

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

CWP No. 13805 of 2013 (O&M)

Date of decision: 14.05.2015

Tina

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Maanipur, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Article 226 of the Constitution of India, the petitioner seeks quashing of the impugned order dated 14.01.2013 (Annexure P-2), passed by respondent No.3, qua the petitioner's husband, whereby the services of the husband of the petitioner were declined to be regularized despite the fact that the juniors to him were regularized.

It is contended that the husband of the petitioner joined the respondent No.3-Forest Department as daily wager. He remained in service from 01.01.1988 to 09.04.1988. His services were illegally terminated on 09.04.1988. Aggrieved against the order of termination, the husband of the petitioner filed a reference before the Industrial Tribunal-cum-Labour Court, Rohtak. The said reference was allowed by the learned Tribunal, vide order dated 04.01.2006 (Annexure P-1),

by observing that the petitioner is entitled to be reinstated on the previous post with continuity of service but without back wages. The said order has attained finality. It is further submitted that despite the order passed by the learned Tribunal, the services of husband of the petitioner were not regularized on the ground that he was not in service on 01.10.2003, when the policy of regularization was introduced. The learned counsel refers to Annexure P-7 and states that the services of similarly situated employees which were junior to the husband of the petitioner were regularized, in compliance of the order dated 28.05.2014, passed by this Court in LPA No. 582 of 2013.

On the other hand, the learned State counsel submits that the policy of regularization was withdrawn on 25.04.2007. The husband of the petitioner had to be physically present on the roll of the establishment when the services of the juniors were regularized.

I have heard the rival contentions of learned counsel for both the parties and have gone through the record carefully.

It is not in dispute that the husband of the petitioner joined the respondent No.3 on 01.01.1988 and remained in continuous service till 09.04.1988, when his services were terminated. The Award passed in favour of the husband of the petitioner is also not in dispute. It is further not in dispute that in pursuance of the order passed in LPA No. 582 of 2013, the services of the similarly situated employees who were stated to be junior to the husband of the petitioner were regularized,

vide order dated 18.07.2014 (Annexure P-7). Therefore, the only question remains to be examined is whether the husband of the petitioner could be denied the right on the ground that he was not physically present on the roll of the establishment. Once the Award dated 04.01.2006 (Annexure P-1) was passed in favour of husband of the petitioner with continuity of service, he shall be deemed to be on the roll of the establishment for all intents and purposes. The physical presence of the petitioner on the relevant time cannot be read against him as it is not the case that he was deliberately and intentionally absented himself and that he was not allowed to join the establishment under the garb of illegal order dated 09.04.1988.

In view of the above fact that the services of the similarly situated employees have been regularized, vide order dated 18.07.2014 (Annexure P-7), the petitioner cannot be deprived of the same benefits. Accordingly, the present petition is allowed. The respondents are directed to grant the entire benefits from the date when his juniors were regularized and release all the consequential benefits in favour of the petitioner, within a period of four months from the date of receipt of a certified copy of this order.

14.05.2015

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to Reporter: Yes / No