

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 9708 of 2004

Date of Decision : February 04, 2015

Ajit Singh Petitioner
Vs.
State of Haryana and others Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL.
HON'BLE MR. JUSTICE DEEPAK SIBAL.**

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. R. K. Malik, Senior Advocate
with Mr. Mahavir Sandhu, Advocate
for the petitioner.

Mr. Sudeep Mahajan, Addl. A. G., Haryana
for the respondents.

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DEEPAK SIBAL, J. :

The undisputed facts, which have emerged, are that the petitioner was appointed as a Driver in August 1998 in the office of Divisional Forest Officer, Arawali Project, Rewari, on daily wage basis. He continued to work uninterruptedly and while he was discharging his duties,

through a notification dated 01.10.2003, the Government of Haryana issued a regularization policy, which provided that all ad hoc/contract/daily wage appointees, who had put in three years of service as on 30.09.2003, were entitled to be regularized. Since the case of the petitioner was covered under the above notification, through order dated 15.12.2003, his services were regularized w.e.f. 01.10.2003. Thereafter, vide notification dated 10.02.2004, the Government of Haryana amended its earlier notification dated 01.10.2003 and the relevant amendment, for the purpose of present writ, was that all daily wagers, who were engaged prior to 31.01.1996, were now made eligible for regularization. Since the petitioner was appointed in August 1998 i.e. he had not been engaged prior to 31.01.1996, vide order dated 01.03.2004, his order of regularization was reviewed and set aside. Aggrieved by such action, the petitioner approached this Court through **C. W. P. No. 5270 of 2004 - Ajit Singh vs. State of Haryana and others.** A Division Bench of this Court went into the issues raised by the petitioner and finding the order dated 01.03.2004 to be in violation of principles of natural justice, quashed the same. However, liberty was granted to the competent authority to pass fresh orders after hearing the petitioner and by passing a speaking order. The relevant portion of the order dated 26.03.2004 is reproduced below :-

“In the result, the writ petition

is allowed. Order Annexure P-6 is declared

illegal and quashed. However, we give liberty to the competent authority to pass fresh order in the matter after hearing the petitioner. We also give liberty to the petitioner to raise all legally permissible objections in his reply to the show cause notice, which may now be issued to him by the competent authority. It is expected that the competent authority will deal with the points raised by the petitioner and decide the same by passing a speaking order.”

In pursuance to the liberty granted above, the de-regularization of the services of the petitioner were reiterated, but this time, after following the principles of natural justice. It is against such action of the respondent-State that the present writ petition has been preferred by the petitioner.

We have heard learned counsel for the parties and with their able assistance, have also gone through the record.

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.

On the issue of back wages, learned counsel appearing on behalf of the petitioner very fairly stated that on the principle of “*no work – no pay*”, the petitioner would not be entitled to the same.

Accordingly, the writ petition is allowed in the above terms. However, in view of the statement made by learned counsel for the petitioner, he would not be entitled to any back wages, but is held entitled to the benefit of continuity of service and other consequential benefits.

(SATISH KUMAR MITTAL)
JUDGE

(DEEPAK SIBAL)
JUDGE

February 04, 2015
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