

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.18874 of 2015 (O&M)

Sanjay Kumar ... Petitioner

Versus

State of Haryana and others ... Respondents

2. CWP No.18876 of 2015

Sh. Anoop Sharma ... Petitioner

Versus

State of Haryana and others ... Respondents

Date of Decision: 22.10.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajesh Goyal, Advocate,
for the petitioner(s).

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.18874 of 2015 titled *Sanjay Kumar v. State of Haryana and others* [Case 1] & CWP No.18876 of 2015 titled *Sh. Anoop Sharma v. State of Haryana and others* [Case 2]. Facts are taken from Sanjay Kumar case for convenience.

2. The salient facts which are necessary for adjudication of these two cases are as follows:-

3. The petitioners in Case 1 & 2 joined the respondent department as Mali-cum-Chowkidars in 1995. Their services were dispensed with on April

25, 1998. Sanjay Kumar did not call in question his termination order for a long time and raised an industrial dispute after five years in 2003 which dispute was referred by the appropriate government to the Labour Court, Panipat. Unlike Sanjay Kumar, Anoop Sharma [Case 2] did not waste too much time to raise an industrial dispute in comparison. On adjudication, the references were answered in favour of the petitioners by awards, in the case of Sanjay Kumar (CWP No.18874 of 2015) on May 19, 2006 while Anoop Sharma (CWP No.18876 of 2015) having raised an industrial dispute a lot earlier than his friend obtained a reference in the year 2000 against his termination on April 25, 1998. Anoop Sharma succeeded before the Labour Court in the award dated August 01, 2002 with relief of reinstatement with continuity and full back wages but from the date of demand notice i.e. March 21, 2000. The date of demand notice in the case of Sanjay Kumar is September 09, 2002.

4. Sanjay Kumar has also, like Anoop Sharma, obtained an award of reinstatement with continuity of service but back wages have been denied by the Tribunal in the award dated May 19, 2006.

5. In Sanjay Kumar's case, the State filed CWP No.15034 of 2006 assailing the award unsuccessfully and the petition was dismissed on September 22, 2006 by this Court. The order has attained finality. However, in the case of Anoop Sharma the State was successful in getting the award set aside in CWP No.15703 of 2003 on October 20, 2007. The petitioner Anoop Sharma challenged the order of this Court in appeal before the Supreme Court in SLP No. CC 17965 of 2008 which was allowed on April 09, 2010 and implemented relief came to the petitioner late when he was

allowed to join the respondent-Department on April 23, 2010 and has since been working there in his original capacity.

6. The petitioners have approached this Court in the present cases [which have been ordered to be heard together] seeking directions to the respondents to regularize their services under the regularization policy dated October 01, 2003 which provides relief to Group-C & D employees who were engaged *inter alia* on daily wages and part time service and who had completed a minimum period of three years as on September 30, 2003. They were in litigation on the appointed day when forced out of service by what the Labour Court has declared as illegal termination.

7. They both assert that their colleagues who joined the department in 1995 and continued in service have received the benefit of regularization of their services by the department and some of those names are mentioned in the petition. They claim parity of treatment with them. They represented for regularization of their services in terms of policy instructions of 2003.

8. They have both relied on the litigation by Jiyaji Sharma, a daily wage worker like them who joined the department with the petitioners and filed CWP No.23938 of 2013 for regularization of his services in terms of the policy of 2003. This Court allowed the petition in a bunch matter on May 28, 2014. LPA No.1903 of 2014 filed by the department was dismissed on January 21, 2015 in *Khajjan Singh and others v. State of Haryana and others*, 2015 (2) RSJ 135 : 2015 (1) SCT 604 authored by the undersigned. It may be mentioned that the matter is now pending before the Supreme Court and contempt actions in this Court have by interim order kept contempt proceedings in abeyance.

9. In the light of the above factual position, the claim of the petitioners have to be considered whether they have any right to claim regularization in terms of the policy letter dated October 01, 2003, both of them armed with Labour Court awards in their favour granting them reinstatement and continuity of service. One without back wages [Sanjay Kumar] while the other with back wages but from the date of raising an industrial dispute by a demand notice.

