

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14215 of 2013
Decided on : 11.04.2016

Swarn Gir

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.M.K.Bhandari, Advocate, for the petitioner.

Mr.Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia, J.

Petitioner challenges the order dated 16.08.2012 (Annexure P10), passed by respondent No.4, whereby his claim for regularization of services has been declined. The claim is based on the fact that similarly situated persons stood regularized vide order dated 31.10.2011 (Annexure P7), as per the instructions dated 15.12.2006 (Annexure P2) and accordingly, the benefit is sought with all consequential benefits, i.e., seniority, arrears of pay etc. along with interest w.e.f. the same date when similarly situated persons were regularized.

The reasoning given in the impugned order would go on to show that the Committee formed for preparing the seniority list as per the policy in question rejected the case of the petitioner in its meeting dated 03.05.2008, in view of the fact that there was intervention by way of the orders of the Court and therefore, as per

the observations of the Apex Court in **Secretary, State of Karnataka & others Vs. Uma Devi & others 2006 (4) SCC 1**, his daily wage period from 13.07.1995 to 12.05.2000 could not be taken into consideration. The minimum educational qualifications were also missing as the petitioner was under-matric and he had not worked continuously for the last 10 years as on the cut-off date, i.e., 10.04.2006, since there was break in service in the year 2001-2002 as he has not completed the period of one year in the calendar year 2001.

The said order has been attacked by counsel for the petitioner on the strength of the pleaded facts and on the ground of violation of principles of equity, enshrined under Article 14 of the Constitution of India.

It is the case of the petitioner that he was appointed as Beldar in the Forest Department on 04.06.1991 and his services were terminated by the respondents on 13.07.1995 along with 2 others, namely, Gurnam Gir and Saroop Singh. The matter was referred to the Labour Court and an award dated 10.08.1999 (Annexure P1) was passed in favour of the petitioner and the similarly situated two other above named persons and reinstatement was ordered along with back wages. The petitioner, was, thereafter, duly paid the arrears of pay from the date of actual reinstatement, i.e., 22.07.2002, after the State failed to get any relief from this Court.

In view of the policy dated 15.12.2006, issued thereafter, for regularization of services of daily wage workers who had worked more than 10 years, the petitioner approached this Court, which was disposed of on 12.11.2007, with a direction for considering the claim of the petitioner. The claim was, firstly, rejected on 19.08.2008 (Annexre P3) on similar reasons as given in the impugned order, apart from rejecting the claim of equal pay for equal work. Thereafter, instructions dated 08.03.2011 were issued (Annexure P4) for regularizing the appointments of employees working on contract basis and a Committee was formed and persons, who were appointed after the petitioner who were senior to him, were shown in the seniority list.

A regularization order was passed on 31.10.2011 whereby 19 persons were regularized and persons junior to the petitioner were given the benefit of regularization. Thereafter, a justice demand notice dated 02.03.2012 (Annexure P8) was served upon the respondents for the necessary relief, giving the details of the juniors. A direction was given by this Court to dispose of the said justice demand notice in CWP-11244-2012 on 31.05.2012, in pursuance of which, the impugned order was passed.

State, in its reply, defended the action by relying upon the earlier order dated 19.08.2008. The same had not been challenged and there was delay on the part of the petitioner. The

petitioner was beyond the list of 409 workers who were regularized. The factum of the retrenchment of the petitioner and the fact that he was reinstated while implementing the award of the Labour Court, was admitted. It was, however, justified that he was only a daily wage worker engaged on contract basis and not on any sanctioned regular post. It was, however, admitted that the cases of other workers including the petitioner was duly considered and whosoever was found eligible was given the benefit of regularization, however, the petitioner, not being eligible, was denied the same.

Thus, there was no specific denial regarding the averments made in para 15 of the writ petition in which the instances of other juniors who had been regularized was given, including the persons who were also party to the Labour Court award, namely, Saroop Singh and Gurnam Gir.

In the replication filed, the petitioner placed on record the case of Gurnam Gir and Saroop Singh which had been rejected vide the earlier order dated 11.08.2008 (Annexure P12 Colly.). However, the said employees had been, thereafter, ordered to be regularized whereas the petitioner had not been regularized.

On 04.05.2015, this discrepancy was noticed by this Court and the State was directed to file specific affidavit in this regard. Order dated 04.05.2015 reads as under:

“Contends that vide order dated 31.10.2011, respondent No.2 regularized the services of 19 persons, as depicted in paragraph 15 of the petition, though junior to the petitioner. The position, that has not been controverted in the written statement filed by the State. It is further submitted that the petitioner along with one Gurnam Gir and Saroop Singh had raised an industrial dispute and vide award dated 10.08.1999 (Annexure P1), all three were ordered to be reinstated with continuity of service. So much so, said Gurnam Gir and Saroop Singh had since been regularized, for no tangible reason the claim of the petitioner is being kept in abeyance.

Learned State counsel prays for and is granted three weeks' time to furnish a specific affidavit in this regard and respond.

Adjourned to 26.05.2015.”

Thereafter, an additional affidavit of Shri Ashwani Kumar, the Divisional Forest Officer, wherein the plea taken was that Saroop Singh and Gurnam Gir had completed 4886 days and 4107 days, respectively, as on 10.04.2006 whereas the petitioner had only worked for 3291 days and therefore, could not be regularized. Thus, over and above the reasoning given in the impugned order, an additional ground was sought to be made out by the respondents to justify the non-consideration of the petitioner for regularization.

