

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

**CWP No.23241 of 2014
Date of decision : 17.09.2015**

Smt. Chameli

....Petitioner

Versus

State of Haryana & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER

Present: Mr. Sandeep Thakan, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. AG, Haryana.

Mahesh Grover, J. (Oral)

This writ petition has been preferred by the petitioner for regularization of service in terms of the prevailing policy applicable to her particularly of 1996 envisaging benefit of regularization to all incumbents who have completed five years service on 31.01.1996.

The petitioner was appointed as Mali in the year 1988 and continued to work as such till her services were terminated on 28.09.1997, leading to an industrial dispute raised by the petitioner, culminating in an award dated 05.12.2001 entitling the petitioner to reinstatement with continuity of service and 75% backwages from the date of demand notice i.e. 27.04.1995.

The order of the Labour Court was not challenged by the respondents, a fact evidenced from Annexure P-8, the information supplied to the petitioner under Right to Information Act, 2005. Reply, filed on behalf of respondents No.2 & 3 is also eloquently silent in this regard. Thus, the Court would lean towards an irresistible conclusion that the award of the labour court attained finality with no further challenge from the respondents.

It is pertinent to mention here that the petitioner filed writ petition bearing No.8819 of 2004 with a similar prayer where this Court directed the respondents to consider her case for regularization by passing a speaking order, which was indeed done but benefit of regularization was denied to the petitioner on the premise that the award of the labour court was seemingly challenged by the respondents in a writ petition. Evidently, this reasoning of the respondents is wrong if Annexure P-8 is to be seen where the respondents have given the information that the award of the labour court has not been challenged by them in the High Court.

This leads to a situation where the award of the labour court passed in the year 2001 directed reinstatement of the petitioner with continuity of service and thus, by deeming fiction of law the petitioner would be in continuous service without any interruption i.e. since 1998 and consequently entitled to regularization in terms of instructions envisaging regularization of service of all those employees, who have completed 5 years of service in 1996. The action of the respondents can thus, be termed grossly unfair particularly when all the juniors of the petitioner have been granted benefit of regularization, which is also evident from Annexure P-9, the information supplied under the RTI Act and uncontroverted by the respondents in the reply.

For the aforesaid, when the petitioner is being deemed to be in service since 1988 and her juniors have been regularized, the action of the respondents to deny regularization to the petitioner is totally arbitrary and discriminatory.

The stand of the respondents that the petitioner has not completed 240 days in a calendar year can be termed to be perverse

as it ignores all other relevant material such as award of the labour court in her favour.

Consequently, the present petition is accepted and the petitioner is held entitled to the benefit of regularization in terms of the policy 1996. Necessary orders in this regard be passed within a period of four weeks from the date of receipt of certified copy of the order and all consequential benefits flowing to the petitioner be released to him within a period of six weeks thereafter.

17.09.2015
sonia

(Mahesh Grover)
Judge