

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8507 of 2013

Date of Decision: 30.08.2016

Chet Ram

... Petitioner

Versus

The State of Haryana and others

... Respondents

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

Present: Mr. K.L. Suneja, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioner claims regularization of service as a Cook in the Hospitality Department, Haryana from the day one Tota Singh, Cook, who was junior to him was regularized and to grant all consequential service benefits to the petitioner. The services of Tota Singh were regularized w.e.f. April 01, 1993 as per the Haryana Government Policy instructions dated May 27, 1993 as clarified by letter dated March 18, 1994.

2. The claim is made in the following backdrop of dates and events. The petitioner was employed as a Cook on March 07, 1986 on daily wages on muster roll. Tota Singh was appointed as a Helper Cook on May 14, 1986. One Pawan Kumar Chaudhary, Cook appointed a week after the petitioner, left his job against which vacancy Tota Singh was appointed as a Cook on daily wages on September 01, 1986. Thus, Tota Singh was junior to the petitioner. They together approached this Court in CWP No.5573 of 1989 seeking regularization of the services from the date they were

appointed and for pay at par with regular Cooks. The writ petition came up for motion hearing on April 26, 1989 when the Division Bench issued notice of motion for August 07, 1989 and ordered status quo to be maintained regarding service.

3. On August 07, 1989 the State entered appearance and contested the writ petition by filing written statement and the matter was adjourned sine die to await the decision of the Supreme Court in pending appeal in *State of Haryana & Others v. Piara Singh & Others* against the ruling of the Division Bench of this Court in CWP 72 of 1988, *Piara Singh v. State of Haryana* and connected cases.

4. The State in response to the present writ petition asserts that the petitioner was not in service on the date the status quo order was passed. On May 17, 1990 the petitioner was retrenched from service but Tota Singh continued. Claiming violation of the status quo order the petitioner approached this Court in COCP No.84 of 1991 pleading that the order was disobeyed. The contempt petition was filed almost one year after the termination. However, an undertaking was given before the Bench in the contempt proceeding that the Department shall give appointment letter as Cook within two days and he will be posted at Hisar. In view of the undertaking, the contempt petition was not pressed and was dismissed as infructuous vide order dated April 12, 1991. On the same day, the Joint Director Hospitality, Haryana issued office order directing the petitioner to report for duty as Cook in the Mini Secretariat, Hisar. The petitioner joined duty on April 19, 1991. The pending writ petition which the petitioner had filed with Tota Singh as co-petitioner was dismissed on November 16, 1992

in view of the judgment handed down by the Supreme Court in *State of Haryana & Others v. Piara Singh & others*, AIR 1992 SC 2130 : (1992) 1 SCC 118.

5. It is mentioned in the impugned order that the petitioner remained absent for 502 days w.e.f. February 13, 1988 to October 06, 1992 which makes the petitioner appear to be a habitual absentee. In the meantime, the department received letter from the office of Chief Secretary to Government, Haryana dated December 17, 1992 regarding review of requirement of services of ad hoc/casual/daily wagers etc. in which letter it was stipulated that in view of the orders passed by the Supreme Court in *Piara Singh* case, the ad hoc employees are to be replaced by the candidates recommended by the SSS Board/HPSC. Hence, the services of all ad hoc employees on posts against which candidates from the SSS Board/HPSC have been recommended may be terminated immediately. In cases where no such recommendations have been made by the Board or the Commission, the department should review the position of the ad hoc appointees and terminate their services immediately, if no longer required. In cases, where High Court has granted stay on the basis of *Piara Singh's* case, immediate action in terms of letter dated November 06, 1992 may be taken.

6. In the wake of this letter, the Hospitality Organization assessed the available work and it was found that the petitioner was surplus and, therefore, his services were terminated on December 31, 1992.

7. Aggrieved by the termination, the petitioner raised an industrial dispute by serving a demand notice dated February 13, 1993 on the management praying for reinstatement, continuity of service and back

wages. It appears the dispute remained irreconcilable in conciliation proceedings and on their failure the appropriate Government made reference of the dispute to the Labour Court, Hisar which by award dated June 01, 2001 reinstated the petitioner with continuity and other consequential service benefits with 50% back wages from the date of demand notice till reinstatement. The State of Haryana called the award in question in CWP No.4087 of 2002 which failed and so did the Special Leave Petition vide order dated April 26, 2005. The award became final.

