

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1774 of 2017 (O&M)

Date of Decision: 20.04.2017

Ram Lal

... Appellant

Versus

DHBVN and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jangvir S. Hooda, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

CM No.4292-C of 2017

The appellant works as a Water Carrier in the DHBVNL and prays in the application for condoning delay in filing appeal averring that he is a poor person who could not muster sufficient resources to file this appeal in time. He states that he was not properly guided to file the appeal within limitation.

In these circumstances and looking to the merits of the case, the application is allowed and the delay of 387 days in filing the appeal is condoned.

Main Case

In the suit filed in 2011 the appellant claimed regularization of service after having spent 20 years in the Nigam. He was appointed in 1991. The trial Court dismissed the suit on a finding that there was no evidence that the appellant had served the Nigam since 1991. Aggrieved, he carried an appeal under Section 96 of the CPC. The appeal succeeded and the findings of the trial Judge were reversed after the learned Additional

District Judge, Gurgaon carefully read the evidence of DW-1 where there was an admission in the testimony that the appellant had in fact served since 1991. The Lower Appellate Court discovered that there was nothing on record to suggest that the claim of the appellant was considered by the defendant-Nigam at any point of time and any speaking order to that effect was passed. This in fact means that there was no impugned order under challenge and, therefore, the first appeal court could only direct consideration of the case for regularization with a direction to the respondents to pass a speaking order within three months from the date of receipt of copy of the judgment. It is well settled that Court will not direct regularization but only consideration thereof in accordance with law.

I do not propose to disturb any of the findings recorded by the lower Appellate Court but would only clarify that the directions contained in para.18 of the judgment have to be taken to the logical conclusion, i.e., by the competent authority in the respondent Nigam while passing the order as directed by the learned ADJ, Gurgaon in his judgment dated October 31, 2015. Obviously, the Nigam would consider the appellant as its employee since 1991 and further to consider his claim against any one of the policies of regularization of Haryana Government adopted by the Nigam or its own policy instructions prevailing from 1991 onwards and decide by a speaking order whether the case of the appellant fits in the earliest one of them. The Nigam will also speak whether any other person similarly-situated has been regularized in service and appointed in Class-IV service prior to the appellant if he/they have secured regular appointment under policy instructions on regularization.

With this clarification, the appeal stands dismissed with the clarification. The judgment and decree in appeal is upheld as legal and valid and so are the directions issued to pass administrative order, including the findings of fact recorded therein.

(RAJIV NARAIN RAINA)
JUDGE

20.04.2017
manju

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>