

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CWP No. 2552 of 2014 (O&M)

Date of decision : February 23, 2016

* * * * *

Rambir Singh

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Sushil Bhardwaj, Advocate for the petitioner.

Mr. Keshav Gupta, Assistant Advocate General,
Haryana.

* * * * *

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner is seeking writ of certiorari for quashing of the orders dated 29.7.2010 (Annexure P-7) and subsequent order dated 13.12.2013 (Annexure P-12) passed by the respondents whereby the claim of the petitioner for regularization of the services in view of the policies issued by the Govt. of Haryana has been rejected.

The petitioner was appointed as Beldar on 5.3.1990 on

daily wages basis in the respondent-Department. He was assigned the duty of driver on Road Roller No. 343. His services were terminated in the year 1996. The said order of termination was assailed by the petitioner by way of filing CWP No. 11121 of 1996 and vide order dated 30.7.1996 the department was directed to allow the petitioner to continue in service. Thereafter the order of termination was withdrawn and the petitioner was reinstated. The said writ petition was disposed of on 11.11.1997 and the department was directed to consider and decide the representation of the petitioner by passing a speaking order. The Government of Haryana vide notification dated 7.3.1996 (Annexure P-1) took a policy decision to regularize the services of the daily rated employees who have completed five years of service on 31.1.1996. This policy was again modified vide policy dated 18.3.1996 (Annexure P-2) to the effect that daily rated employees who have completed three years of service instead of five years shall be eligible for regularization. The services of the petitioner were again terminated on 1.8.1998. He challenged the said order by way of filing CWP No.14237 of 1998 which was disposed of vide order dated 25.11.1998 (Annexure P-3) with a direction that the petitioner shall be reinstated in service forthwith. The Engineer in Chief, Haryana, PWD, B&R Br. Chandigarh issued a letter dated 22.2.1999 (Annexure P-4) for regularization of services of the daily rated employees who have completed three years of service on 31.1.1996 in view of the policy decision. The Government of Haryana General Administration

department vide notification dated 1.10.2003 (Annexure P-5) again took a policy decision to regularize the services of daily wage employees who have completed three years service on 30.9.2003. Despite the specific instructions by the Government of Haryana, the Department did not consider the claim of the petitioner for regularization of his services in the light of instructions dated 1.10.2003 (Annexure P-5). The petitioner again filed CWP No. 3350 of 2010 seeking direction for regularization of service w.e.f 31.3.1993 which was disposed of vide order of this Court dated 24.2.2010 (Annexure P-6) with a direction to decide the legal notice by passing a speaking order. In compliance of the order dated 24.2.2010 (Annexure P-6), legal notice of the petitioner was considered and his claim for regularization was rejected by the order dated 28.7.2010 (Annexure P-7). The order dated 28.7.2010 (Annexure P-7) was again assailed by the petitioner by filing CWP No.7822 of 2011 which was dismissed as withdrawn vide order dated 5.7.2011 (Annexure P-8) with liberty to file a representation seeking regularization in terms of law laid down by the Hon'ble the Supreme Court of India. As per the policy decision dated 29.7.2011 (Annexure P-9), the State Government decided to regularize the services of the employees who have completed ten years of service on 10.4.2006. After passing of the order dated 5.7.2011 (Annexure P-8), the petitioner again filed a representation within two weeks seeking his regularization in terms of law laid down by Hon'ble the Supreme Court of India. When the said representation remained undecided, the petitioner served a legal

notice dated 19.11.2013 (Annexure P-10) upon the respondents for redressal of his grievance. The claim of the petitioner was rejected vide order dated 13.12.2013 (Annexure P-12) on the ground that he was reinstated under the order of the Court and as such he was not entitled for regularization. In paragraph 17 of the petition, names of the juniors of the petitioners have been given who had been earlier regularized as per the policy of 1996.

Written statement was filed on behalf of the respondents. In reply to paragraph 17 of the writ petition, it has been submitted that the petitioners cannot equate his case with his so called juniors. Since they fulfill the requisite conditions of the government policies, therefore, they have been given the benefit of regularization taking into account all the relevant facts but the case of the petitioner does not fall within the ambit of policy decision, therefore, case of the petitioner has rightly been rejected. After his reinstatement on 25.11.1998 his case does not fulfill the conditions as per the policy dated 29.7.2011 (Annexure P-9) and he is not entitled for regularization.

