

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CWP No.4522 of 1993**

**Date of Decision: 14.10.2015**

Alka Khurana

... Petitioner

Versus

Improvement Trust, Bhiwani & ors.

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Saurabh Arora, Advocate,  
for the petitioner.

Ms. Vibha Dhiman, A.A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RAJIV NARAIN RAINA, J.(Oral)**

The petitioner was appointed as a Clerk/Accounts Clerk to serve Improvement Trust, Bhiwani. She joined service on 10.9.1985. She was a daily wage worker drawing the minimum rate of wages fixed by the Deputy Commissioner of the District for the job. Her services were discontinued on 1.3.1988. A notice of disengagement of her services dated 15.2.1992 was served on her which she refused to accept. The Improvement Trust sent a letter by registered post which was received back unserved. This letter contained a cheque dated 15.3.1988 for a sum of Rs.450/- representing her dues. It is not disputed that the last date of service was 1.3.1988 while the registered letter with cheque was sent on 15.3.1988. The money payment offer was not simultaneous with or offered at the time of termination. This issue has been dealt with in detail by the labour Court and no further reference needs to be made to dilate on the subject.

Against the impugned award a writ petition was filed by the Improvement Trust, Bhiwani which was dismissed by this Court and award is final qua the Improvement Trust, Bhiwani. It is not necessary to narrate all the facts in detail since this petition has been filed by the worker claiming full back wages while the Labour Court in its impugned award dated 9.9.1992 has granted 50% of arrears of back wages from the date of award i.e 9.9.1992 in addition to reinstatement with continuity of service. This petition was been filed on 31.3.1993 and is coming up for final hearing today.

Heard the learned counsel for the parties at length and perused the paper book with their able assistance.

Mr. Saurabh Arora learned counsel appearing for the petitioner submits that this writ petition was admitted on April 26, 1993 and was ordered to be heard with admitted case CWP No.13859 of 1992 which was cross writ filed by the Improvement Trust, Bhiwani, against the same award which was dismissed on May 5, 2011. On January 1, 1996, the admitting Bench directed that the present petition be listed for regular hearing within six months.

In the present petition, no interim order was passed staying the operation of the award, however, there was a stay order in CWP No.13859 of 1992 filed by the Improvement Trust and therefore the petitioner became entitled to full back wages last drawn under section 17-B the Industrial Disputes Act, 1947. Therefore, instead of paying money without taking labour the Improvement Trust, Bhiwani found it more prudent to take back the petitioner into service and that is how she has continued to serve all these years on the post till she reached the age of

superannuation on 31.08.2013 and retired from service. No terminal benefits have been given to her since the matter has remained pending adjudication as also for the reason that the petitioner had approached this Court in CWP No.14346 of 2010 while this petition was pending where she claimed regularization of her services in view of pendency of the cross petition challenging the impugned award. The learned Single Judge noticed the brief facts of the case in the background of claim for regularization but dismissed the said writ petition on August 13, 2010 since the question of validity of termination was pending consideration in CWP No.13859 of 1992 filed by the respondent which petition was finally, as mentioned earlier, dismissed in 2011. Since the question of termination was not finalized, a claim for regularization would not lie and that is why the learned Single Judge while dismissing the writ petition granted liberty to the petitioner to seek remedy including filing another writ petition on disposal of CWP No.13859 of 1992, which is the present one.

Mr. Arora points out that the petitioner's counsel Mr. K.S. Bakshi, who was engaged to argue the petition unfortunately passed away due to which the present case was dismissed for non-prosecution and for non-appearance of counsel on May 5, 2011. The application for restoration was filed after Mr. Arora was engaged and appeared to argue the application for recall of the order dismissing the case in default of appearance and for non-prosecution. The case was restored on November 5, 2012 to its original number.

The question which remains to be adjudicated is whether the petitioner can be granted relief of regularization of her services in the

background of the claim made in CWP No.14346 of 2010 titled 'Alka Khurana v. State of Haryana & anr.' wherein liberty had been granted to the petitioner to seek appropriate remedy including filing of fresh petition on disposal of the writ filed by the Improvement Trust, Bhiwani. Therefore, it cannot be urged that the claim for regularization has been shut out. The moot question is whether the relief can be granted in this petition as ancillary to the relief claimed of award of 100% back wages by modification of the impugned award [from the date of award to be read presently till the date of retirement on superannuation] if the period is recognized as qualifying for regularization. One way is to allow petitioner to resort to fresh writ petition which will only result in another round of litigation and multiplicity of proceedings and compel the petitioner to assert her rights claimed in the year 2010 in CWP No.14346 of 2010 where specifically regularization was claimed or would it be permissible to pick up the threads from where the order passed by this Court on 30.8.2010 left and to continue that thread and take it to its logical conclusion by attaching that prayer [of regularization] as ancillary and incidental to the relief claimed in this petition and in continuation. It is past cavil that reinstatement stands confirmed with the dismissal of the writ petition filed by the Improvement Trust in challenge to the award of the labour court granting reinstatement and 50% back wages but more importantly in the present context, continuity of service which takes the petitioner back to the initial appointment on 10.9.1895 giving rise to claim for regularization by the deeming fiction of the award which stands confirmed qua reinstatement with continuity of service.

