

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

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**CWP-5648-2014
Decided on 23.01.2017**

MANOHAR

....PETITIONER

VS

STATE OF HARYANA & OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Deepak Sonak, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

AJAY TEWARI, J.(Oral)

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

Brief facts of the case are that the petitioner was working in the respondent department on daily wage basis since year 1988. The service of the petitioner was terminated by the respondents on 10.11.1997 and he raised an industrial dispute against his termination before the Labour Court. He was directed to be reinstated with continuity of service with full back wages vide award dated 12.02.2002. During this period, services of some of the persons junior to the petitioner were regularised in terms of the policy dated 01.10.2003. Since the petitioner was not given the said benefit, he has filed the present writ petition.

Learned counsel for the petitioner states that in one matter

i.e. **State of Haryana and others vs. Mohammad Farookh and another**,

the identical issue was decided in favour of the employee in LPA No. 836 of 2013 and the case of the petitioner is squarely covered by the aforesaid judgment.

Learned AAG has, however, argued that all regularization policies were withdrawn in the year 2007.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 framed three policies. However, this Court stayed the operation of those policies.

In my opinion, no doubt the claim of the juniors was considered under a policy but now the claim of the petitioner rests on the jurisprudential premise that a benefit which has been granted to his junior 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 vs. 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).

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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 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.

23.01.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No