

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

**CWP No.19200 of 2012 (O&M)
Date of Decision : 14th February, 2017**

Rampal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Sajjan Singh Malik, Advocate for the petitioner.

Ms. Shruti Jain, Goyal, AAG, Haryana
for the respondent(s)-State.

AJAY TEWARI, J. (Oral)

By this petition, the petitioner has impugned the action of the respondents in not regularizing his services while regularizing the services of the persons who were appointed subsequent to him.

The petitioner started working as a 'Beldar' with the respondents on 01.03.1988. In the year 1995 his services were terminated leading him to seek a reference before the Labour Court.

Since the respondents did not produce any record relating to the days on which the petitioner had worked from 01.03.1988 till 11.07.1995, the Labour Court drew an adverse inference against them and held that the statement of the petitioner that he had worked from 01.03.1988 to 11.07.1995 would have to be accepted, and on the basis of that finding set aside the order of termination, awarding continuity of services and reinstatement with 50% wages from the date of demand notice.

The award of the Labour Court attained finality. The respondents reinstated the petitioner but did not regularize his services.

Then he filed CWP No.9670 of 2004 for regularization which was disposed of with direction to decide his representation by passing a speaking order. That representation was decided vide order dated 31.03.2005 by the respondents whereby it was held that the services of the petitioner would be regularized as and when regular posts are provided. At one stage the respondent regularized his service from 2015 only to withdraw the same in the year 2016.

The argument raised by the learned counsel for the petitioner is that on the one hand the respondents have not regularized the services of the petitioner but on the other hand they have regularized the services of three other persons who were appointed after the appointment of petitioner, in the year 1993 and 1991 respectively, w.e.f. 10.11.2006 and, therefore, the respondents are now estopped from claiming that regular posts were not available. On 14.08.2015, the following order was passed:-

After hearing the parties at length, learned counsel for the State is directed to produce the relevant record in original pertaining to the services rendered by four persons mentioned in Annexure P-3 particularly pertaining to their initial appointment on 1.4.1993, 1.4.1993, 1.4.1983 and 14.03.1991 respectively and with regard to regularization of their services.”

Learned State counsel has fairly stated that on perusal of the record, the dates mentioned in the petition are correct. She has, however, argued that before the Labour Court (and the subsequent proceedings before this Court as well as before the Supreme Court), the record relating to the working of the petitioner could not be produced and actually he was not entitled even for reinstatement and now that record is with the department

and has been annexed with the written statement and as per that the petitioner was not even entitled to reinstatement since the petitioner had not completed 240 working days in the year preceding the termination of his services.

In my opinion, once there is a finding of the Labour Court (on whatever basis) that the petitioner had worked regularly from the year 1988 till 1995 and that finding has been upheld up to the Supreme Court, it is not open to the respondents in a subsequent proceedings to try and revisit that position. Consequently, it has to be held that the petitioner was working from 1988 onwards. It, therefore, has to follow that his services had to be regularized before the services of those persons mentioned in Annexure P-3. Once their services were regularized w.e.f. 09.11.2006/10.11.2006, the petitioner cannot be denied that relief. It may be mentioned that in these circumstances, the juris prudential basis of the claim of the petitioner is neither the policy of regularization nor the availability of posts, but the fact that the persons junior to him have been given the benefit of regularization of service.

In these circumstances, the petition is allowed. The respondents are directed to regularize the services of the petitioner w.e.f. 09.11.2006 and to release all consequential benefits within a period of three months from the date of receipt of certified copy of this order.

14th February, 2017
mamta

(AJAY TEWARI)
JUDGE

Whether speaking

Yes/No

Whether Reportable

Yes/No