

232 IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CWP No. 17022 of 2004(O&M)

Date of Decision:.03.09.2015

Joginder

...Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. R. K. Malik, Sr. Advocate with
Mr. Vijay Dahiya, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.
for the respondent-State.

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

DEEPAK SIBAL, J. (Oral)

On 23.01.1991 the petitioner joined the Transport Department of the State of Haryana as a Helper Tyreman. On termination of his services on 31.08.1991, he raised a dispute which was referred to the Labour Court where the matter was compromised. As per the compromise the petitioner was to be reinstated but as a fresh appointee. In pursuance to the above referred compromise the petitioner joined the respondent department on 08.03.1996.

Through policy dated 01.10.2003 (Annexure P-2) the State of Haryana took a decision to regularize the services of all daily wage employees who had put in three years service as on 30.09.2003. In pursuance to such policy the services of the petitioner were regularized vide order dated 10.03.2004 (Annexure P-4) but through the impugned order dated 19.10.2004 the order of regularization of the services of the petitioner

was sought to be withdrawn. The withdrawal of the order of regularization was on the basis of the amended regularization policy of the State of Haryana dated 10.02.2004 which provided that only those employees working on daily wages who had put in three years of service and had been initially employed prior to 31.01.1996 were entitled to regularization. The petitioner having not been appointed prior to 31.01.1996 was thus considered ineligible and the order dated 10.03.2004 regularizing his services was withdrawn. It is this order that has been challenged through the present petition.

I have heard learned counsel for the parties.

Learned counsel for the petitioner states that an identical issue has been considered and decided by a Division Bench of this Court in CWP No.9708 of 2004 titled as Ajit Singh Vs. State of Haryana & ors. decided on 04.02.2015 wherein it has been held as under:-

“The services of the petitioner were de-regularized on the introduction of a cut-off date through notification dated 10.02.2004. When we posed a question to the learned counsel appearing on behalf of the State so as to what was the rationale and object behind fixation of such cut-off date, he candidly submitted that no reason was forthcoming from the record. On such admission, we have no hesitation to hold that the fixation of such a date is arbitrary and thus, violative of Article 14 of the Constitution of India.

Vide notification dated 01.10.2003, services of all daily wagers, who had put in three years of service as on 30.09.2003, were entitled to be regularized. Through the impugned notification dated 10.02.2004, the amendment sought to be introduced to the earlier notification dated 01.10.2003, was that services of only

those daily wagers would be regularized, who have been engaged before 31.01.1996. We find the introduction of date 31.01.1996 through the impugned amendment dated 10.02.2004 to be unreasonable and arbitrary because if such an amendment is to be allowed, then the result is that a daily wager, who puts in three years of service from 30.01.1996, would be entitled to regularization of his service, whereas the services of the person like the petitioner, who would have put in over five years of service i.e. from August 1998 till 30.09.2003, would not be regularized.

Even otherwise, the impugned amendment through notification dated 10.02.2004, could not apply retrospectively to take away the vested rights of the petitioner, whose services had already been regularized through order dated 15.12.2003 prior to the amendment. If at all the impugned amendment was to apply, the same could be applied to cases of regularization of service after the date of the amendment i.e. 10.02.2004.

In view of the above, the impugned order dated 08.06.2004 (Annexure P-11) is quashed.

Counsel for the respondents has not been able to distinguish the above reproduced judgment. Even otherwise, I have gone through the same and find that the same fully covers the case of the petitioner in his favour.

In view of the above, the impugned order dated 19.10.2004 (Annexure P-8) is quashed with all consequential benefits.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

03.09.2015
rimpal