

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

RSA No.387 of 2015 (O&M)

Date of Decision:16.08.2016

The State of Haryana and others

... Appellants

Vs.

Mahinder Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Keshav Gupta, A.A.G. Haryana.
Mr. B.S. Mittal, Advocate for the respondent.

P.B. BAJANTHRI J.

The appellants have assailed the orders of both the Courts below. The services of the respondent-Mahinder Kumar, who was working on ad hoc basis, were regularized on 3.2.1988 prospectively. Policy of the Government (1979 Policy) is that an ad hoc employee, who completes 240 days of service, is entitled to regularization. However, the same has not been implemented in large number of ad hoc employees are concerned. Subsequently, the services were regularized from time to time. In the present case on 3.2.1988, Mahinder Kumar's services were regularized. In the year 2012, the respondent-Mahinder Kumar filed a suit before the trial Court on 19.03.2012. The trial Court decreed the suit directing the appellants to release consequential benefits as he is entitled to regularization in service on completion of 240 days of continuous service. It was further directed that consequential benefits should be paid to the respondent alongwith interest @ 6% per annum from the date of regularization till realizations. Subsequently, the State preferred an appeal before the Appellate Court on 8.3.2011. The Appellate Court declined to interfere in the appeal preferred by the State.

There is delay of 348 days in filing the present appeal. The

same is opposed by the learned counsel for the respondent-Mahinder Kumar.

Perusal of the reasons stated in the application and affidavit, delay of 348 days in filing the appeal is condoned.

Learned counsel for the appellants submitted that Appellate Court order is to be set aside on the sole ground that there is delay and laches on the part of the respondent-workman. In support of the said contention, he relied upon the decision of the Hon'ble Supreme Court rendered in **Regional Manager, A.P. SRTC v. N. Satyanarayana and others**; (2008) 1 SCC 210.

Per contra, learned counsel for the respondent submitted that the appellant-State being a model employer is bound by their own policy relating to regularization of ad hoc employees which is introduced in the year 1979. It was bounden duty on the part of the appellants to regularize the ad hoc employees' services as and when each of the employee completes 240 days. In this regard large number of ad hoc employees approached the Courts. Courts have directed for regularization. The appellants have implemented in those cases including the case of the respondent-Mahinder Kumar. For no reason, in some of the cases only, the appellants have preferred the appeals. The appellants have adopted theory of pick and choose method while granting benefit of regularization while implementing policy decision relating to regularization. Therefore, there is no infirmity in the orders passed by both the Courts below. It was further submitted that insofar as the delay in filing the suit is concerned, before filing the suit, the appellants have already extended the benefit of regularization as and when an employee completes 240 days. Therefore, principle relating to extending

any benefit to an employee, the same shall be extended to similarly situated employee. Therefore, question of delay may not be hurdle in extending the claim.

Heard learned counsel for the parties.

Issue raised by the appellants in the present case is delay in extending claim of the respondent-Mahinder Kumar in respect of retrospective regularization on par with his juniors and similarly situated persons.

Suit was filed in the year 2012, therefore, the respondent is not entitled to regularization, may not be correct for the reasons that similarly situated persons have been extended the benefit of regularization by the appellants. Hence, the Appellate Court order is required to be modified insofar as consequential benefits are concerned.

Accordingly, the respondent-Mahinder Kumar is entitled to regularization w.e.f. 21.1.1985. However, he is entitled for monetary benefits prior to 38 months from the date of filing suit. He is entitled for difference of pay having regard to the regularization w.e.f. 21.1.1985. The difference of salary be disbursed by the appellants within a period of six months failing which the respondent-Mahinder Kumar is entitled for interest @ 9% on the difference of pay.

Disposed of accordingly.

16.08.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No