considered and after careful consideration it has now been decided to regularise the services of all those work-charged/casual/daily rated employees who have completed 3 years service on 31st January, 1996 and fulfil other conditions laid down in Haryana Government letter of even number dated 7th March, 1996.

3. Accordingly, Government instructions issued,—*vide* letter of even number dated 7th March, 1996 should be considered as modified to the extent that the Work-charged/Casual/Daily—rated employees with 3 years service on 31st January, 1996 instead of 5 years service on 31st January, 1996 shall be eligible for regularisation.

4. This may please be brought to the notice of all concerned.

Yours faithfully,

(Sd.) . . .,

Under Secretary, General Administration
for Chief Secretary to Government, Haryana.

(4) The instructions contained in the two letters issued in 1996 were made applicable to the services of Haryana Urban Development Authority (for short, 'HUDA'),—*vide* memo No. 1/16/96/1 TCP, dated 15th April, 1997 sent by the Commissioner and Secretary to Government, Haryana, Town and Country Planning Department to the Chief Administrator, HUDA (Annexure P.8). Memo dated 15th April, 1997 also reads as under :

“From

The Commissioner and Secretary to Government, Haryana,
Town & Country Planning Department.

To

The Chief Administrator,
Haryana Urban Development Authority,
Panchkula.

Dated, Chandigarh, the 15th April, 1997.

Subject : Regularisation of work-charged/casual/daily rated employees.

Reference your memo No. EA-6-97/1295, dated 17th January, 1997 on the subject noted above.

Sanction of the Governor of Haryana is hereby accorded to regularise the services of only those work charged/casual/daily rated employees of HUDA w.e.f. 19th March, 1997 who have completed 3 years of continuous service as on 31st January, 1996 and were in service on 31st January, 1996 and also fulfils the other conditions contained in the instructions of the State Government issued,—vide No. 6/38/95-2GS-I dated 7th March, 1996 and 18th March, 1996. Further HUDA should ensure that pay scales for different categories should not exceed the pay scales in Government Department for similar posts.

The expenditure involved in this account shall be met by HUDA from its own funds.

This issues with concurrence of Finance Department conveyed,—*vide* their U.O. No. 1/1/5-PF(FD)-97, dated 28th March, 1997 (copy enclosed).

(Sd.) . . . ,

Joint Secretary,
for Commissioner & Secretary to Government, Haryana,
Town & Country Planning Department.”

(5) The petitioner had been engaged as daily wage Mali-cum-Chowkidar under the Executive Engineer, HUDA Division No.1, Gurgaon. His case was considered in accordance with the instructions issued by the government,—*vide* memo dated 15th April, 1997 and by an order dated 30th April, 1997 (Annexure P. 11), his services were regularised with effect from 19th March, 1997 on the post of Pump Attendant in the pay scale of Rs. 750—940. This did not satisfy him and, therefore, he submitted representations, Annexures P.13, dated 8th August 1997, P.14 dated 29th October, 1998 and P. 15, dated 9th August, 1999 to the Chief Administrator, HUDA for regularisation of his service on the post of Clerk by stating that he was qualified for appointment as Clerk and had been discharging the duties of that post for a period of 3 years as on 31st January, 1996 and even thereafter. The authority concerned did not pay any attention to the request of the petitioner and, therefore, he has filed this petition for issuance of a mandamus directing the respondents to regularise his service on a Class-III post (Clerk) with effect from 23rd September, 1992 and to pay him salary in the pay scale prescribed for that post.

(6) In the writ petition, the petitioner has averred that the order passed by the Executive Engineer, HUDA Division No. 1, Gurgaon regularising his service on the post of Pump Attendant in the pay scale of Rs. 750—940 is discriminatory and violative of his fundamental right to equality guaranteed under Articles 14 and 16 of the Constitution of India. He has further averred that the services of similarly situated persons have been regularised on the posts of Clerk and, therefore, a mandamus be issued to the respondents to regularise his service on the post of Clerk keeping in view the fact that he had, in fact, worked as Clerk for more than 3 years as on the cut-off date stipulated in the instructions issued by the government for regularisation of the services of work-charged, casual, daily-rated employees engaged in the services of HUDA.

(7) Shri K.L. Arora invited our attention to the orders, Annexures P. 17 and P.18 passed by this Court and the Supreme Court in the case of Navneet Kumar son of Shiv Shankar Vats and the orders, Annexures P. 17-A and P. 21, passed by this Court in the cases of Sushil Kumar son of Ganga Ram, Mohan Shyam son of Narain Singh, Ashok Kumar son of Shiv Lal, Rajesh Madan son of Yash Paul Madan, Ashok Kumar son of Ram Raj, Baljit son of Ran Singh and Jatinder Kumar Saini son of Hoshiar Singh and submitted that in view of the acceptance of the claim made by similarly situated persons, the respondents may be directed to regularise the services of the petitioner on the post of Clerk. He relied on the contents of Annexures P. 4 to P. 6, P. 9, P.10, P. 12, P.12-A and P. 16 to show that the petitioner had worked as Clerk from 1992 to 1996 and thereafter.

