

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 18923 of 2015
Date of decision:-23.02.2016

Gulshan and anr. ...Petitioners

versus

State of Hry. and others ..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Sr. Advocate with
Ms. Rimpal Kadyan, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl.A.G. Haryana

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

RITU BAHRI , J.

Petitioners have approached this Court praying for issuance of writ in the nature of mandamus to consider the claim of petitioner for regularization in the light of the policy decision dated 01.10.2003 (P-3) and petitioners be granted all consequential benefits.

<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>
Gulshan <i>Chowkidar</i>	05/02/97	August 2000	13.10.2004	Reinstated with continuity of service
Hira Mal Chowkidar	04/12/98	01/12/99	15/24.07.2002	Reinstated with continuity of service

In view of the above, both petitioner joined their service with continuity of service. Thereafter, Haryana Government had issued a policy decision dated 01.10.2003 that all daily wagers who had completed three years service on 30.09.2003 are entitled for regularization w.e.f 01.10.2003 (P-3). The said policy was withdrawn by the State in the year 2007 but vide notification dated 20.06.2014 the Government has withdrawn the said instructions and decided to regularize the services of left over cases (P-4). However, services of petitioners were regularized w.e.f 07.07.2014 in the light of policy decision dated 18.06.2014 (P-5) instead of 01.10.2003. In this regard, petitioners notice for regularization of their services w.e.f 01.10.2003 (P-6) to which the Executive Engineer, Provisional Division, PWD (B&R) Jind has given its reply stating therein that petitioners were not covered under the notification dated 01.10.2003 as in para 8 of that notification, it has been stated as under:-

8. In the case of daily wage group C & D employees, only those daily wages employees shall be regularized who had been engaged before 31.01.1996 provided they fulfill other conditions.”

In view of the above condition, the case of the petitioners for regularization of their services w.e.f 01.10.2003 was rejected, as they were appointed in the year 1997 and 1998.

At the very outset, learned senior counsel for the petitioners has referred 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. This Court while referring to ***CWP No. 5270 of 2004 titled as Ajit Singh vs. State of Haryana and others***, allowed the writ petition and held the petitioner 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.

On the other hand, learned State counsel submits that the services of the petitioner have been regularized 07.07.2014 in the light of policy decision dated 18.06.2014 (P-5) and there is nothing wrong in the action of the respondents in not regularizing the service w.e.f 01.10.2003.

Reference has been made to a decision of Hon'ble the Supreme Court in a case of ***State of Rajasthan and others v. Daya Lal and others, 2011 (2) SCC 429*** wherein in para 8 of the judgment, it has been observed as under:-

8. We may at the outset refer to the following well settled principles relating to regularisation and parity in pay, relevant in the context of these appeals :

"(i) *High Courts, in exercising power under Article 226 of the*

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Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularisation of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part time temporary employees.

(v) Part time temporary employees in Government run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with Government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

Similar issue came up for consideration before this Court in

a case of **Mohammad Farookh and anr vs. State of Haryana and**

others, 2012(6) SLR 687 and in para 7 and 8, it has been observed as under:-

7. The other objection which has been raised by the respondents denying the claim as has been made by the petitioners for regularization of their services is that they did not fulfil the requisite qualification nor were they appointed against sanctioned/vacant posts. This objection cannot be accepted in the light of the fact that minimum qualification prescribed for the post of Beldar is not mentioned nor any statutory Rules have been referred to which would suggest that the appointments of the petitioners should be with a specified qualification. With regard to the availability of sanctioned post, the same also cannot be accepted keeping in view the fact that petitioners are daily wage employees and posts are created depending upon the need which has been created by the respondents and persons who have been appointed subsequent to the petitioners have been regularized. Plea of the respondents that petitioners had not completed more than 240 days in a preceding year also cannot be accepted in the light of the Awards dated 11.8.2004 (Annexures-P-1 and P-2), passed by the Industrial Tribunal-cum-Labour Court, Ambala.

8. As regards the submission of the counsel for respondents

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that the policies for regularization of the services of the adhoc/daily wage part time/ temporary workers have been withdrawn, suffice it to say that the right of the petitioners for consideration arose to them as per the policy dated 1.10.2003, and the denial thereof on the ground that they have not completed 240 days in 12 preceding months have been found to be not in accordance with law. The plea of the respondents that the petitioners having approached this Court after a delay cannot again be accepted as the petitioners have been representing the respondents and their claim has been denied merely because they were not in service on the relevant date which plea has also been found to be not correct in the light of the Awards passed by the Industrial Tribunal-cum-Labour Court, Ambala, referred to above. “

The above mentioned **Daya Lal's case (supra)** is not applicable to the facts of the present case as in the present case, petitioners were appointed in the year 1997 and 1998 and were subsequently terminated. They challenged their termination orders and Labour Court was answered in their favour and they were subsequently reinstated with continuity of service.

For all intents and purposes, the petitioners were held to be deemed in service w.e.f the date of their appointments and their cases

were totally covered by the policy dated 01.10.2003 as they had put in three years of service as on 30.09.2003. Thus, the case of the petitioners should be considered in view of the policy/instruction dated 01.10.2003 issued by State of Haryana instead of policy decision dated 18.06.2014 (P-5).

In view of the above, the writ petition is allowed 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 ***Ajit Singh's case (supra)*** and petitioners would not be entitled to any back wages, but will be entitled to benefit of continuity of services and other consequential benefits.

(RITU BAHRI)
JUDGE

23.02.2016

G Arora