

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 27571 of 2015
Date of decision:-11.03.2016

Joginder Singh ...Petitioner

versus

State of Hry. and others ..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Raman B. Garg, Advocate
for the petitioner.

Mr. Ravi Pratap Singh, A.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.

Petitioner has approached this Court praying for issuance of writ in the nature of mandamus directing the respondents to regularize the service of the petitioner in the light of the policies (P-7 to P-10)

<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>
Joginder Singh <i>Beldar</i>	May 1991	31.03.1998	11/04/01	Reinstated with continuity of service and full back wages

Against the Labour Court award, the department filed CWP No. 19535 of 2001, which was admitted on 08.04.2004 and no stay was

granted. Ultimately the petition was dismissed on 29.10.2015 and the labour Court award has attained finality. However, respondent No. 4 regularized the services of the petitioner vide order dated 25.07.2014 w.e.f 28.05.2014. Petitioner joined on 31.07.2014. Subsequently, petitioner was issued orders dated 06.08.2014 and his regular appointment was cancelled and no show cause notice was issued to him (P-4). Petitioner subsequently filed CWP No. 16043 of 2014 and during the pendency of the writ petition, services of the petitioner was regularized w.e.f 07.07.2014, vide order dated 01.09.2014 (P-5). Subsequently, petitioner withdrew the above said petition on 12.12.2014 so as to seek benefit of regularisation w.e.f 01.10.2003. Petitioner then moved a representation dated 12.05.2015 for regularizing his services, in view of Haryana Government policy decision dated 01.10.2003 whereby all daily wagers who had completed three years service on 30.09.2003 were held entitled for regularization w.e.f 01.10.2003 (P-3).

Similar issue has come up for consideration before this Court in a case of ***Gulshan and another vs. State of Haryana and others***, passed in CWP No. 18923 of 2015, decided on 23.02.2016 whereby this Court while referring 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, allowed the writ petition. Reference has been made to **CWP No. 5270 of 2004 titled as Ajit Singh vs. State of Haryana and others**, which was allowed and held that the petitioner is 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

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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.

Following the ratio of law laid down in the above mentioned judgment, the writ petition is disposed of 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 ***Gulshan's case (supra)*** and petitioner 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

11.03.2016

G Arora