

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

RSA No.3821 of 2014(O&M)

Date of Decision:-13.07.2015

The State of Haryana & others

.....Appellants

Versus

Babu Lal

.....Respondent

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Mukesh Kaushik, DAG, Haryana.

Mr. J.P. Sharma, Advocate for the respondent.

RITU BAHRI, J.

Appellant-State of Haryana has preferred the present second appeal against the judgments of concurrent findings of facts dated 24.04.2009 and 01.11.2013 passed by the Additional Civil Judge (Senior Division), Narnaul and the Additional District Judge, Narnaul, whereby suit filed by the plaintiff-respondent for declaration to the effect that he is entitled to regularization of his service as Mali-cum-Chowkidar under the Police & Instructions of the State Government from the due date along with consequential benefits, has been decreed.

Babu Lal-plaintiff (respondent herein) was initially appointed as Mali-cum-Chowkidar under the control of defendants w.e.f. 01.01.1992. However, his services were terminated w.e.f. 01.04.1996. Thereafter, the plaintiff raised industrial dispute, upon which, the matter was referred to the

Presiding Officer, Labour Court, Gurgaon under the provisions of Industrial Disputes Act. Vide award dated 09.11.1999 passed by the Labour Court, termination of services of the respondent-plaintiff was held as illegal and he was held entitled for reinstatement with continuity of service and other benefits. The said award was challenged by the appellants-defendants by filing a petition before this court, but that was dismissed. SLP filed against the order of this Court was also dismissed by the Hon'ble Supreme Court on 24.02.2004. Thereafter, respondent-plaintiff was taken back in service and an amount of Rs.1,46,858 was paid to him through cheque dated 31.03.2004. As per plaintiff, he was discharging his official duties since 01.01.1992. The Government of Haryana had issued policy and instructions making the provisions for regularization of service of daily wage employees who have completed more than 3 years of service tenure. Since, the plaintiff fulfilled all the conditions in terms of policy of the Government, therefore, he was entitled to be regularized. But, the appellants-defendants did not pay any heed to the same. Hence the present suit.

Upon notice, appellants-defendants filed written statement taking preliminary objections with regard to maintainability of the suit, locus standi and cause of action. On merits, fact regarding appointment of respondent-plaintiff on the post of Mali-cum-Chowkidar on 01.01.1992 was denied, as there was no post of Mali-cum-Chowkidar in the Forest Department. In fact, the plaintiff had worked in Aravali Project as daily wages labourer and the said project was being run with the help of European Community. It was denied that the plaintiff was terminated on 01.04.1996. He had worked during the period from May 1992 to November 1993 as Daily Wages Labourer. Fact regarding passing of award dated 09.11.1999

by Labour Court, Gurgaon directing the department to pay back wages to the plaintiff w.e.f. 01.04.1996 to 05.03.1999 as well as the dismissal of their appeal against the said award by this Court, was admitted. The plaintiff was terminated vide order No.32 dated 10.08.2005 after conducting a proper inquiry, as his work was found unsatisfactory. The aforesaid Policy was not applicable in the case of the plaintiff as per the decision of the Hon'ble Supreme Court. It was further averred that as per the judgment of the Hon'ble Supreme Court in case titled as Secretary, Karnataka State & Ors. Vs. Uma Devi & Ors., decided on 10.04.2006, services of any daily wages employee cannot be regularized.

From the pleadings of the parties, following issues were framed by the learned trial Court on 02.11.2006:-

1. *Whether the termination order dated 01.04.1996 of the service of the plaintiff is illegal, in violation of principle of natural justice and in violation of Industrial Dispute Act?OPP.*
2. *Whether the plaintiff is entitled to regularization of his service as Mali-cum-Chowkidar from the due date and is entitled to pay salary, emolument and other allowances besides all consequential service benefits as regular employee?OPP.*
3. *Whether the suit of the plaintiff is not maintainable?OPD.*
4. *Whether the plaintiff has no cause of action to file the present suit?OPD.*
5. *Whether the suit is bad for want of notice under Section 80 CPC?OPD.*
6. *Relief.*

Trial Court, after going through the evidence led by the parties, decreed the suit of the plaintiff to the effect that he was entitled to be

regularized in service as per Haryana Government Notification GSR/24/Const./Art./309/2003 along with all consequential benefits of service. The lower appellate Court affirmed the findings of the trial Court and dismissed the appeal.

