

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

**CWP-16340-2012
Date of Decision : 09.03.2015**

KAILASH KUMAR

... Petitioner

VS

STATE OF HARYANA AND ORS

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr.V.M.Gupta, Advocate
for the petitioner.

Mr.Ashok Singh Chaudhary, Addl. A.G., Haryana.

Mr.S.S.Dalal, Advocate
for respondent No.3.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J.(ORAL)

By this petition, the petitioner has challenged the order withdrawing ACP granted to the petitioner.

The petitioner was appointed as Clerk on ad-hoc basis with the respondent No.3 for a period of 89 days on 02.08.1985 and he joined as such on 08.08.1985. His services were terminated on 30.07.1986. He raised a labour dispute and the following award was passed by the Industrial Tribunal-cum-Labour Court, Hisar on 20.04.1992 :-

“

AWARD

*In exercise of the powers conferred by
clauses of Sub Section 1 of Section 10 of the*

Industrial Disputes Act, 1947, the Governor of Haryana referred the following disputes between Kailash Kumar and the above mentioned management for adjudication to this Court vide Labour Deptt. Letter No.BWN/168-88/20820-25, dated 22.05.1988 :-

Whether termination of service of Kailash Kumar, Clerk is justified and in Order? If not, to what relief is he entitled?

2. *The case of the petitioner workman is that his service was terminated by the management on 29.07.1986 in an illegal manner.*

3. *The case was being contested, when the parties came to an amicable settlement today. The statements of the parties have been recorded.*

4. *In view of the statements of the parties recorded today, the petitioner has already been taken on duty with effect from 20.02.1992 and he has been paid 50% of the back wages. The management has agreed to give him benefit of continuity of service and seniority. No dispute survives for adjudication. The reference is answered accordingly, with no order as to costs."*

Thereafter he was duly granted regular pay scale and and the respondent No.3 gave him the necessary benefits of ACP. The first ACP was granted on 01.09.1995 i.e. after 10 years of service, the second ACP was granted on 01.09.2005 i.e. after 20 years of service. However, thereafter the respondent No.3 issued a tentative seniority list vide

order dated 27.08.2010, where the petitioner's seniority was sought to be counted w.e.f 1992. The petitioner moved a representation dated 18.09.2010 bringing it to the notice of the respondent No.3 that in terms of the Award above mentioned he had to be treated as a regular employee and his seniority had to be granted from the date of his initial appointment. That representation was rejected and thereafter a notice was issued to the petitioner asking him to show cause why the ACP granted to him be not withdrawn and after considering his reply the two ACPs granted to him were withdrawn.

Learned counsel for the respondent No.3 has stated that the petitioner could not have been treated as a regular employee having been appointed only for 89 days.

In normal circumstances, this argument would have sufficed but once the respondent No.3 agreed to give seniority to the petitioner and the Industrial Tribunal-cum-Labour Court passed the award in view of that specific undertaking, it would not be open to the respondent No.3 to turn around and seek to argue that the petitioner was not entitled or not eligible. If this were so it was incumbent upon the respondent No.3 to move an appropriate application before the Labour Court with the request to have recalled the award or take any other remedy available. Having not done so, it can not now withdraw the benefits granted to the petitioner.

Resultantly, the petition is allowed. The respondents are are directed to consider the petitioner as having been regularly appointed and take initial date of appointment as 08.08.1985 and then to

determine his entitlement to seniority and ACP on that basis. Let the necessary exercise be done within a period of 3 months from the date of receipt of a certified copy of this order.

March 09, 2015

Pooja Sharma-I

(AJAY TEWARI)
JUDGE