

CWP No. 17150 of 2015 (O&M)

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

CWP No. 17150 of 2015 (O&M)
Date of decision : January 24, 2017

Pawan Kumar and others,

..... Petitioners

v.

State of Haryana and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Ajay Chaudhary, Advocate
for the petitioners.

Mr. RK Doon, AAG Haryana

Ajay Tewari, J (Oral)

By way of this writ petition, the petitioners have sought regularization of their services from the date services of their juniors were regularized, in view of the policy/instructions dated 1.10.2003 and 10.02.2004, Annexures P-1 and P-2 respectively.

Brief facts are that the petitioners were appointed as daily wage labourers on different dates between 1988 and 1998. On

1.10.2003, the State of Haryana issued a policy as per which services of

those daily wages who had completed 3 years of service on 30.9.2003 and were in service on 1.10.2003 were to be regularized. This policy of 2003 was thereafter modified on 10.02.2004 and one condition was imposed that only those daily wagers were entitled for regularization of their services who were in service prior to 1.1.1996. However, services of their juniors were regularized but the petitioners were ignored. On 11.8.2012, their services were terminated. Petitioner No.1 raised an industrial dispute and the Labour Court passed an Award dated 27.8.2014 vide which termination order was set aside and he was directed to be reinstated in service with continuity of service with 50% back wages. Similar Awards were passed in the case of other petitioners.

In the written statement, a new plea has been taken that the alleged juniors were actually appointed in different beat/s and, therefore, there could be no seniority between the petitioners and those persons.

Counsel for the petitioners points out that when the petitioners had challenged the termination of services, they had relied on the retention of those very juniors and the Labour Court had allowed reinstatement after considering the case of the petitioners with those juniors and had held that those persons were juniors to the petitioners and had consequently held that the termination of the services of the petitioners while retaining those juniors was illegal. As per him, that

Award has become final and now the department cannot say that those persons were not juniors to the petitioners.

I find myself in agreement with this argument of counsel for the petitioners. If after comparing the same persons the petitioners have been treated as seniors by the Labour Court and that Award has become final, the department cannot in writ petition say that the persons are not juniors to the petitioners.

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 petitioners framed three policies. However, this Court stayed the operation of those policies.

In my opinion, this argument would not suffice. The issue is as to what is the basis on which the claim of the petitioners rests. No doubt, the claim of their juniors was considered under the policy but now the claim of the petitioners rests on the jurisprudential premise that a benefit which has been granted to their juniors cannot be denied to them, and even if no policy had been framed in the year 2014, the claim of the petitioners would still be alive. In Raj Kumar v. State of Haryana, 2015 (4) SCT 277, this Court held as follows :-

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).

In the circumstances, this writ petition is allowed and the

respondents are directed to consider the case of the petitioners for

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regularization of their services from the date services of their juniors were regularized. Necessary 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 24, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No