Heard Mr. Arora and Ms. Dhiman at length also on the

question of enhancement of back wages to the extent of full arrears of wages from the date of award i.e. 9.9.2002 onwards even while the petitioner served the Improvement Trust, Bhiwani after the award was passed and she continued to work on wages on DC rates as Clerk/Accountant Clerk and obviously the Improvement Trust, Bhiwani got from the petitioner the full work and responsibilities of the post at cheap cost of Rs. 6700/-per mensem which represents the wages drawn on the date of retirement on 31.8.2013 because the Tribunal has given continuity of service on 9.9.1992. Then the period between 10.9.1985 to 10.9.1992 shall remain by fiction continuous and uninterrupted service. The position will remain the same after passing of the award on 9.9.1992 as far as continuity of service is concerned but that will have to be read in continuity on the post and in the same status as existed on 10.5.1985. During this period, the petitioner cannot be said to be a full-fledged regular employee of the Improvement Trust, Bhiwani entitled to full pay and allowances as the contract of employment was not changed by the Labour Court while putting the petitioner to her original status, nor can be done by this Court in proceedings under Article 226 of the Constitution.

In **State of Haryana vs. Piara Singh**, (1992) 4 SCC 118, the Supreme Court had directed by interim orders earlier passed in the civil appeal both the States of Haryana and Punjab to formulate a scheme of regularization of services of ad hoc, temporary, daily wage, casual, work-charged employees etc. who had served since long. Both the States presented their schemes of regularization before the Supreme Court which were approved and are found in *Piara Singh's* case (supra), the

regularization policy of Haryana is dated 6.4.1990, where the terms and conditions were approved by the Supreme Court and found their way in the policy circular. It would be apt to refer to the scheme of regularization as noticed in *Piara Singh* case which in relevant extract reads:

“On 28th February, 1991, yet another order has been issued by the Governor of Haryana under the proviso to Article 309 of the Constitution providing for regularisation of class III employees who have put in service of two years on 31st December, 1990 subject to usual conditions. This order reads as follows:

"Notification The 28th February, 1991 No. G.S.R. 11/Const./Art. 309/91-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 GSI-70/2068, dated the 28th January, 1970 the Governor of Haryana hereby specifies such Class III posts as have been held for a minimum period of two years on the 31st December, 1990, by Class III employees on ad hoc basis to be taken out of the purview of the Subordinate Services Selection Board, Haryana and their services shall be regularised if they fulfill the following conditions, namely:-

(i) that the employees have completed two years services on 31st December, 1990, and were in service on 31st December, 1990.

(ii) that the employees shall be regularised against the posts/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:...” [emphasis added]

When fiction granted by the Labour Court in 1985 up to

9.9.1992 by award of continuity of service and reinstatement upheld with the dismissal of the writ petition filed by the Improvement Trust, Bhiwani, then the petitioner would have a case for consideration for regularization of her services as a daily wage worker in terms of the first available policy formulated by the Government of Haryana on regularization prior to 9.9.1992. It may be mentioned that the policies formulated by the State of Haryana were not limited to State Government Departments but was extended to local bodies including Improvement Trust, Bhiwani either directly or by adoption. This labour court created right would have to be considered retrospectively by virtue of a fiction of continuity of service which legal position I have dealt with in detail in **Khajjan Singh v. State of Haryana & ors.**, 2015(1) SCT 604 : 2015(2) RSJ 135 of the effect of continuity of service awarded by labour courts and how would they impact the question of regularization of services on principles of unfair discrimination in Art. 14 of the Constitution including a large number of issues involving the special empowerment reposed in labour courts and tribunals. I would read that judgment in the present one.

Thus, the Improvement Trust, Bhiwani would have to consider the claim of the petitioner retrospectively from the date of the first policy of regularization formulated by Government of Haryana before 9.9.1992 [date of award] and fit the petitioner in accordance with rules provided in the scheme, if the petitioner fulfills all the stipulations in the policy. The cut off date fixed in the policy would have to be read in such a manner that the petitioner had served 3 years prior thereto by virtue of deeming fiction of continuity of service. The Improvement

Trust, Bhiwani would consider passing the order accordingly in the light of all that is said above. Thereafter, the petitioner would be entitled to regular pay scales and allowances from the appointed day under the then prevailing policy till retirement and between the period 9.9.1992 till the date of deemed regularization. The petitioner's pay be re-fixed on the date when she demitted the post on reaching the age of superannuation. However, the award of the Labour Court would operate and the petitioner is held entitled only to 50% back wages as awarded. The petition is accordingly dismissed qua claim for 100% back wages but stands disposed of qua reliefs granted as above regarding regularization and retirement dues computed as though the petitioner retired for all intents and purposes as a regular employee of the Improvement Trust by virtue of the award granting continuity of service.

The case of the petitioner for regularization against the latest prevailing policy prior to the date of the award be considered and a fresh order be passed within two months of the date of receipt a certified copy of the order. Pension and pensionary/terminal benefits be calculated accordingly within the same period and paid to the petitioner, failing which interest will run @ 8% with the principal amount determined till realization.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**14.10.2015**  
**monika**