

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 18246 of 2012 (O&M)

Date of Decision: 23.02.2015.

Umrao Singh & another

--Petitioners

Versus

State of Haryana & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Yesh Paal Malik, Advocate for the petitioners.

Mr. Ravi Pratap Singh, A.A.G., Haryana.

TEJINDER SINGH DHINDSA.J

Brief facts that would emanate from the pleadings on record are that the petitioners were appointed as School Lecturers in the subjects of History/Hindi in the year 1997. Such appointment was in pursuance to a selection process having been followed, whereby names of the petitioners were sponsored through the Employment Exchange and they were interviewed by a duly constituted Selection Committee. However, inspite of work and conduct of the petitioners being without blemish, they were relieved from service in the year 1997 itself. At that stage a number of writ petitions came to be filed by identically situated employees and which were disposed of by this Court with a direction to the department to consider the claim of such teachers to be taken back in service. Suffice it to notice that vide order dated 26.10.2005 and placed on record at Annexure P-2, passed by the Commissioner and Director General, School Education, Haryana, petitioner no.1 was offered a fresh appointment as Lecturer in Hindi on contractual basis. However, in such order condition no.5 read as follows:-

“(5) No other benefits will be given for the

previous services rendered on contractual basis.”

Likewise, petitioner no.2 was also offered fresh appointment in the light of order dated 26.10.2005 at Annexure P-3 under similar terms and conditions.

It so transpires that the petitioners herein along with one Rajesh Kumar filed CWP No.3659 of 2006 seeking quashing of condition no.5 as noticed herein above. The writ petition came to be disposed of by this Court on 7.3.2006 with the direction to the department to consider and to take a final decision on a representation that had already been submitted by the petitioners.

In purported compliance of the directions issued by this Court the Commissioner and Director General, School Education, Haryana passed order dated 19.5.2006 at Annexure P-4, whereby claim of the petitioners seeking continuity in service was accepted and condition no.5 contained in the orders granted fresh appointment to the petitioners was modified. It was noticed in the order dated 19.5.2006 at Annexure P-4 that the relief of continuity in service had already been accepted in the case of identically situated employees and as such, the claim set up on behalf of the petitioners was found to be genuine. In a nutshell both the petitioners herein were held entitled to the benefit of continuity in service but without any actual financial benefits for the period in question.

The instant writ petition raises a grievance that inspite of having been granted benefit of continuity in service by taking into account the initial appointment on the post in question in the year 1997, the benefit of regularization of service in the light of govt. notification/policy dated 1.10.2003 has not enured to them. Accordingly, the issuance of a Writ of

Mandamus to the respondents to regularize their services in the light of

govt. policy dated 1.10.2003, has been raised.

The claim raised by the petitioners has been resisted on behalf of the State by taking a stand in the joint written statement filed on behalf of respondents no.1 and 2 that the petitioners have not completed 3 years continuous service prior to the date of issuance of the notification dated 1.10.2003 and secondly such notification dated 1.10.2003 itself stands withdrawn in the light of subsequent notification dated 13.4.2007.

Having heard learned counsel for the parties at length, this Court is of the considered view that the prayer made in the instant writ petition merits acceptance.

There is no dispute with regard to the fact that under the regularization policy dated 1.10.2003 an employee was vested with a right to be considered for regularization upon completing 3 years continuous service as on 30.9.2003 and was to be in service as on 1.10.2003. Both the petitioners having firstly been reappointed as Lecturers vide orders carrying even date i.e. 26.10.2005 at Annexures P-2 and P-3 and subsequently having been granted the benefit of continuity in service vide order dated 19.5.2006, passed by the Commissioner and Director General, School Education, Haryana at Annexure P-4 would be deemed to be in service w.e.f. their initial appointment relating back to the year 1997. The objection raised on behalf of the State as regards the petitioners not having completed 3 years continuous service as on 30.9.2003 and not being in service on 1.10.2003, is wholly untenable. Such a stand, if, accepted would amount to negating the relief granted by the respondent authorities themselves by virtue of the order dated 19.5.2006 at Annexure P-4, whereby the benefit of continuity in service stood granted.

Even the objection with regard to the regularization policy dated 1.10.2003 having already been withdrawn is wholly fallacious. The petitioners having been granted the benefit of continuity in service vide order dated 19.5.2006 at Annexure P-4, their rights, as such, stood crystalized much prior to the subsequent notification dated 13.4.2007, whereby the regularization policy dated 1.10.2003 had been withdrawn. By a deeming fiction they would be considered to be in service in the year 2003. Such notification dated 13.4.2007 could only have prospective operation and cannot take away the vested right of the petitioners which relates back to the year 2003 itself. In taking such view I would draw support from a judgement dated 28.5.2014 rendered by a Coordinate Bench of this Court in **CWP No.10017 of 2011** titled as **Khajan Singh and others Vs. State of Haryana & others.**

For the reasons stated above, the present petition is allowed. The petitioners are held entitled to the benefit of regularization in service as per govt. notification/policy dated 1.10.2003. Requisite orders in this regard be passed and communicated to the petitioners within a period of two months from the date of receipt of a certified copy of this order.

Petition allowed.

(TEJINDER SINGH DHINDSA)
JUDGE

February 23, 2015.
lucky

Whether to be referred to Reporter? Yes.