

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

206

LPA No.1903 of 2014 (O&M)
Date of Decision: January 21, 2015

State of Haryana and others

...Appellants

Versus

Jiyaji Sharma

...Respondent

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Amar Vivek, Additional Advocate General, Haryana,
for the applicants-appellants.

Mr. Rajesh Goyal, Advocate
for the non-applicant/respondent.

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (ORAL)

This is an appeal against the order and judgment of the learned Single Judge, granting the respondent regularization of his services. The learned Judge has dealt with several aspects of the matter. We, however, are inclined to uphold the same on a limited aspect keeping all other issues of law decided by the learned Judge open.

2. The respondent was appointed on 19.08.1995 and his services were terminated on 31.05.1996. He challenged the same by filing a reference under Section 10(1) of the Industrial Disputes Act. The Labour Court by an award dated 29.04.2005 granted the respondent reinstatement with continuity of services with full back wages with effect from the date of the demand notice. The appellant challenged this order by filing writ petition No.13269 of 2005. The writ petition was dismissed. The appellant's petition for Special Leave to Appeal against the said order and judgment was also dismissed. The respondents in compliance with the award

dated 29.04.2005 was reinstated in October, 2005 as a daily wager. The respondent thereafter filed writ petition No.23938 of 2013 seeking regularization. The writ petition was disposed of by directing the appellant to consider his application. The application having been rejected, the petitioner challenged the same by filing the present writ petition.

3. As we mentioned earlier the appellant was employed with effect from 19.08.1995. The termination of his services on 31.05.1996 were held to be illegal and he was reinstated in service. Thus, as on 31.09.2003, the respondent must be deemed to have been in service. Under the policy of 01.10.2003, the petitioner was entitled to have his services regularized. All other employees similarly situated whose services had not been terminated were in fact granted the benefit of regularization under the policy of 01.10.2003. The termination of the respondent's services having been held to be illegal and having been set aside, he must also be deemed to have been in service on 01.10.2003 and entitled to the benefits of the policy on par with the others. The petitioner cannot be denied the benefits of the policy on par with the others similarly situated for no fault of his namely and on account of the appellants having issued an illegal order of termination. The Supreme Court in **Hari Nandan Prasad and another Versus Employer I/R to Mangmt. of FCI and another**, held as follows:-

“However, wherever it is found that similarly situated workmen are regularized 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 regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision”.

4. In the circumstances, the appeal is dismissed. We reiterate that the all other issues decided by the impugned judgment are kept open. The time to comply with the order of learned Single Judge is extended up to and including 28.02.2015. There shall however be no order as to costs.

**(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE**

January 21, 2015
Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**