

CWP No.21754 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.21754 of 2016

Date of Decision: 20.10.2016

Suresh Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Senior Advocate, with
Mr. Samrat Malik, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

The uncontroverted factual position is that petitioner was appointed as an Electrician on daily wages on 3.1.1997 and he continued in service without any interruption up to 12.6.1998. After which engagement he was not allowed to continue in service. He felt aggrieved and raised a dispute with the management seeking reinstatement and the matter was referred to the Industrial Tribunal by the appropriate government on a reference to the learned Labour Court which vide award dated 18.12.2002 reinstated him with continuity of service and 50% back wages from the date of demand notice on a finding that the retrenchment was illegal. On a challenge to the award of the learned Labour Court, this court upheld the award vide decision dated 09.05.2014 rendered in CWP No. 19429 of 2003 (P-2) in which apart for other things, affirmed continuity in service granted by the learned Labour Court. On the strength of the award the petitioner claims regularization.

The Haryana Government had issued a policy decision dated 1.10.2003 wherein it was decided that all daily wagers who had completed three years service as on 30.9.2003 are entitled to regularization and indisputably the petitioner fulfils all the conditions of regularization prescribed as conditions precedent in the policy dated 01.10.2003 (at Annex P-4).

The sole controversy involved in the present case is squarely covered by the judgment rendered in CWP No.27024 of 2013 and four connected writ petitions cited as in lead petition titled 'Jai Bhagwan v. State of Haryana and others' decided by a Coordinate Bench on January 20, 2016 and the issue in controversy is also covered by the judgment rendered in CWP No. 9873 of 2013 decided on 07.05.2015 titled as 'Raj Kumar Vs. State of Haryana' and other connected writ petitions at Annex P-10 and still further the subject matter is also covered by the judgment rendered in CWP No.11224 of 2015 titled as 'Lekhu Raj Vs. State of Haryana' (P-11).

Since the same controversy is involved in the present writ petition, Mr. R.K. Malik, learned senior counsel appearing for the petitioner submits that the petitioner is entitled to grant of similar relief on principles of parity of treatment and equality before the law with those who are satisfied and are enjoying the fruits of litigation. That apart, Mr. Malik cites the law in Hari Nandan Prasad and another v. Employer I/R to Management of FCI and another; 2014 (2) SCT 234 (SC), Khajjan Singh v. State of Haryana & Others, 2015 (1) SCT 604: 2015 (2) RSJ 135 and the learned Single Judge decision in CWP No.9873 of 2013 in case titled Raj

Kumar v. State of Haryana and others decided on May 07, 2015 (P-10) relying on dicta in *Hari Nandan Prasad* and *Khajjan Singh* cases and the law enunciated by the Supreme Court in Maharashtra State Road Transport Corporation Ltd. vs. Casteribe Rajya P. Karmchari Sanghatana, (2009) 8 SCC 556 to contain the operational principle to resolve this case which is on all fours and on equal footing with the instant case for grant of similar relief in the same circumstances and in the same context.

In view of the settled legal position by *stare decisis* it would no longer be necessary to issue notice of motion in this case to the respondents as the services of similarly situated employees who have already been regularized in light of the policy decision dated 1.10.2003 (P-4) creates rights on the petitioner and any prevarication will only result in delaying the matter by awaiting response of the State expecting a different result which is no longer open to fresh debate. It would be expecting far too much from the State for it to take a different stand in this case and, therefore, this writ petition is allowed to the extent that the department is directed to take up the representation dated August 24, 2016 (P-7) submitted by the petitioner Suresh Kumar and pass an appropriate order in the light of the orders passed by this Court in *Raj Kumar's* and *Lekhu Raj's* cases (*supra*).

As a result of the aforesaid factual position established on record, a direction is issued to the respondents to consider the case of the petitioner and grant him the desired relief on principles of equal opportunity. Let the consideration take place within three weeks from the date of receipt of certified copy of this order.

On the passing of the order, the petitioner would be entitled to all consequential benefits in the same terms as was granted to the petitioners in the aforesaid cases so that the petitioner is not compelled to come back to this Court for resolution of consequential and residuary benefits on the same issue which is no longer *res integra* and to allow the respondents in the future to expend more court time on a covered matter and thus all rights flowing from regularization are decreed so that from the appropriate and due date the petitioner's rights are taken care of today in order to prevent any excess burden of litigation which might be forced upon the petitioner tomorrow. As the practical saying goes; a stitch in time saves nine.

Order dasti.

20.10.2016
Vimal

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*