The plaintiff-respondent was working in the Forest Department as Mali-cum-Chowkidar since 1992. He was removed from the service in the year 1996. Thereafter, the Labour Court, Gurgaon passed an award (Ex.P1) in favour of the plaintiff. Appeal filed by the State against the said Award, was dismissed up to the Hon'ble Supreme Court. Vide Award dated 09.11.1999 (Ex.P1), it was held that the plaintiff had rendered service with the defendants from 01.01.1992 to 31.03.1996 i.e. more than 240 days and while terminating his services, the defendant-department had not complied with the provisions of Section 25-F of the Act. Therefore, the plaintiff was held entitled to reinstatement and back wages from 01.04.1996 to 05.03.1999 at the rate of Rs.1418/- per month. This fact was admitted by the defendants-appellants in their written statement. It was also admitted that the services of the plaintiff were terminated on 10.08.2005. It was stated that the services of the plaintiff were not regularized as he did not fulfill the condition of policy framed by the Government. As per defendants-appellants, the plaintiff had not worked for 240 days continuously in the previous three years from 30.09.2003. However, as per Award (Ex.P1), the plaintiff was reinstated with continuity of service along with back wages from 01.04.1996. Meaning thereby, the plaintiff-respondent had worked continuously from 01.01.1992 to 31.03.1996 and thereafter, he was reinstated by the Labour Court vide Award (Ex.P1) w.e.f. 01.04.1996. As per the notification of regularization, the essential condition was that those

daily wages employees, who had completed three years services on Group 'D' post on 30th September, 2003 and were in service on 30th September, 2003, shall be regularized against their respective Group 'D' post, provided that they have worked for a minimum period of 240 days. The break in service was to be condoned, if it had not been caused on account of fault on the part of the employee. Pursuant to passing of Award (Ex.P1), the plaintiff-respondent had been taken back in service.

In similar circumstances, a Co-ordinate Bench of this Court in **Sukhpal Vs. State of Haryana and others**, 2013 (4) SLR 167, has upheld the regularization of an employee, who had been reinstated by the Labour Court. It was further observed as under:-

7. It is not a matter of dispute that the termination of the services of the petitioner w.e.f. 1.9.2000 had been held to be bad in law in terms of the Labour Court award dated 16.1.2006. Still further, directions had been issued to re-instate the petitioner w.e.f. 1.9.2000 with all consequential benefits including continuity in service. Such award passed in favour of the petitioner has been upheld up to the Hon'ble Apex Court. As such, by the deeming fiction of law, the petitioner would have to be construed to be in service as on 30.9.2003 i.e. the relevant date as per regularization policy dated 1.10.2003, Annexure P3. It is well settled that once directions for re-instatement of an employee with continuity in service have been issued, he would be deemed to be in service for all intents and purposes continuously and all the benefits accruing on the basis of the deemed re-instatement would flow to such employee in law. The plea raised on behalf of the State that his claim for regularization cannot be accepted on the ground that the regularization policy stands withdrawn and that the petitioner was not in service on the crucial date i.e. 30.9.2003, cannot be accepted.”

In the facts of the present case, since the plaintiff was held entitled for reinstatement with continuity of service, both the Courts have rightly come to a conclusion that the period of service w.e.f. 01.04.1996 to 18.10.2004 would be treated as a period spent on duty by the plaintiff.

Hence, keeping in view the Regularization Policy of 2003, the plaintiff had

completed more than three years for all intents and purposes, therefore, he was entitled to be regularized.

After going through the impugned judgments passed by both the Courts below, no illegality, much less perversity, has been found therein, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

13.07.2015
ajp

(RITU BAHRI)
JUDGE