

Sr.No.241

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-2724-2015(O&M)

Decided on: **03.12.2015**

Ashok KumarPetitioner

vs.

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Ms. Abha Rathore, Advocate for the petitioner.

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

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Mahesh Grover, J

The petitioner prays for quashing of order dated 01.09.2014 whereby the order of regularization initially passed in favour of the petitioner was withdrawn on the premise that his services were wrongly regularized in view of the amended policy of the Haryana Government dated 20.08.2014 entitling regularization only as per Department Rules.

The petitioner was appointed as daily wager in the year 1987 as Beldar and his services were terminated on 01.08.1994 leading to an industrial dispute resulting in an award in favour of the petitioner dated 18.12.2002 entitling him to reinstatement of service with continuity and 25% back wages from the date of issuance of demand notice.

This award was challenged by the respondents but the writ petition was dismissed. The petitioner was thereafter taken back in service and is working continuously since then.

The State has been issuing policy instructions from time to time entitling regularization of services of the employees who have completed requisite number of years envisaged in the policy. The policy of 1996 and 30.09.2003 contemplated regularization to those employees who had completed three years of service.

The petitioner's case is that he is in service since 1987 and would, thus, be entitled to regularization in terms of the aforesaid policy but the benefit of regularization

was indeed conferred upon the petitioner pursuant to the policy of 18.06.2014 but withdrawn vide the impugned order in view of the latest instructions of August 2014 entitling regularization only in terms of the service Rules and not otherwise.

On due consideration of the matter, I am of the opinion that the petitioner has been prejudiced as he is actually entitled for regularization in terms of the earlier policies of 1996 and 2003. The petitioner's services which were terminated earlier leading to an industrial dispute resulted in an award in his favour entitling him to continuity of service and back wages to the extent of 25%. This would imply that the petitioner was in service if the order of termination had not intervened lending continuity of service and thereby entitling him to benefit of regularization on having completed three years of service in terms of the earlier policies of the State Government. The matter is no longer *res integra* as this Court has already taken this view in **CWP No. 11224 of 2015 titled Lekhu Raj v. State of Haryana and others**, decided on **19.10.2015** after noticing the observations of Hon'ble Supreme Court in **Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI and another 2014(3) SLR 262**, the relevant portion of which is extracted herebelow:-

“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, writ petition is accepted and the petitioner is held entitled for regularization of his service along with all consequential benefits in terms of the policies of 1996 and 2003.

03.12.2015

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(MAHESH GROVER)

JUDGE

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Mahesh Grover, J

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(MAHESH GROVER)

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