A short affidavit has been filed on behalf of respondent no.2-Engineer-in-Chief, Haryana Public Works (B&R) Department, Chandigarh on 31.3.2015 explaining that in compliance of the directions of this Court dated 10.2.2015 and letter dated 24.2.2014, the Superintending Engineers have submitted certificate that all the employees have been paid their salary/wages for the month of January 2015, copies of which were enclosed as Annexure R-2/B-1

to R-2/B-15. It has been further clarified that TMRs are issued by the J.E/S.D.E under whom such employees are engaged on daily wages and are working on the completion of every month and are submitted before the EE. The E.E concerned approve the same, bills are prepared and submitted to the Treasury for passing the same. The Treasury Officer concerned passes the bills, then payment is drawn and paid to workmen engaged on muster roll basis or otherwise. This process of preparation of TMR, bills passing by Treasury Officers and making the payment to the employees takes at least 15 days. So, it was undertaken that every low paid employee working on muster roll or otherwise would receive the salary of previous month on or before 15th day of every month. As regards the monthly salary of the regular employees, it is drawn through the Haryana Govt Treasury and as per bills, the Treasury transfers the salary on the pay day in the account of the employees. Whereas the wages/salary of the employees/workmen engaged on muster roll or otherwise are disbursed after muster roll are issued and verified by the Drawing and Disbursing officer and then bills are prepared and sent to treasury for passing. After passing of such bills in the Treasury, the payment is drawn and disbursed to the workmen. This process takes a time of 10 to 15 days in disbursement of salary and the respondent-Engineer-in-Chief, Haryana further stated in the affidavit that he will only draw his monthly salary after making sure that salary for the previous month of all low paid employees working in the Department has been disbursed well before 15th of the date of

the month and no bills are pending with the DDOs.

After going through the short affidavit of Mahesh Kumar, Engineer-in-Chief, Haryana, Public Works (B&R) Department, Chandigarh, this Court is of the view that the directions issued by this Court on 10.2.2015 had been duly complied with and in future salary of the low paid employees shall be paid in time.

Since the case of the petitioner is concerned, the reference can be made to judgment of Hon'ble the Supreme Court in the case of **Hari Nandan Prasad and another vs. Employer I/R to Mangmt. of FCI and another, 2014 (2) SCR 955**, wherein it has been held that *wherever it is found that similarly situated workman are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of the Article 14 of the Constitution.*

In the facts of the present case, the petitioner after being reinstated on 25.11.1998, had a right to be considered for regularization as per the policy dated 1.10.2003 (Annexure P-5). The essential conditions for regularization under the above said policy was that an employee should have worked for 240 days each year and should have completed 3 years of service on 30.9.2003 and should be in service on 30.9.2003. The petitioner fulfills all the

conditions of the abovesaid policy, however, the respondents vide orders dated 29.7.2010 (Annexure P-7) and subsequent order dated 13.12.2013 (Annexure P-12) have rejected the case of the petitioner by considering his case for regularization as per policy dated 29.7.2011 (Annexure P-9). His case was found to be not covered under the policy of 2003 as he has many breaks in the service in the year 2002 and 2003. A perusal of the policy dated 1.10.2003 (Annexure P-5) further provides that if there is a break in service of the daily wage for no fault attributable to him, such break should be condoned unless it is of an extraordinary longer period i.e not more than six months. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the government may not condone the same if the period of such break is more than a period of 30 days. The petitioner has been appointed in the year 1990 and he made his claim for regularization as per the letter dated 22.2.1999 (Annexure P-4). Even as per this letter, the case of the petitioner could have been considered for regularization as he had completed three years of service on 31.1.1996 and should have been considered against the above said policy. The respondents have wrongly considered the case of the petitioner under the policy dated 29.7.2011 (Annexure P-9).

Having regard to the aforesaid, the orders dated 29.7.2010 (Annexure P-7) and subsequent order dated 13.12.2013 (Annexure P-12) are set aside and the present petition is allowed with a direction to the respondents to consider the case of the

petitioner for regularization as per policy dated 1.10.2003 (Annexure P-5) and letter dated 22.2.1999 (Annexure P-4) after following the ratio laid down in the judgment of Hon'ble the Supreme Court in the case of ***Hari Nandan Prasad (supra)*** and pass an appropriate order in this regard.

February 23, 2016
ritu

(**RITU BAHRI**)
JUDGE