8. It would not be irrelevant to mention that the petitioner filed an application No.02 of 2011 before the Labour Court for initiating contempt of Court proceedings against the management for not regularizing his services nor giving him the benefits available to the regular employees i.e. promotion, dress allowance and increments etc. The Presiding Officer, Labour Court, Hisar by order dated August 16, 2011 dismissed the application by holding as follows:-

“5. After hearing the Ld. AR of the workman and Govt. Pleader for the management, I am of the view that the application is misconceived. This court never directed regularization of the services of the workman neither it was within the preview of this court to direct the regularization of the services of the applicant. There is difference between reinstatement and regularization. Reinstatement means restoration of the status which was on the date the services of an employee are terminated. Since the applicant was a daily wager when his services were terminated, the same status was restored while directing his reinstatement. If on the ground of length of service he is entitled to relief of regularization of his service, he can agitate his claim on said point by availing the appropriate remedy provided under the law. In the present application the court is to see whether the

directions issued by this court have been complied with by the management or not which have been complied with. Application is thus dismissed.”

9. But for the above reliefs prayed, the department in its reply states that the award has been complied with in toto and the award stands implemented of what it gave to the petitioner under court directions. It may be noted that it was during the pendency of the Special Leave Petition that the petitioner was reinstated to service on May 27, 2003 with the dismissal *in limini* by the Division Bench of the petition on March 08, 2002 filed by the State. After the dismissal of the Special Leave Petition the petitioner was paid 50% back wages on July 2006 as awarded by the labour Court in 2001 after dismissal of the civil appeal on April 06, 2005. Even before the petitioner filed application No.02 of 2011 before the Labour Court, Hisar on January 20, 2011 he served a legal notice on the respondents on May 29, 2010 requesting them to regularize his service and to provide him all consequential service benefits which a Government servant is granted during the course of his employment. He explains that because a legal notice was not attended to and the award was not complied with he had moved the Labour Court for contempt which application was, however, dismissed. When nothing seemed to work for him he approached this Court in CWP No.21932 of 2012 praying for directions to regularize his services, to treat him in continuous service as per the award; determine his seniority; open his Provident Fund Account; to provide liveries as provided to other Cooks; to grant regular pay scale/revised pay scales; to allow periodical increments in the pay scale; to confirm him in service; to grant him accelerated pay scale; and to pay the petitioner the arrears on account of

difference of salary/wages paid and the salary due, due to continuity granted with all allowances to the petitioner. This petition was disposed of with a direction to the 2nd respondent to decide the issues for which the petitioner was directed to file a detailed representation which was directed to be decided by the Director, Hospitality Department, Haryana within a period of four months from the date of submission of the representation. In case, the petitioner is found entitled to the claim(s), the same shall be granted to the petitioner within a further period of two months and in case, the claim is not accepted then a speaking and well reasoned order would be passed and conveyed to the petitioner forthwith. The order was passed on November 05, 2012. The petitioner submitted detailed representation on November 21, 2012 to the employer which has been considered and rejected by the competent authority vide impugned order dated February 19, 2013. Hence the writ petition.

10. On notice, the State has filed reply through the Assistant Director, Hospitality Organization, Chandigarh from where the crucial facts have already been culled out and incorporated in the preceding paragraphs and no further reference is required to them.

11. I have heard the learned counsel for the parties at considerable length and reserved orders which are now being pronounced today.

12. The important milestones of the case history as I see them are like this: The petitioner was appointed as a daily wager in 1986 on muster rolls on a public post without providing equal opportunity to eligible candidates in the open market. His appointment to a public post as against a daily wager cannot be held to have been obtained in consonance with the

constitutional scheme of appointments and his initial appointment is *per se* irregular and illegal. The status quo order dated April 26, 1989 was passed when the petitioner was not in physical employment as stated by the department in its reply. However, there is no need to join issue on this point since the first joint writ petition filed in 1989 which was adjourned sine die to await the decision in SLP (Civil) No.16471 of 1988 (State of Haryana v. Piara Singh) which was allowed by the Supreme Court on August 12, 1992. His services had been terminated on May 17, 1990. He took about a year to file contempt petition in 1991 claiming disobedience of the orders of motion Bench maintaining status quo. It was on pain of contempt that undertaking was given that the petitioner shall be appointed as Cook within two days. The fiat issued by the Chief Secretary, Haryana following Court orders in *Piara Singh* led to the exercise for need of retention in case regular hands were not available in the Hospitality Organization; as it must have been done in other departments, which exercise resulted in declaration of petitioner as surplus and accordingly his services were again terminated on December 31, 1992 as not required. Meanwhile, the services of Tota Singh who continued in service were regularized w.e.f. April 01, 1993 as against whom discrimination is pleaded to obtain relief by parity of treatment. The petitioner served the demand notice in 1993 challenging his termination order dated January 01, 1993. The industrial dispute was referred to Labour Court, Hisar vide order dated March 23, 1999, that is, after six years of termination. The award came on June 01, 2001. The writ petition filed by the department was dismissed in 2002 while the SLP after being converted to Civil Appeal No.55 of 2004 was dismissed on April 06, 2005. The

