

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 1994 of 2016
Date of decision: 4.10.2016

Jasmer Singh

... Petitioner

Versus

State of Haryana & anr.

... Respondents

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

Present: Ms. Abha Rathore, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner was a daily-wager serving in the office of 2nd respondent at Karnal, presently he is serving at Jind after he secured reinstatement from the Labour Court Panipat vide award dated July 27, 2000. The Labour Court granted continuity of service and full back-wages by declaring the retrenchment illegal and therefore, by fiction reinstatement goes back to the initial appointment. As a result of this, the petitioner would be deemed to be in continuous service since January 1, 1993. In this petition he claims that the benefit of regularization in terms of the Haryana Government policy dated March 7, 1996 as modified soon after on March 18, 1996 on the subject of regularization of work-charged/casual/daily rated employees. The policy dated March, 7 1996 required 5 years of continuous service as on January 31, 1996 for entitlement to regularization of an irregular appointment. However, the subsequent policy dated March 18, 1996 relaxes the condition of 5 years to 3 years as sufficient for the concession. Therefore, the petitioner came within the stipulation in the policy apart from satisfying the conditions required by the legal fiction

postulated in the policy.

2. While he was litigating while out of service, many of his compatriot daily wage earners who continued in service came to be regularized in service under the prevailing policy but the petitioner's case could obviously not be considered due to pending litigation and declaration of rights.

3. There is no dispute that the award of the Labour Court attained finality with the matter resting in the Supreme Court judgment dated January 13, 2015 (Annex P-1) pronounced in favour of the petitioner after he lost two the battle in this Court in writ and appeal, where State succeeded in getting the award set aside. However, with the restoration of the award by the Supreme Court and consequential reinstatement to service, the petitioner acquired a right of consideration for regularization in terms of the former policy with effect from the date when persons junior to him were regularized in service on standards set on the cut-off date. The juniors had their service regularized w.e.f. February 1, 1996 and that is the date claimed in this petition for relief.

4. In view of the law in Khajjan Singh v. State of Haryana & ors., 2015(1) SCT 604, and of the Supreme Court in Hari Nandan Prasad & anr. v. Employer I/R to Mangmt. of FCI and another, 2014(3) SLR 262 and in Jasmer Singh v. State of Haryana, (2015) 4 SCC 458 and also CWP No.2724 of 2015, Ashok Kumar v. State of Haryana & ors. decided by learned single Judge on December 3, 2015, and hence this petition deserves to be allowed to prevent continued right against unfair discrimination, which is both hostile and invidious if relief was not granted to the petitioner.

5. As a result of right to restoration of antecedent rights by deemed fiction of law and in order to cure continued right deprivation regarding regularization and so as to put the case back on rails of parity of treatment, this petition is allowed. The impugned order rejecting the claim of the petitioner placed at Annex P-5 dated January 18, 2006 is quashed and the petitioner is held entitled to all consequential benefits in terms of the policy of 1996. As a corollary, a writ of mandamus is issued to the respondents to regularize the services of the petitioner w.e.f. February 1, 1996 to bring his case at par with his juniors.

6. Accordingly, the petitioner would get his monetary rights ordinarily from the date of regularization i.e. February 1, 1996 (subject to what has finally been allowed, as at the end of the order) for two reasons; firstly, an illegal order of termination was passed, which was set aside by the Labour Court and the Labour Court award was restored by the Supreme Court because the department was in breach of the statutory provisions of the Industrial Disputes Act, 1947, which resulted in disengagement for the wrong reasons without just cause or legal justification. The State cannot be rewarded for passing an illegal order contrary to the statutory provisions. Secondly, the petitioner was deprived of his labour all these years suffering loss of livelihood which is irretrievable and has thus to be compensated with the difference of arrears of salary as between daily-wagers and regular hands and in the same terms given to his colleagues who were fortunate to have continued in service. This can be the only justifiable recompense for the agony of prolonged litigation faced by Jasmer Singh (petitioner) a recipient of case Jasmer Singh v. State of Haryana (supra) battling from the year 1996 for vindication of his rights.

7. However, Mr. Rathee points out that if this past benefit is given, it should run from the date of demand notice. The date of demand notice is November 27, 1996. This principle of moulding relief to suit a case is well-known to labour jurisprudence and is mostly accepted as the applicable principle of relief which is found suitable to the facts of this case. I would agree with Mr. Rathee that this clipped relief should be modulated in parity with the relief granted in a similar situation presented before the learned Single Judge in *Ashok Kumar's* case (supra) on which he places strong reliance to avoid a windfall. It is ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

4.10.2016
monika

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>