

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 7660 of 2015

Date of Decision : November 28, 2015

Suresh Petitioner

Vs.

State of Haryana and others Respondents

Case No. : C. W. P.No. 7701 of 2015

Date of Decision : November 28, 2015

Raj Kavar Petitioner

Vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. R. K. Malik, Senior Advocate
with Mr. Bhupinder Malik, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

These two writ petitions being **C. W. P. No. 7660 of 2015** and

C. W. P. No. 7701 of 2015, involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment. For the sake of convenience, facts are being extracted from **C. W. P. No. 7660 of 2015**.

The petitioner was appointed as a Beldar on 01.01.1993 and his services were terminated on 01.06.2003 leading to an industrial dispute raised by him, which was answered in his favour through Award of the Labour Court dated 30.05.2008, reinstating the petitioner with continuity of service. The Award was challenged by the respondents before this Court through **C. W. P. No. 7227 of 2009 – Executive Engineer vs. Suresh and another**, which was dismissed on 02.03.2010.

On dismissal of the aforementioned writ petition, the petitioner was reinstated into service and has been serving the respondents ever since.

Through the present petition, the petitioner seeks regularization of his services on the strength of policy of the State dated 01.10.2003, which entitled the regularization of services of all employees in service for a period of three years till 30.09.2003.

In view of the aforementioned facts, I am of the view that both the writ petitions deserve to be allowed. A conjoint reading of the Award of the Labour Court, as also the judgment of this Court passed in the earlier writ petition **C. W. P. No. 7227 of 2009 – Executive Engineer vs. Suresh**

and another, filed by the State clearly brings out that the petitioner was continuously serving the respondents since June 1996. He would, thus, be covered in terms of the policy dated 01.10.2003.

The aforesaid view of mine finds support from a recent judgment of this Court **C. W. P. No. 11224 of 2015 – Lekhu Raj vs. State of Haryana and others**, decided on **19.10.2015**, wherein on similar facts, this Court has held as under :-

“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 (Sic.) (The Apex 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.”*

Resultantly, both these writ petitions i.e. **C. W. P. Nos. 7660
and 7701 of 2015** are allowed and the respondents are directed to consider
the case of the petitioners for regularization of their services in terms of the
prevailing policy of the State, with all consequential benefits.

A photocopy of this judgment be placed on the file of other
connected case.

**(DEEPAK SIBAL)
JUDGE**

November 28, 2015
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