Labour Court award of reinstatement and continuity would, in the circumstances, only mean revival of his earlier status as a Cook on daily wages and paid salary through muster roll. The labour court did not alter the status of the petitioner in the award, nor could have. The petitioner was appointed on March 07, 1986, not by a letter of appointment but a verbal one, which fact he admits. If my reading is correct, the Labour Court has restricted relief of reinstatement, continuity with all consequential service benefits with 50% back wages from February 13, 1993 vide award dated June 01, 2001. Has the date February 13, 1993 to be read only with respect to 50% back wages or also with the three other components of the relief package by the labour court? The petitioner has not called the award in question in a court of law i.e. the High Court that the reliefs have to be read conjunctively and not disjunctively. He has succumbed to the result. His reinstatement and continuity and service benefits as awarded cannot antedate prior to February 13, 1993. In Law he is a fresh appointee w.e.f. February 13, 1993 by virtue of the legal fiction of the award of the Labour Court, Hisar announced on June 01, 2001 since all benefits have been granted from the date of demand notice on a literal reading of the order. Therefore, it is necessary to reproduce the operative part of the award in its concluding para.17 to understand the language, its text and context, which reads as follows:-

“17. Sequel to the finding on above issue, this reference is hereby answered against the respondent management and in favour of the workman to the effect that termination of services of Chet Ram was neither in order, nor justified. He is entitled to reinstatement with continuity and with all other consequential service benefits with 50% back wages

from the date of his demand notice dated 13.2.1993 till reinstatement.”

13. In view of the clear directions in the award as above rights to regularization can be measured only w.e.f. February 13, 1993 the date from which relief has been moulded by the Labour Court, which power it possesses. If the language of the underlined part (supra) is unambiguous, there being no qualifying words to separate 50% back wages from the rest of the relief, to read the rest from the date of actual termination, the court then will not read more than it can see in the award with naked eyes. Therefore, the petitioner's claim based on policy dated May 27, 1993 is misconceived. Since his previous service prior to February 13, 1993 by legal fiction will not give him the requisite period of service as a daily wager to claim regularization and, therefore, he can have no lis with Tota Singh whose services were regularized w.e.f. April 01, 1993 based on discrimination. This is the inevitable fall out, in my opinion, of the specific directions in the operative part of the award of the Labour Court in plain its grammatical sense tying up all relief by one thread and pegging it on 13.2.1993, the day when the petitioner raised an industrial dispute with the management. Therefore, the prayer that he be treated at par with Tota Singh is not legally sustainable since Tota Singh ceased to be “junior” to the petitioner by virtue of the stipulations in the award which has attained finality.

14. As a result, the superstructure built on the case of Tota Singh collapses and, therefore, I find nothing illegal in the impugned order rejecting the representation of the petitioner. Though not properly articulated in the reply but the fact remains that when the department says

repeatedly that it has implemented the award of the Labour Court dated June 01, 2001 in toto it means one and the same thing after the interpretation processes as have been applied by this Court on the meaning of the directions of the Labour Court. The question whether the petitioner is entitled to regularization after 1993 is neither pressed nor projected in the petition and no foundations have been laid therefor in the petition and, therefore, there is no response in the written statement admitting or denying his claim arising after 1993 as per the award passed in 2001. Consequently, he may make a representation to the department to examine his case by taking his date of appointment as a daily wager on muster roll from the date of demand notice. The hiatus between the date of demand notice in 1993 and the order of reference made to the Labour Court in 1999 remains unexplained in the petition and the gap cannot work to the disadvantage of the Government unless an opinion had been expressed on that period by the Labour Court. A reading of the award of the Labour Court produces no material to bridge the gap. In the main, the petition is dismissed with liberty granted as above.

(RAJIV NARAIN RAINA)
JUDGE

30.08.2016

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Whether speaking/reasoned Yes

Whether reportable Yes