

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

Date of decision: 31.08.2016

CWP No.17841 of 2016

Madan Lal

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Dharamveer Phour, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

The claim in this petition is for regularisation of service with right asserted from an Award of the Industrial Tribunal -cum- Labour Court, Rohtak dated 28.07.2003 setting aside the order of termination as illegal and granting reinstatement with continuity of service and 50% back wages from the date of demand notice dated 21.09.1999. The Award has attained finality with the dismissal of CWP No.4967 of 2004. The review petition has also been dismissed.

The petitioner has been working as Beldar on daily-wages since 01.02.1998 till his services were terminated after a short span on 01.09.1999, which became the subject matter of industrial adjudication resulting in the Award of reinstatement with continuity of service. On these facts, it is argued that by legal fiction, the services of the petitioner go back to the date of original appointment to be dealt with in future as though retrenchment had never taken place and if by fiction of law the petitioner continues then he would become entitled to claim regularisation under the extant policies of

the Government of Haryana and particularly the one issued on 01.10.2003 since reinstatement came before that by the award of the learned Tribunal. The petitioner puts paid to the protection afforded by the Haryana Government notification dated 18.06.2014, which is a policy on regularization as a one-time measure to cure irregular appointments which preserves the right of Group 'C' & 'D' employees working on ad hoc/contract/daily wages/work-charge basis, who could not be regularised under the regularisation policy issued vide notifications mentioned in the stipulations in Sr.Nos.1 to 4 of the policy, which were the earlier regularisation policies promulgated from time to time, and those would also have to be kept in mind while considering the cases of regularisation advanced by the petitioner in his pleaded case presented to this Court in proceedings under Article 226 of the COI to secure relief.

On these premises, relief is claimed for a direction to the respondents to give the benefit to the petitioner of the earlier policies on which his case ought to be considered and dealt with in accordance with law. However, no decision has been taken so far and the petitioner has moved the Department with a legal notice dated 15.03.2016 (Annex P-6) claiming that similarly situated persons, namely, Satyawan, Vikram, Smt. Khajani, Mahabir, Parkash, Smt. Shakuntla and Charan Singh, who are all Class IV Beldars appointed after the petitioner was engaged, have been regularised in service, but his case has been paid a deaf ear.

In these circumstances, the learned counsel for the petitioner submits that since the decision has not been taken on the demand for justice, he may not be in a strong position to invoke judicial review jurisdiction of this Court in absence of a primary order in place on paper while sitting in

secondary review. “To decide to do nothing is itself a decision; to remain inactive is also an act”- *said Lord Herbert Samuel*. Therefore, he pleads that the Department may be directed to decide the legal notice (Annex P-6) by treating it as a representation requesting grant of relief claimed in the notice and in the present petition on principles of parity of treatment.

The contention of the learned counsel for the petitioner is worthy of acceptance. The petitioner has a right of consideration, which cannot be denied to him and therefore a mandamus is issued to the State/Department to consider the legal notice/representation (Annex P-6) in the light of the above facts, as set out in greater detail in the Legal notice/representation and in the instant petition and to take a final decision thereon by passing a reasoned speaking order. It is expected that the Department would compare the cases of the similarly-placed daily-wagers named above and to consider the claim of the petitioner from the earliest regularisation policy or the policies on which the cases of the fortunate ones were allowed, and albeit on the terms and conditions prescribed therein, which the petitioner may satisfy. This is for the competent authority to examine. Thus, without expressing any opinion on merits, it is ordered that the entire exercise be completed within six weeks from the date of receipt of certified copy of this order. The final order would be communicated to the petitioner forthwith. In case, the claim of the petitioner is found genuine, then relief can be granted without passing a speaking order and by issuing only an office order. In case, the decision is adverse to the petitioner, then the necessity would arise for recording reasons which is a constitutional compulsion adumbrated in S. N. Mukherjee Vs. Union of India, AIR 1990 SC 1984 [CB].

With the above observations and directions, the petition stands disposed of.

31.08.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>