

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.2331 of 2016 (O&M)

Date of Decision: December 01, 2016

Surjit Singh and another

.....Appellants

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr.Sandeep Singal, Advocate, for the appellants.

Mr.RKS Brar, Additional Advocate General, Haryana.

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1. Whether Reporters of Local papers 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?

Surya Kant, J. (Oral)

Notice of motion.

On our asking, Mr.RKS Brar, learned Additional Advocate General, Haryana, accepts notice on behalf of the respondents.

Let four copies of the complete paper book be handed over to him during the course of day.

[2] Heard learned counsel for the parties.

[3] This intra-court appeal is directed against the order dated 07.11.2016 vide which the learned Single Judge has dismissed the appellants' writ petition only on the ground of delay and laches. The claim put-forth by them in the writ-petition pertained to retrospective regularization of their services on completion of 2 years' service.

[4] The facts are not in dispute. The appellants were appointed as drivers on contract basis on 23.12.1995 and 25.10.1995, respectively. Their

services were later on dispensed with. They raised an industrial dispute and the Labour-Court-cum-Industrial Tribunal answered the same in their favour directing their reinstatement with all consequential benefits.

[5] The order of the Tribunal dated 24.10.2002 was modified by this Court in CWP No.2145 of 2005 and other connected cases preferred by the Department and it was directed that the appellants were entitled to benefit of Section 25-H of the Industrial Disputes Act and consequently, they were to be re-employed from the date(s) another employee was taken into employment. The date of such employment identified by this Court was 30.06.2006. In this manner, the appellants were taken back in service w.e.f. 30.06.2006.

[6] The above-cited order of this Court was challenged before the Hon'ble Supreme Court by the department and it was modified on February 06, 2009 only to the extent that instead of full back wages, Hon'ble Supreme Court held the appellants entitled to 30% back wages.

[7] The resultant effect is that it was February 06, 2009 that the status of the appellants as temporary/contract employees appointed on 30.06.2006, stood determined and attained finality.

[8] It appears that meanwhile services of the appellants were regularized w.e.f. 10.09.2004. It is in this backdrop that they filed a fresh writ-petition seeking retrospective regularization on completion of two years' service, i.e., somewhere in the year 1998 onwards in terms of the Government Policy dated 28.07.1994.

[9] It is true that there is some delay on the part of the appellants. The order of regularization of their services were passed in the year 2004 during the pendency of SLP filed in the Hon'ble Supreme Court on the

question of back wages. At the same time, there are element of uncertainty with regard to security of employment so long as the matter was pending before one or the other Court.

[10] Taking into consideration totality of circumstances, we are of the view that the appellants' claim for retrospective regularization of their services could be left to the discretion of the authorities, if it is so maintainable under the Government Policy. We thus allow this appeal in part, modify the order passed by learned Single Judge and dispose of the appellants' writ petition with a direction to the Competent Authority in the Transport Department, Haryana, to consider the claim of the appellants for ante-dated regularization of their services in terms of the Government Policy dated 28.07.1994. Having regard to some delay on the part of the appellants, it is directed that if they are found entitled to regularization of their service from back date, such benefit shall be granted to them notionally only without granting the consequential arrears of pay. An appropriate order in this regard shall be passed within a period of four months from the date of receiving a certified copy of this order.

[11] Ordered accordingly.

[12] Dasti.

[SURYA KANT]
JUDGE

December 01, 2016
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No