

## Harish Chand and Others Vs Additional Director CGHS and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** March 10, 2015

**Hon'ble Judges:** Ajay Tewari, J.

**Bench:** Single Bench

**Advocate:** Deepak Balyan, for the Appellant; B.S. Kanwar, Sr. Panel Counsel, Advocates for the Respondent

**Final Decision:** Disposed off

### Judgement

Ajay Tewari, J.

This petition has been filed for a direction to the respondents to regularize the service of the petitioners.

2. The brief allegations are that the petitioners were appointed by way of public appointment on merit against sanctioned vacant posts but on

contractual basis. It is further averred that the petitioners have continued to serve without a break for the last more than 10 years at least but the

claim for their regularization has not been considered. In the written statement, the facts are not disputed but it has only been urged that the

petitioners had never been promised that they would be regularized. The reliance has been placed upon the judgment of the Hon"ble Supreme

Court in the matter of Amarendra Kumar Mohapatra and Others Vs. State of Orissa and Others, , to canvas that employees like the petitioners

have no right to be regularized.

3. Learned counsel for the petitioners has argued that the reliance placed on Amarendra Kumar's case (supra) by the respondents is misplaced

and rather that judgment is in their favour.

4. In my opinion, the argument raised by the respondents can not succeed. Once it is not disputed that the petitioners were appointed against

sanctioned regular posts and were not back door entrants but were appointed after full advertisement and selection process, it is for the

respondents to justify why they have taken this expedient recourse to fill regular posts by way of contractual employees. There is also no reason

shown why the petitioners were allowed to continue for more than 10 years. In the circumstances, it is hard to resist the conclusion that the

exercise of appointing the petitioners on contractual basis is a colourable exercise of power in the facts and circumstances of the case. Moreover,

in the case of Amarendra Kumar (supra) the Hon<sup>ble</sup> Supreme held as follows:-

57. Having said that we are of the opinion that even when the challenge to the constitutional validity of the impugned enactment fails, the degree

holder Junior Engineers currently working as ad hoc Assistant Engineers are entitled to the relief of regularisation in service, having regard to the

fact that they have rendered long years of service as Assistant Engineers on ad hoc basis for 17 to 18 years in some cases. While it is true that

those in service degree holders working as Junior Engineers were not the beneficiaries of the legislation under challenge, the fact remains, that they

were eligible for appointment as Assistant Engineers on account of their being degree holders. It is also not in dispute that they were appointed

against substantive vacancies in the cadre of Assistant Engineers no matter by utilizing the direct recruit quota. Even in the case of Stipendiary

Engineers the vacancies were utilized out of the 67% quota meant for direct recruitment. What is, however, significant is that the utilization of the

quota reserved for direct recruitment for appointing Stipendiary and Junior Engineers as Assistant Engineers has not been assailed either before the

High Court or before us. On the contrary the contention urged on behalf of Junior Engineers degree holders who are still working as Junior

Engineers was that the remainder of vacancies comprising 5% of the cadre strength should be utilised to appoint the eligible degree holder Junior

Engineers. We shall presently deal with that contention. Suffice it to say for the present that the appointments granted to degree holder Junior

Engineers as Assistant Engineers on ad hoc basis were pursuant to a Government decision whereunder such degree holders as were already in-

service as Junior Engineers, were also given an opening for upward movement. Appointment of such degree holders was not grudged by their

diploma holder colleagues as no challenge was mounted by them to such appointments ostensibly because degree holder Junior Engineers were

getting appointed without in the least affecting the quota of 33% reserved for the promotees. In a way the upward movement of the degree holders

as Assistant Engineers brightened the chances of the rest to get promoted at their turn in the promotees quota. All told, the Junior Engineers have

served for almost a lifetime and held substantive vacancies no matter on ad hoc basis. To revert them at this distant point of time would work

hardship to them. Besides, we cannot ignore the march of events especially the fact that Stipendaries appointed at a later point of time with the

same qualifications and pursuant to the very same Government policy as took shape for both the categories, have been regularised by the

Government through the medium of a legislation. That this Court can suitably mould the relief, was not in serious controversy before us. In the

circumstances, we hold the degree holder Junior Engineers currently working as Assistant Engineers on ad hoc basis writ petitioners in the High

Court entitled to the relief of regularisation with effect from the same date as the Validation Act granted such regularisation to the Stipendiary

Engineers.

