

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.11224 of 2015 (O&M)
DATE OF DECISION : 19.10.2015

Lekhu Raj

PETITIONER

VERSUS

State of Haryana and others

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers 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 ?

Present:- Shri R.K.Malik, Senior Advocate with Shri Samrat Malik,
Advocate for the petitioner.

Shri Hitesh Pandit, Additional A.G. Haryana.

MAHESH GROVER, J.

The petitioner was appointed as Beldar on 1.9.1993 and his services were terminated on 28.2.2002 leading to an industrial dispute raised by the petitioner which was answered vide the award of the Labour Court dated 25.8.2005 reinstating the petitioner with continuity of service with full back wages from the date of demand notice dated 7.3.2002. This award was challenged by the respondents by way of C.W.P. No.776 of 2006 which was disposed of on

25.7.2006, whereupon the petitioner was reinstated into service and has been working ever since.

On 1.10.2003, the State issued a policy entitling the incumbents who were in service for a period of three years till 30.9.2003 to regularisation. The petitioner's services were not regularised till the year 2014 when another policy dated 18.6.2014 came into existence enabling the incumbents to regularisation who had completed 3 years service till 28.5.2014. The petitioner was granted the benefit of regularisation in terms of the policy of 2014 vide order dated 21.7.2014, but the order was withdrawn on the plea that it was not passed by the competent authority.

The petitioner while impugning the said order Annexure P-8 dated 1.9.2014, has contended that his case for regularisation was erroneously considered in terms of the 2014 policy, whereas his right for regularisation should have been considered in terms of the 2003 policy considering the fact that the petitioner was in service on the relevant date in 2003 entitling him to regularisation with effect from the said date.

The respondents reiterated their stand that since the petitioner was not actually in service on the said date, his case for regularisation had to be considered in terms of the 2014 policy.

On due consideration of the matter, I am of the view that the stand of the respondents is erroneous and unjustified. Once the award of the Tribunal granted continuity of service to the petitioner, it would imply that he would be in service, as if the factum of termination had not intervened. The petitioner would continue to be in service without interruption and if that be so, then in terms of the policy of 2003, he would be entitled for consideration for regularisation as he had concededly completed 3 years service. This Court has already taken similar view in **Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI and**

another 2014(3) S.L.R.262, wherein it has been observed as follows :-

“34. On harmonious reading of the judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement for the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution.** Thus, the Industrial adjudicator would be achieving the quality by upholding Article 14, rather than violating this constitutional provision.”

Keeping in view the above, I am of the opinion that the ratio of the aforesaid decision is straightway attracted to the facts of this case and when even the award of the Labour Court mandated continuity of service and the fiction of law reflects that the petitioner would be deemed to be in service on the relevant date in 2003 entitling him to the benefit of regularisation with effect from the said date.

Let the respondents offer a consideration to the petitioner in view of the above and pass an appropriate order within two months from the date of receipt of a certified copy of this order.

Consequently, the writ petition is accepted and the petitioner is held entitled to regularisation in terms of the prevailing policy of the State with all consequential benefit from the date when his juniors were regularised.

October 19, 2015
GD

(MAHESH GROVER)
JUDGE