(8) We have given serious thought to the submissions of the learned counsel, but have not felt persuaded to agree with him. A bare reading of the notification dated 11th May, 1994 shows that in exercise of its power under proviso to Article 309 of the Constitution of India, the Governor of Haryana had directed the regularisation of the services of *ad hoc*/ daily rated Class-III employees who had held the posts for a minimum period of 2 or 5 years respectively as on 31st March, 1993. For this purpose, those posts were taken out of the purview of the Subordinate Services Selection Board, Haryana. The executive instructions issued by the government,—*vide* letter dated 7th March, 1996 envisaged regularisation of the services of those work-charged, casual and daily rated employees who had completed 5 years service as on 31st January, 1996 and were in service on that date. This was subject to the fulfilment of the conditions stipulated in that letter. *Vide* letter dated 18th March, 1996, the requirement of 5 years service as on 31st January, 1996 was reduced to three years.

(9) An analysis of the notification dated 11th May, 1994 and the circular letter dated 7th March, 1996 shows that the services of an employee could be regularised on Class-III post subject to his fulfilling the following conditions :

- (i) he must be qualified for appointment on that post :
- (ii) he must have been originally appointed on that post ; and
- (iii) vacant post is available.

(10) The rationale behind the imposition of the condition that the employee concerned must have been originally appointed on Class-III post appears to be that benefit of the policy of regularisation should now be allowed to work-charged/casual/daily rated employee on a post higher than the one on which he was initially appointed/engaged. While imposing this condition, the government must have taken into consideration the fact that a substantial number of employees engaged on Class-IV posts on muster rolls were assigned duties on superior posts due to extraneous reasons and, at times, senior employees were not assigned such duties. The government must have also been aware of the fact that the action of the departmental authorities to assign duties of higher post to an employee appointed/engaged on a lower post was highly irregular. The government must have also been aware of the fact that although as per the existing procedure the competent authorities were required to send requisition to the employment exchange for making appointment on Class-III posts, in a large number of cases such appointments were made without sending any requisition.

(11) In view of the above, we hold that as per the policies framed by the State Government the services of a person originally appointed/engaged on/against a Class IV post cannot be regularised on a Class III post simply because he may have been assigned the duties of Class III post or he may have worked against a Class III post for a particular length of time.

(12) We shall now examine the petitioner's claim to be regularised on a Class-III post. Admittedly, the petitioner had been engaged on 23rd September, 1992 as Mali-cum-Chowkidar on temporary muster roll. Therefore, the regularisation of his services on a Class IV post is quite consistent with the policy instructions issued by the State Government which were made applicable to the HUDA services,—*vide* memo dated 15th April, 1997 and the mere fact that he had been asked to discharge the duties of clerk cannot enure to the petitioner's benefit because by issuing a direction under Article 226 of the Constitution of India, the Court cannot amend or modify the conditions of eligibility

prescribed by the State Government for regularisation of services of *ad hoc*, work-charged, casual and daily rated employees.

(13) We are further of the opinion that by issuing a direction under Article 226 of the Constitution of India, the High Court cannot perpetuate the illegal actions of the executive authorities and direct regularisation of *ad hoc*, work-charged, casual and daily rated employees, irrespective of the fact that the petitioner does not satisfy the conditions stipulated in the policy of regularisation. In its very nature, the policy framed by the State Government for regularising the services of *ad hoc*, temporary, work-charged, casual and daily rated employees is a recognition of the stark reality that its officers have made appointments without following the provisions of the Act and the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India which, as already mentioned above, envisages appointments to the public services by open competition. Further irregularities committed by the concerned authorities of assigning duties of a Class-III post to a person like the petitioner who was engaged on a Class-IV post, cannot be compounded by directing his regularisation on the higher post even though in terms of the policy, he is not entitled to be regularised on a Class-III post.

(14) Now we shall deal with the decisions relied upon by Shri Arora. A careful perusal of the orders passed in the cases Navneet Kumar (Annexure P.17). Sushil Kumar and Mohan Shyam (Annexure P. 17/A) and Ashok Kumar and four others (Annexure P. 21) shows that in none of them attention of the Court was not drawn to the instructions issued by the State Government for regularising the services of Class-III employees and, therefore, without adverting to the same, the Court granted relief to the petitioners on the premise that they were discharging the duties as Class III employees on the cut-off date. In none of those cases, the Court was called upon to consider the conditions embodied in the notification dated 11th May, 1994 and the circular letter dated 7th March, 1996. Therefore, those decisions cannot be treated as laying down a proposition that a work-charged/casual/daily rated employee is entitled to be regularised de hors the conditions laid down by the Government.

(15) The S.L.P. filed by H.U.D.A. against the order passed by this court in Navneet Kumar's case was dismissed with the following observations :

“In view of the peculiar facts and circumstances of this case, we do not find any reason to interfere with the orders under appeal. Hence, the appeal is dismissed.”

(16) In our considered view, that order cannot be treated as law declared by the Supreme Court within the meaning of Article 141 of the Constitution of India and relief cannot be given to the petitioner simply because the S.L.P. filed by H.U.D.A. in Navneet Kumar's case was dismissed.

(17) For the reasons mentioned above, the writ petition is dismissed.

(18) A copy of this order be sent to the Chief Administrator, HUDA, Panchkula.

R.N.R.