

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 22606 of 2012
Date of decision:-04.04.2016

Raj Pal ...Petitioner

versus

HUDA and others ..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Yesh Paul Malik, Advocate
for the petitioner.

None for the respondents.

- 1. To be referred to the Reporters or not?
- 2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

Petitioner has approached this Court praying for issuance of writ in the nature of mandamus directing the respondents to regularize the service of the petitioner in the light of the Haryana Government policies, as the petitioner has completed more than 17 ¼ years of service.

<i>Name</i>	<i>Date of appointment</i>	<i>Date of termination</i>	<i>Date of Labour Court award</i>	<i>Date of reinstatement in service</i>
Raj Pal <i>Chowkidar/peon</i>	01/07/95	01/03/97	03/01/05	Reinstated with continuity of service with consequential benefits and 50% back wages

Petitioner was then permitted to join his duties on 11.02.2005 but against the Labour Court award, the department filed CWP No. 10437 of 2005, which was dismissed on 18.07.2005 and the labour Court award has attained finality. Thereafter, petitioner submitted representations (P-4 to P-6) and legal notice 24.07.2012 (P-7) to respondent No. 3 for regularization of his services, in view of Haryana Government policy decision dated 01.10.2003 whereby all daily wagers who had completed three years service on 30.09.2003 were held entitled for regularization w.e.f 01.10.2003 (P-3).

Learned counsel for the petitioner submits that the service of the petitioner should have been regularised by the respondents, in view of policy dated 01.10.2003. Reference has made to plethora of judgment by learned counsel for the petitioner, which reads as under:-

1. ***Ved Pal vs. State of Haryana and others,
CWP No. 1169 of 2009 decided on 10.02.2012***
2. ***State of Haryana and others v. Ved Pal and others
LPA No. 1037 of 2012 decided on 25.07.2012***
3. ***Arun Kumar and others v. State of Haryana and others
CWP No. 4821 of 2011 decided on 19.04.2012***
4. ***Chet Ram and others v. State of Haryana and others
CWP No. 2822 of 2012 decided on 19.09.2012***
5. ***State of Haryana and others v. Chet Ram and others v.
LPA No. 1214 of 2013 decided on 12.07.2013***
6. ***Khajjan Singh and others v. State of Haryana and others
CWP No. 10017 of 2011 decided on 28.05.2014***
7. ***Ram Kumar v. State of Haryana and others
CWP No. 9873 of 2013 decided on 07.05.2015***

On notice, a written statement has been filed on behalf of the respondents stating that the writ petition filed by the petitioner deserves to be dismissed, as all the policies of regularisation of service were withdrawn vide notification dated 12.04.2007/25.04.2007, in view of the decision of Hon'ble Apex court in ***Secretary, State of Karnataka vs. Uma Devi, AIR 2006 SC 1806***

Heard learned counsel for the parties.

Reference at this stage can be made to a judgment passed by this Court in ***CWP No. 5848 of 2011 titled as Karamvir Singh vs. State of Haryana and others and connected cases***, decided on 11.01.2012 where similar issue has been dealt with wherein the petitioner was working as Peon on daily wages w.e.f 10.03.1992 and was terminated vide order dated 09.06.1999, which was challenged by him and the Labour Court held the order to be illegal, null and void and the petitioner was held entitled to reinstatement in service with all consequential benefits including continuity of service and full back wages. The department went up to the Hon'ble Supreme Court but the award passed by the Labour Court attained finality. But the petitioner was taken back in service on 18.03.2010 and thus his claim for regularization of his service in view of policy dated 01.10.2003 was declined by the Department. But this Court allowed the writ petition filed by the petitioner and held that the petitioner is deemed to be in

service since 10.03.1992 as the order of termination of service dated 09.06.1999 was held to be null and void by the Labour Court. Thus, the petitioner was held entitled to regularization of his service from the date the services of his juniors were regularized and was held entitled to the benefit of policy decision dated 01.10.2003 with all consequential benefits.

In the present case as well, the award was passed in favour of the petitioner on 03.01.2005 (P-1) and direction was given to the respondents to reinstate the petitioner in service with continuity of service with 50% back wages from the date of demand notice i.e. 17.04.2000. For all intents and purposes, the petitioner was held to be deemed in service w.e.f 01.07.1995 and only on the ground that he was not in service on 01.10.2003, will not deprive him of the benefit of the Haryana Government policy dated 01.10.2003 whereby all daily wagers who have completed three years of service on 30.09.2003 were held entitled for regularization.

Reference at this stage can further be made to a judgment of this Court in a case of '***Gulshan and another vs. State of Haryana and others***', passed in CWP No. 18923 of 2015, decided on 23.02.2016 whereby this Court while referring to CWP No. 9708 of 2014 titled as ***Ajit Singh vs. State of Haryana and others, decided on 04.02.2015***, wherein similar situated employee was appointed as Driver

in August 1998 and was claiming the benefit of regularization under the policy dated 01.10.2003, allowed the writ petition. Reference has been made to **CWP No. 5270 of 2004 titled as Ajit Singh vs. State of Haryana and others**, which was allowed and held that the petitioner is entitled for regularization of his services w.e.f 01.10.2003 with consequential benefits. In **Ajit Singh's** case, it has been observed as under:-

“Vide notification dated 01.10.2003, services of all daily wagers, who had put in three years of service as on 30.09.2003, were entitled to be regularized. Through the impugned notification dated 10.02.2004, the amendment sought to be introduced to the earlier notification dated 01.10.2003, was that services of only those daily wagers would be regularized, who have been engaged before 31.01.1996. We find the introduction of date 31.01.1996 through the impugned amendment dated 10.02.2004 to be unreasonable and arbitrary because if such an amendment is to be allowed, then the result is that a daily wager, who puts in three years of service from 30.01.1996, would be entitled to regularization of his service, whereas the services of the person like the petitioner, who would have put in over five years of service i.e. from August 1998 till 30.09.2003, would not be regularized.

Even otherwise, the impugned amendment through notification dated 10.02.2004, could not apply retrospectively to take away the vested rights of the petitioner, whose services had already been regularized through order dated 15.12.2003 prior to the amendment. If at all the impugned amendment was to apply, the same could be applied to cases of regularization of service after the date of the amendment i.e. 10.02.2004.

Following the ratio of law laid down in the above mentioned judgment, the writ petition is disposed of and direction is given to the respondents to regularize the service of the petitioner w.e.f 01.10.2003, in view of policy/instruction dated 01.10.2003 and in view of the judgments mentioned above and petitioner would not be entitled to any back wages, but will be entitled to benefit of continuity of services and other consequential benefits. The exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

04.04.2016

G Arora