

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

115

CWP-14848 of 1998

Decided on : 09.05.2016

Jagir Singh Chowkidar

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present : None for the petitioner.
Mr.Harkesh Manuja, 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)

1. No one appears for the petitioner as well as the contesting respondents No.2 and 3 when case is called for hearing. Reply on behalf of respondents No.2 and 3 is already on record, from where, it is revealed that case of the petitioner would be considered for regularization after completion of 10 years. Written statement was filed on 11.3.1999 wherein it is maintained in para. 4 that the services of Harbans Singh, Chowkidar have been regularised as per instructions of Punjab Government as he had completed 10 years of service on 31.12.1996.

2. Heard Mr. Manuja for the State.

3. The disputed issue re: regularisation arises in the following manner. The petitioner was appointed in October, 1986 but the respondents, in para. 6 of the written statement insist that petitioner was working as

Chowkidar on daily wages but he was short of completion of 10 years required under the policy with a difference of about 6 months. However, the petitioner has the protection of award of Labour Court dated 08.12.1992 striking down his termination order dated 17.11.1987. Labour Court, Patiala awarded reinstatement to the petitioner with continuity of service but without back wages. The respondents did not dispute before the Labour Court that petitioner joined service in the year 1986 and Labour Court has rested the case on the date 1st October, 1986, accepted as the date of joining employment as daily wager. The date of termination without doubt is 17.11.1987 and the Labour Court found on evidence that the petitioner had completed more than 240 days of continuous service during the calendar year preceding the date of termination and thus the stand of the respondent corporation in para. 2 that the date of appointment was 1.7.1987 is not only wrong but deserves to be deprecated since it flies in the face of the award which has attained finality.

4. If the petitioner had been appointed on 1.7.1987 as daily wage Chowkidar as the corporation insists to postpone his rights, the foundation on which the award was built would be uprooted. The result would be to write off the award with one stroke of the pen which would not only be an absurd thing to do but would appear rather preposterous. Hence the stand in the written statement to bring the petitioner out of the teeth of the policy inspires no trust, faith or confidence and the defence appears clearly to have been taken casually without due reflection informed from records only with a view to scuttle the case some how or the other and non-suit the petitioner

and deprive him of his valuable rights. Therefore, the stand of the petitioner is accepted as the correct and truthful one that he had completed 10 years of service before the appointed date by legal and deeming fiction of the award. When this conclusion is arrived at with the aid of the award the it follows sequitur that he was subjected to unreasonable and unfair discrimination as against Harbans Singh, Chowkidar whose services have been regularised on completing 10 years service on 31.12.1996, the cut of date. Then the petitioner must take similar relief as was granted to Harbans Singh to prevent unreasonable discrimination and infringement of Article 14 of the Constitution. See Supreme Court in Hari Nandan Prasad v. Food Corporation of India, (2014) 7 SCC 190 expressing the binding view as follows:

“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 the Industrial/Labour Court are on a 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 equality by upholding Article 14, rather than violating this constitutional provision.”

5. Principles involved in industrial adjudication can be directly applied by the writ court in appropriate cases where facts are not in dispute to prevent long suffered unfair labour practice and hostile discrimination, a

feature clearly presented in the present proceeding under Article 226 of the Constitution. See Khajjan Singh v, State of Haryana, 2014 SCC Online P & H 10865: ILR 2014 P & H 363.

6. For these reasons, the writ petition is allowed as there is substantial merit found demanding relief. A direction is issued to the respondents to consider regularization of the services of the petitioner with effect from the date when Harbans Singh, Chowkidar was regularised or thereabout and within the policy instructions prevailing then which were applied in the case of similarly placed person. The petitioner would be entitled to all the consequential benefits flowing from the retrospective due date.

[RAJIV NARAIN RAINA]
JUDGE

09.05.2016

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