

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

1. CWP No. 27024 of 2013

Jai Bhagwan

...Petitioner

versus

State of Haryana and others

..Respondents

2. CWP No. 27311 of 2013

Ram Lal

...Petitioner

versus

State of Haryana and others

..Respondents

3. CWP No. 27357 of 2013

Satinder Kumar

...Petitioner

versus

State of Haryana and others

..Respondents

4. CWP No. 27395 of 2013

Sanjeev

...Petitioner

versus

State of Haryana and others

..Respondents

5. CWP No. 7343 of 2014

Roshan Lal

...Petitioner

versus

State of Haryana and others

..Respondents

Date of decision:-20.01.2016

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jagbir Malik, Advocate, for the petitioner(s).

Mr. Samarvir Singh, DAG, Haryana

Ms. Avnika Gupta, Advocate, for
Mr. Vinod S. Bhardwaj, Advocate
for respondent No. 4 in CWP No. 27024, 27395,
27311 and 27357 of 2013

Mr. Ajay Ghanghas, Advocate for respondent No. 4 in
CWP No. 7343 of 2014

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

RITU BAHRI , J. (Oral)

This order shall dispose of the above five petitions as common question of facts and law are involved in all these petitions wherein prayer is for consideration of claim of the petitioners for regularization in the light of policy decision dated 01.10.2003. However, for the facility of reference, the facts are being taken from C.W.P No. 27024 of 2013.

Petitioner-Jai Bhagwan was appointed on 01.01.1990 by the Municipal Committee, Panipat on the vacant post of Sweeper on daily wages basis and continued up to 31.12.1995 and on 01.01.1996, the services of the petitioner was terminated. The petitioner raised a dispute and the matter was referred to the Industrial Tribunal cum Labour Court, Panipat, who answered the reference in favour of the petitioner, vide award dated 08.05.2003 and direction was given to the respondents to reinstate the petitioner in service with continuity of service and full back wages from the date of demand notice i.e. 03.03.1997 (P-1). This award was challenged by respondent No. 4 by filing CWP No. 9654 of 2003 and vide order dated 04.11.2003, the matter was remanded back to the Labour Court Panipat for fresh adjudication and on 26.07.2004 (P-2), the Labour Court again answered the reference in favour of the petitioner and directed the respondents to reinstate the petitioner in service with continuity of service and full back wages from the date of demand notice i.e. 03.03.1997 (P-1). Thereafter, the petitioner was allowed to join the duty on 28.01.2005 and from then the petitioner is continuing without any break. Thereafter, Haryana Government on 01.10.2003 had issued a policy that all daily wagers who have completed three years of service on 30.09.2003 are entitled for regularization (P-3).

The precise grievance of the petitioners that services of

hundred of juniors to the petitioner have been regularized by Municipal Corporation including Municipal Corporation, Panipat w.e.f 01.10.2003 but the claim of the petitioner for regularization was not considered on the ground that in the year 2007, the policy decision dated 01.10.2003 has been withdrawn by the Government and in compliance of the judgment of Hon'ble the Supreme Court in a case of State of Karnataka vs. Uma Devi, the Government of Haryana had issued a policy decision dated 29.07.2011 to regularize the services of those who completed 10 years of service on 10.04.2006 (P-4).

On notice, a written statement has been filed on behalf of respondent No 4 admitting all the facts about the date of appointment of the petitioner and passing of award by the Labour Court but a stand has been taken that the petitioner submitted an affidavit before the Labour Court that he was gainfully employed during the period of his disengagement and till the time of his reinstatement. The petitioner was although reinstated in service but the benefit of backwages was not released to him, as in the affidavit, he stated that he waived the back wages of award and will not claim the same in any Court.

Learned counsel for the petitioner contends that vide award dated 26.07.2004 (P-2), the Labour Court again answered the reference in favour of the petitioner and directed the respondents to reinstate the petitioner in service with continuity of service and full back wages

from the date of demand notice i.e. 03.03.1997. Thus, the petitioner was held to be deemed in service w.e.f 03.03.1997 and he has completed his almost 06 years of service when Haryana Government framed its policy dated 01.10.2003 to regularize the persons who had completed three years of service on 30.09.2003.

