

205

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No. 23378 of 2011 (O/M)  
Date of decision : 1.2.2017

Maha Singh

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arun Yadav, Advocate, for the petitioner.

Mr. D.S. Nalwa, Additional Advocate General, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The petitioner joined the services as a Waterman with Market Committee, Sohana, District Gurgaon, on daily wage basis with effect from 1.9.1984. His services were terminated on 30.9.1985. The petitioner raised an industrial dispute and ultimately the Industrial Tribunal-cum-Labour Court, Gurgaon, vide award dated 24.7.1991 (Annexure-P-1), reinstated the petitioner in service with continuity of service and full back wages. It also comes out that the services of the petitioner were regularized with effect from 1.9.1984 by the Committee, vide its Resolution No. 7, dated 22.10.2003, as per the extract of the service book (Annexure-P-4). Thereafter, the petitioner sought voluntary retirement with effect from 4.6.2010 (A.N.). The petitioner claims that he should be granted pensionary benefits, which have been denied to him apparently on the ground that he is not eligible for the same.

CWP No. 23378 of 2011 (O/M)

-2-

Respondents No. 2 and 3 in the reply have taken the stand that since there was no sanctioned post, therefore, his regularization was bad and that the Chief Administrator, HSAM Board, Panchkula, had sanctioned one post of Waterman with effect from 6.4.1992 and his services have been regularized with effect from 6.4.1992, vide order dated 21.7.1998. Since the petitioner does not have 20 years of qualifying regular service, therefore, he is not entitled for pensionary benefits. Since the post was not there, the question of his regularization with effect from 1.9.1984 does not arise.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The copy of entry in the service book (Annexure-P-4) shows that vide Resolution No. 7, dated 22.10.2003, the services of the petitioner were regularized with effect from 1.9.1984 i.e. the date on which he joined the services on daily wage basis. Now, the claim of respondents is that since there was no post and that the said post was created, vide order dated 21.7.1998, whereby the services of the petitioner were regularized with effect from 6.4.1992, therefore, the question of his regularization from 1.9.1984 does not arise.

I am of the view that the resolution of the Committee i.e. No. 7 dated 22.10.2003, vide which the services of the petitioner were regularized with effect from 1.9.1984, has not been set aside by respondents. The effect of the said resolution, passed by the Committee in the year 2003, is to override the effect of the order dated 21.7.1998. Further perusal of the original record produced before this Court shows that infact, vide order dated 21.7.1998, one post of Waterman was created with effect from 6.4.1992. However, there is no order that the services of the petitioner stand

CWP No. 23378 of 2011 (O/M)

-3-

regularized with effect from 6.4.1992, as claimed in the written statement. Even otherwise, the service of the petitioner was on daily wage basis and as such, such services are to be computed as qualifying service for the grant of pensionary benefits. It being so, the present writ petition is allowed. The services of the petitioner are to be treated as regular services with effect from 1.9.1984 and his case for pension is to be accordingly processed. If the respondents, so desire, they can create a supernumerary post of Waterman with effect from 1.9.1984 to meet the legal requirement. Respondents are directed to do the needful within three months from the date of receipt of certified copy of this order and release the pensionary benefits to the petitioner alongwith interest on the delayed payment, as per the Government instructions.

(KULDIP SINGH)  
JUDGE

1.2.2017

sjks

Whether speaking / reasoned : Yes

Whether Reportable : No