10. When the cases of both Sanjay Kumar and Anoop Sharma are examined closely there are a few stark differences which might bring relief to them differently. The admitted position in Sanjay Kumar's case is that after termination of service on April 25, 1998 he raised an industrial dispute in 2002 and secured reference in 2003. He slept over his rights for at least four years. This gap has been moulded by the Labour Court, Panipat by depriving Sanjay Kumar the back wages altogether but granting him reinstatement with continuity of service which would take effect from 1998. His award was answered on May 19, 2006 in his favour to the extent indicated. Four to five years of inactivity in seeking legal remedy is sufficient to be read against Sanjay Kumar the aforesaid period from service and continuity accordingly. The reference was made on September 28, 2003 while the policy relied upon is dated October 01, 2003 with the cut-off date September 30, 2003 as per policy. This cuts his case very fine separating it artificially by two days from the date of reference.

11. On the other hand, Anoop Sharma did not sit idle for too long after his termination on April 25, 1998 and raised an industrial dispute by the demand notice on March 21, 2000. In his case the award came on

August 01, 2002 and his rights to continuity of service stood crystallized well before the policy letter was issued on which reliance is placed. I have thus no doubt that Anoop Sharma would take the benefit in *Khajjan Singh's* case since in the meanwhile similarly placed persons had continued to work and obtained orders of regularization. This fact is not disputed by the respondents. Anoop Sharma had to litigate up to the Supreme Court in what now makes for an important judgment of the Supreme Court delivered in his case in Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana), 2010 (3) SLR 663. In his case the Labour Court award was restored by setting aside the judgment of the High Court. The Supreme Court in its order dated April 09, 2010 granted interest @9% per annum from the effective date of reinstatement i.e. March 21, 2000. The petitioner cannot be deprived of his rights secured from the Supreme Court. The petitioner would effectively be in position on the cut-off date in the policy letter dated September 30, 2003 and would reap the benefit of this policy as he would be deemed to be in position on that date. Anoop Sharma would also take the benefit of the judgment of the Supreme Court in Hari Nandan Prasad & Anr v. Food Corporation of India, (2014) 7 SCC 190 on the point of unfair discrimination and by virtue of Article 14 of the Constitution and accordingly the petitioner has to be put at par with his erstwhile colleagues who had the fortune to continue in service without the axe of termination falling on their heads.

12 As a result, the writ petition filed by Anoop Sharma's is allowed with a direction to the respondents to consider regularizing his services under the policy letter dated October 01, 2003.

13. However, Sanjay Kumar cannot reap the benefit of his lethargy amounting to laches at the cost of the State for sitting idle and contented for five years before raising an industrial dispute and receiving an award four years after Anoop Sharma litigated in four courts succeeding in the highest Court. Sanjay Kumar's rights had not matured on September 30, 2003 as explained above and his case would have to be separated and dealt with in a different manner. Granting him the effective legal fiction of reinstatement and continuity of service to wash out half a decade of virtual abandonment of service will not to my mind bring him the desired and precious benefit of regularization of his services automatically under the policy letter dated October 01, 2003 and his case would have to be examined for fitment in some other policy issued thereafter, which adjustment is not for this Court to match, search for and grant relief since it is in the domain of the authorities. Therefore, Case 1 is dismissed qua policy letter dated October 01, 2003 but is disposed of with a direction to the respondents to consider his case for regularization in any of the subsequent policies issued by the State Government by passing a speaking order and communicating the same to him within three months, if requested by the petitioner in Case 1 by a representation in writing to the competent authority. The time given for decision making in the direction will run from the date of presentation of the request in writing.

14. In the matter of grant of similar relief arising from Court orders where an employee does not challenge the wrongful action and acquiesces in the same for an inordinately long period of time only to wake up after long unexplained delay and laches to litigate, then he is not ordinarily

similarly placed person to one who approached within reasonable time by reason that his erstwhile shoulder-to-shoulder workers had approached the Court earlier in time and succeeded in their efforts. Such an employee cannot claim as a matter of right that the benefit of a judgment be extended to them. This fence-sitting and delay and laches will bring such person different relief, if at all. In this manner, the law stated by the Supreme Court in State of U.P. and others vs. Arvind Kumar Srivastava and others, (2015) 1 SCC 347 would have to be kept in view.

15. The petitions are disposed of in the above terms i.e. Case 2 is allowed while Case 1 is dismissed qua claim based on the policy dated October 1, 2003 but his rights, if any, are kept open in terms of paragraph 13 above.

(RAJIV NARAIN RAINA)
JUDGE

22.10.2016
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Whether speaking/reasoned Yes

Whether reportable Yes