Reference has been made to plethora of judgments passed by this Court regarding regularization of their services in view of policy dated 01.10.2003 wherein it has been held that regularization of similar situated employee cannot be rejected on the ground that after Uma Devi's judgment policies of regularization have been withdrawn by the Government. The judgments cited by learned counsel for the petitioner mentioned as under:-

1. Ved Pal vs. State of Haryana and others,
CWP No. 1169 of 2009 decided on 10.02.2012
2. State of Haryana and others v. Ved Pal and others
LPA No. 1037 of 2012 decided on 25.07.2012
3. Arun Kumar and others v. State of Haryana and others
CWP No. 4821 of 2011 decided on 19.04.2012
4. Chet Ram and others v. State of Haryana and others
CWP No. 2822 of 2012 decided on 19.09.2012
5. State of Haryana and others v. Chet Ram and others v.
LPA No. 1214 of 2013 decided on 12.07.2013
6. Khajjan Singh and others v. State of Haryana and others
CWP No. 10017 of 2011 decided on 28.05.2014
7. Ram Kumar v. State of Haryana and others
CWP No. 9873 of 2013 decided on 07.05.2015

Learned counsel for the respondent contends that the writ petition filed by the petitioner deserves to be dismissed on two grounds i.e once the petitioner had given his affidavit (R-4/1) that he was employed somewhere else when he was not in service, his service cannot be treated as regular service for consideration of his claim of regularization of his service, in view of policy dated 01.10.2003 and secondly, the above said policy of 2003 was withdrawn by the Government and in compliance of the judgment of Hon'ble the Supreme Court in a case of ***State of Karnataka vs. Uma Devi*** and the Government of Haryana had issued a policy decision dated 29.07.2011 to regularize the services of those who completed 10 years of service on 10.04.2006 (P-4) in which the petitioner is not eligible.

Heard learned counsel for the parties.

Reference at this stage can be made to a judgment passed by this Court in ***CWP No. 5848 of 2011 titled as Karamvir Singh vs. State of Haryana and others and connected cases***, decided on 11.01.2012 where similar issue has been dealt with wherein the petitioner was working as Peon on daily wages w.e.f 10.03.1992 and was terminated vide order dated 09.06.1999, which was challenged by him and the Labour Court held the order to be illegal, null and void and the petitioner was held entitled to reinstatement in service with all consequential benefits including continuity of service and full back

wages. The department went up to the Hon'ble Supreme Court but the award passed by the Labour Court attained finality. But the petitioner was taken back in service on 18.03.2010 and thus his claim for regularization of his service in view of policy dated 01.10.2003 was declined by the Department. But this Court allowed the writ petition filed by the petitioner and held that the petitioner is deemed to be in service since 10.03.1992 as the order of termination of service dated 09.06.1999 was held to be null and void by the Labour Court. Thus, the petitioner was held entitled to regularization of his service from the date the services of his juniors were regularized and was held entitled to the benefit of policy decision dated 01.10.2003 with all consequential benefits.

In the present case as well, the award was passed in favour of the petitioner on 26.07.2004 (P-2) and direction was given to the respondents to reinstate the petitioner in service with continuity of service and full back wages from the date of demand notice i.e. 03.03.1997 (P-1). For all intents and purposes, the petitioner was held to be deemed in service w.e.f 03.03.1997 and only on the ground that he was doing private job during Court case, will not deprive him of the benefit of the Haryana Government policy dated 01.10.2003 whereby all daily wagers who have completed three years of service on 30.09.2003 were held entitled for regularization (P-3).

In view of the above, the above mentioned five writ petitions are allowed and petitioners are held entitled to regularization of their services, from the date persons junior to them have been regularized as mentioned in para No. 5 of the writ petition.

Orders in this regard shall be passed by the respondents within a period of two months from the date of receipt of certified copy of this order and the petitioners will be entitled to all consequential benefits in terms of policy decision dated 01.10.2003.

(RITU BAHRI)
JUDGE

20.01.2016

G Arora