68. In *Narender Chadha and Others Vs. Union of India and Others*, , this Court was dealing with a somewhat similar fact situation. The petitioners

in that case were not promoted by following the actual procedure prescribed by the relevant Service Rules even though the appointments were

made in the name of the President by the competent authority. They had based on such appointments, continuously held the post to which they

were appointed and received salary and allowances payable to incumbent of such post. The incumbents were entered in the direct line of their

promotion. The question, however, was whether it would be just and proper to hold that such promotees had no right to the post held by them for

15-20 years and could be reverted unceremoniously or treated as persons not belonging to the service at all. Repelling the argument that such

service would not count for the purposes of seniority, this Court observed:

It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts n

Grade IV. The above contention is therefore without sub-stance. But we, however, make it clear that it is not our view that whenever a person is

appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to

that post. Such a person may be reversed from that post. But in a case of the kind before us where persons have been allowed to function in higher

posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be

reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power

to relax the Rules to avoid unjust results. In the instant case the Government has also not expressed its unwillingness to continue them in the said

posts. The other contesting respondents have also not urged that the petitioners should be sent out of the said posts. The only question agitated

before us relates to the seniority as between the petitioners and the direct recruits and such a question can arise only where there is no dispute

regarding the entry of the officers concerned into the same Grade. In the instant case there is no impediment even under the Rules to treat these

petitioners and others who are similarly situated as persons duly appointed to the posts in Grade IV because of the enabling provision contained in

the Rule 16 thereof. Rule 16 as it stood at the relevant time read as follows:

16. The Government may relax the provisions of these rules to such extent as may be necessary to ensure satisfactory working or remove inequitable results.

(emphasis supplied)

69. The ratio of the decision in the above case was not faulted by the Constitution Bench of this Court in *Direct Recruit's case* (*supra*). As a matter

of fact the Court approved the said decision holding that there was force in the view taken by this Court in that case. This Court observed:

In *Narender Chadha v. Union of India* the officers were promoted although without following the procedure prescribed under the rules, but they

continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was

directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable

force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an

appointment made in accordance with the rules prescribed for regular substantive appointments in the service.

70. In the light of what we have said above, we do not see any illegality or constitutional infirmity in the provisions of Section 3(2) or 3(3) of the

impugned legislation.

71. Having said so, there is no reason why a similar direction regarding the writ-petitioners degree holder Junior Engineers who have been held by

us to be entitled to regularisation on account of their length of service should also not be given a similar benefit. We must mention to the credit of

Dr. Dhawan, appearing for the Stipendiary Engineers who have been regularised under the provisions of the Legislation that such Stipendiary- ad

hoc Assistant Engineers cannot, according to the learned counsel, have any objection to the degree holder Junior Engineers currently working as

Assistant Engineers on ad hoc basis being regularised in service or being given seniority from the date they were first appointed. It was also

conceded that Stipendiary Engineers all of whom were appointed after the appointment of the Junior Engineers would en bloc rank junior to such

ad hoc Assistant Engineers from out of degree holder Junior Engineers. But all such regularised Assistant Engineers from Stipendiary Stream and

from Junior Engineers category would together rank below the promotee Assistant Engineers.

5. In the circumstances, the writ petition is allowed and the respondents are directed to consider the case of the petitioners for regularization in

accordance with law. Let the necessary exercise of considering their case be done within a period of 4 months from the date of receipt of a

certified copy of this order.

6. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.