

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

Civil Writ Petition No.842 of 2013

Date of decision: 9.2.2015

Usha Rani

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Inderjeet Sharma, Advocate,
for the petitioner.

Mr.Rajiv Prashad, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The petitioner was appointed as a daily wage worker in the office of Civil Surgeon, Ferozepur. He continued to serve till 1997 when her services were illegally terminated. He raised a dispute which was referred to the Labour Court, Bathinda. The petitioner succeeded before the Labour Court and was handed down an award of reinstatement with continuity of service with 40 percent back wages. The grant of continuity meant that his right to employment since 1997 stood preserved. The award of the Labour Court has become final since the award was not questioned by the State Government in the High Court.

Upon reinstatement, the services of the petitioner were

regularized vide office order dated 18.4.2007 passed by the Civil Surgeon, Ferozepur by which 3 other officials who had been working on 89 days basis were regularized. The order of regularization was passed on the strength of the policy instructions dated 13.3.2003 and 24.3.2003 read with circular dated 15.12.2006. The petitioner is before this Court claiming ante-dated regularization on the strength of continuity of services granted by the Labour Court in its award.

Indisputably, the award is final; the petitioner stands reinstated and regularized in terms of the policy dated 13.3.2003 though the order has referred to instructions dated 15.12.2006 which were issued post **Secretary, State of Karnataka and others v. Umadevi** , (2006) 4 SCC 1. If that is so, then order of regularization which directs that it will be implemented with immediate effect is not a good order and can be read only as an implementation process of a pre-existing right created by the Labour Court award which granted continuity. See **Khajjan Singh v. State of Haryana and others**, CWP No.10017 of 2011 decided on 28.5.2014. Therefore, the petitioner would have to be retrofitted with effect from 1996 and in terms of the policy circular of regularization issued prior to Umadevi's [supra] which have not been called in question by the respondent State in this case.

Where the Court creates a fiction by grant of continuity of service, all consequences flowing shall have to be imagined. When circular dated 13.3.2003 creates antecedents rights and not future rights, then the petitioner would have a right to have been regularized with effect from prior to 1.1.2004 when the contributory fund scheme was introduced and right to pension taken away. Regularization of a daily wage worker would also give a retroactive right to pension in view of the Full Bench decision of this Court in **Kesar**

CWP No.842 of 2013

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Chand v. State of Punjab and others, AIR 1988 PH 265. Consequently, the petition is allowed and the impugned order is declared to be read retroactively and the petitioner's rights to regularization declared as crystalized prior to 1.1.2004.

(RAJIV NARAIN RAINA)
JUDGE

February 9, 2015
Paritosh Kumar