

CWP No. 10973 of 2015

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

CWP No. 10973 of 2015
Date of decision : January 18, 2017

Shyam Singh,

..... Petitioner

v.

State of Haryana and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. R.K Arora, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG Haryana

Ajay Tewari, J (Oral)

By this writ petition, the petitioner claims regularization from the date services of his juniors were regularized.

Brief facts are that the petitioner was appointed as Beldar on 1.8.1989 and was then given the duties of a driver. On 3.9.2001, his services were terminated. He raised an industrial dispute and by the Award dated 14.9.2005, termination order was set aside and the

petitioner was directed to be reinstated in service with continuity of

service with full back wages. That Award was challenged by the respondents by way of CWP No.18780 of 2005 which was dismissed with the modification that the petitioner was held not entitled to back wages. During this period, services of some of the persons junior to the petitioner were regularized in terms of the policy dated 1.10.2003. Since the petitioner was not given the said benefit, he has filed the present writ petition.

In the written statement, these factual assertions have not been denied.

Learned AAG Haryana has, however, argued that all regularization policies were withdrawn in the year 2007. Thereafter, in the year 2014, the government being cognizant of the anomalies position arising out of cases like the petitioner framed three policies. However, this Court stayed the operation of those policies. She has further argued that in his last representation, the petitioner had claimed regularization only under the 2014 policy.

In my opinion, this argument would not suffice. The issue is as to what is the basis on which the claim of the petitioner rests. No doubt, the claim of his juniors was considered under the policy but now the claim of the petitioner rests on the jurisprudential premise that a benefit which has been granted to his juniors cannot be denied to him,

and even if no policy had been framed in the year 2014, the claim of the petitioner would still be alive. In Raj Kumar v. State of Haryana, 2015 (4) SCT 277, this Court held as follows :-

“9. Ultimately, the Single Judge allowed the plea. Against that, the respondents filed LPA No.1903 of 2014, State of Haryana and others v. Jiyaji Sharma, wherein the Division Bench of this Court held as follows:-

“3. As we mentioned earlier the appellant was employed with effect from 19.08.1995. The termination of his services on 31.05.1996 were held to be illegal and he was reinstated in service. Thus, as on 31.09.2003, the respondent must be deemed to have been in service. Under the policy of 01.10.2003, the petitioner was entitled to have his services regularized. All other employees similarly situated whose services had not been terminated were in fact granted the benefit of regularization under the policy of 01.10.2003. The termination of the respondent's services having been held to be illegal and having been set aside, he must also be deemed to have been in service on 01.10.2003 and entitled to the benefits of the policy on par with the others. The petitioner cannot be denied the benefits of the policy on par with the others similarly situated for no fault of his namely and on account of the appellants having issued an illegal order of termination. The Supreme Court in Hari Nandan Prasad and another Versus Employer I/R to Mangmt. of FCI and another, held as follows:-

‘However, wherever it is found that similarly situated workmen 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 Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision”. (Emphasis supplied).

Another argument raised by learned AAG Haryana is of delay. In this context, counsel for the petitioner has argued that the case of the petitioner was repeatedly recommended by his superior authorities by documents, Annexures P-9 and P-13 and in the face of those positive recommendations, the petitioner cannot be blamed for not having preferred this writ petition in time. He has relied upon the decision of this Court in LPA No.1236 of 2012, State of Haryana and others vs Krishan Singh, decided on 28.8.2012, wherein it was held as follows:-

“ In identical circumstances, this Court in LPA No.1037 of 2012 (State of Haryana and others versus Ved Pal and others, decided on 25.7.2012 has held as follows :-

`..... Since it stands admitted on record that juniors to the private respondents were made regular and no effort to deregularize their services was made even after noticing the fact that seniors have been over-looked and ignored without any reasonable classification, in our considered view, the private respondents have made out a case of hostile discrimination within the ambit of Articles 14 & 16 of the Constitution. It would necessarily mean that even if the Government Policy is not in existence and deemed to have been annulled, the private respondents shall be entitled to seek regularization of their services from the date such a benefit was granted to their juniors....'

The Hon'ble Supreme Court in U.P State Electricity

Board versus Pooran Chandra Pandey and others (2008) 1 SCC (L&S) 736 has held that when junior employees have been brought on regular establishment, their seniors cannot be discriminated and they shall be entitled for regularization of their services in conformity with Article 14 of the Constitution.”

Learned AAG Haryana has further argued that the decision in Khajjan Singh v. State of Haryana, 2015(1) SCT 604 is the subject matter of an SLP and contempt proceedings have been stayed. This fact has also been considered by this Court in CWP No.3584 of 2013, Mala Ram vs State of Haryana and others, decided on 21.7.2016, wherein it was held as follows :-

“ However, Ms. Shruti Jain Goel, learned AAG, Haryana submits that SLP is pending in the Supreme Court and the contempt proceedings initiated by the petitioners therein before this Court in those cases have been ordered to be stayed. Even assuming that the decision of this case should be held up to await the decision of the Supreme Court even then the principle laid down in Hari Nandan Parsad v. FCI, 2014(2) SCT 234 (SC) will continue to operate as the controlling statement of law empowering this Court to pass such orders as would prevent continued violation of Article 14 of our Constitution. Equality before the law is the foundational principle of the rule of law.

As a result, this petition is allowed.....”

In the circumstances, this writ petition is allowed and the respondents are directed to consider the case of the petitioner for regularization of his services from the date services of his juniors (as mentioned in para 9 of the petition) were regularized. Necessary

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exercise be carried out within two months from the date of receipt of a certified copy of this order.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

January 18, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No