In the opinion of this Court, the impugned order cannot be upheld, being patently arbitrary. Firstly, it is not disputed that the petitioner along with the above 2 co-workers were before the

Labour Court against an order of retrenchment dated 13.07.1995 in 3 separate references which had been consolidated. The Labour Court found that the petitioner had worked from 04.06.1991 to 12.07.1995 whereas the other 2 had worked from 01.02.1991 and 30.10.1990. The State had not complied with the provisions of the Industrial Disputes Act, 1947 and no notice or compensation had been given to them. A finding was recorded that the workman had worked for 240 days in the last calendar year and reinstatement was directed along with full back-wages. It is also a matter of record that the request of the said 2 persons was rejected on 11.08.2008 (Annexure P12 Colly.) as was the case of the petitioner on 19.08.2008. However, strangely, thereafter, while preparing the provisional seniority list, only the name of the petitioner did not figure. The Committee only gave the benefit to those 2 persons even though they were illiterate and similarly placed, which would be clear from Annexure P6 which was a letter addressed from respondent No.4 to the Civil Surgeon for their physical examination, for the purposes of regularization. Thereafter, the said persons were duly regularized on 31.10.2011 (Annexure P7).

If the intervention of the Court proceedings were not held against the above-said 2 persons, the reasoning given that the petitioner's case could not be considered on account of the fact that he had been reinstated, as per the orders of the Court, is, thus, without any basis. Even otherwise, the Apex Court in Uma

Devi's case (*supra*) had only directed that employees who were in services on the basis of the interim orders of the Court, were not to be granted the benefit of regularization on the ground that they had completed the requisite period. Similarly, the guidelines have been issued that the 10 years' service on 10.04.2006 should be without the intervention of the orders of the Court. The petitioner had only been reinstated on account of the illegal retrenchment on 13.07.1995 and thereafter, on account of the same, the State cannot turn around and say that this would disentitle the petitioner from reinstatement.

The Full Bench of this Court (of which, the undersigned was a Member) in **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur & another 2015 (1) PLR 465** also held to this effect. It was noticed that on account of an illegal retrenchment, the right of regularization could not be taken away. It was noticed that the judgment of Uma Devi (*supra*) did not deal with the issue of reinstatement/retrenchment which had to be established within the provisions of the Act and the Constitutional Bench of the Apex Court was not examining the powers of the Labour Court to direct reinstatement in violation of the provisions of the Industrial Disputes Act, 1947. The issue there was of reinstatement and not of regularization. The following principles were, accordingly, laid down by the Full Bench:

“48. Recently, in [Bhuvnesh Kumar Dwivedi vs. M/s. Hindalco Industries Ltd., JT](#) 2014 (6) SC 190, while noticing the mandatory nature of [Sections 25-F](#) and [25-B](#) of the Act and holding the retrenchment of an employee as a nullity and as void ab initio, it was held by the Apex Court that the employee was entitled to continue in employment as if his services had not been terminated. Reliance was again laid on the earlier judgments referred above starting from Hospital Mazdoor Sabha (supra) to Anoop Sharma (supra) and the order of the High Court modifying the reinstatement and granting compensation was set aside.

Thus, the following principles are laid down:-

- (i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of [Section 25-F](#) of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.
- (ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of [Section 25-F](#) being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.
- (iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of [Sections 25-F](#) and [25-B](#) of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.”

A perusal of the above principles would go on to show that once reinstatement has been directed by the Labour Court, it would mean that the retrenchment was void and the petitioner would be entitled to the continuous service as if the retrenchment was never in operation and the employee was deemed to be in service.

The respondents, in their additional affidavit, have justified the regularization of the juniors mentioned in para 15 of the writ petition by pointing out that the number of days of service

as on 10.04.2006 of the said persons was more than that of the petitioner who had only put in 3291 days. However, this fact does not find mention in the impugned order and resultantly, by filing of the additional affidavit, the impugned order cannot be defended since it is settled principle that the order has to speak for itself and by filing additional affidavit, the same cannot be improved. The Apex Court in **Mohinder Singh Gill Vs. Chief Election Commissioner (1978) 1 SCC 405**, have held that reasons have to be mentioned in the order itself. Relevant portion of the judgment reads as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case : "Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.”

The said view was followed recently in **Dipak Babaria and another vs. State of Gujarat and others 2014 (3) SCC 502** and it was held that the State cannot improve its stand by way of filing affidavits and **State of Punjab Vs. M/s Bandeep Singh & others 2016 (1) SCC 724.**

Accordingly, the present writ petition is allowed, the order dated 16.08.2012 (Annexure P10) is quashed. Respondent No.4 is directed to re-decide the issue of regularization, afresh, without being influenced by any observations of the Committee whereby the petitioner's period of service, for which he remained retrenched, will not be held against him, on account of the reinstatement or on account of his not having the educational qualifications. The said respondent shall also not hold the earlier order dated 19.08.2008 (Annexure P3) against the petitioner and shall decide afresh, keeping in view the fact that similarly situated persons had been granted the benefit. Needful be done within a period of 3 months from the receipt of a certified copy of this order.

APRIL 11, 2016
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(G.S. SANDHAWALIA)
JUDGE