

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1197 of 2000 (O&M)

Date of Decision: 18.12.2018

Ram Karan

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. S.N. Gaur, Advocate,
for the petitioner.

Mr. G.S. Wasu, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioner was appointed as a Helper-cum-Seeds Cleaner in November 1990 to work in the Seeds Laboratory, Pinjore in the Forest Department. He was put to a fixed salary of ₹750/- per month. In December 1995 his employment status was changed to daily wage employee paid @60 per day. At the time of filing of the petition in 2000 he drew ₹71.21 paisa per day.

2. On March 07, 1996 Haryana Government issued instructions that all those persons who have completed five years of service as casual/daily wage employees on January 31, 1996 be regularized. The condition of five years was relaxed to three years by subsequent letter dated March 18, 1996.

3. He approached this Court in CWP No.10750 of 1999 claiming a direction to the respondents to regularize his services as per the aforesaid two circulars. The petition was disposed of with a direction to decide the

representation within three months from supplying the order. In pursuance of those directions, the impugned order of November 17, 1999 has been passed declining the claim of the petitioner and at the same time recommending that his services be disengaged as daily wage employee.

4. Aggrieved by this order, the petitioner approached this Court in January 2000. Notice of motion was issued on January 31, 2000 and status quo regarding service was ordered to be maintained till further orders by the Division Bench. The case was admitted on January 13, 2003 and it was directed that the petitioner shall not be thrown out of his job till the disposal of the writ petition.

5. Pending writ petition, on May 22, 2003 an order was passed transferring the petitioner to a new place of posting at a distance about 100 kms from Pinjore to serve in a forest unit in Village Mirpur in District Yamuna Nagar.

6. Aggrieved by this transfer, the petitioner moved CM No.12631 of 2003 in the pending writ petition, notice of which was issued to the State of Haryana. The prayer was considered by the learned Single Judge and the following order was passed on August 05, 2003:-

“The petitioner has filed writ petition claiming regularising. The writ petition was admitted on 13-01-2003. The respondents have filed written statement attaching Annexure R-III, a copy of the order passed by the Deputy Conservator of Forests, Seed Collection Division, Pinjore, wherein it has been mentioned that the petitioner has produced a copy of the muster-roll in respect of Seed Laboratory Range Pinjore which is in violation of the Official Secrets Act and, thus, it is a serious disciplinary lapse and tantamounts to

dispensing his engagement as daily wage labourer on temporary basis.

The petitioner has alleged that he has been transferred from Pinjore only on account of the production of muster-roll. Learned counsel for the respondents states that there is no work for the petitioner at Pinjore and, therefore, he has been transferred. Keeping in view the copy of order Annexure R-III attached with the written statement, the stand of the respondents lacks bona fide.

In view of the above, the order of transfer of the petitioner shall remain stayed during the pendency of the writ petition. The civil miscellaneous stands disposed of accordingly.”

7. By order dated September 08, 2014 the writ petition was directed to be set down for final hearing within one year. Some documents at Annexures P-5 to P-9 filed by the petitioner were taken on record in November 2016. The matter was taken up to be shown in ordinary motion list by order dated September 04, 2018. When the matter came up on September 26, 2018 the following order was passed:-

“The Department to show cause why this matter should not be allowed in terms of office order No.5 dated 16.6.2011 (Annexure P-7), in which there is a clear statement that the petitioner is entitled to be regularized in service w.e.f. 1.10.2003. The Department has taken in writing from the petitioner that his services will be regularized in case he withdraws the present petition and the order dated 16.6.2011 will be made effective. It was also recorded that no post in Group 'D' was available i.e. till 16.06.2011 and the Divisional Forest Officer, Seed Collection Division, Pinjore had recommended that a post may be created and as such the proposal was

forwarded to the higher authorities. The State to justify non-creation of a post to accommodate the claim of the petitioner, who has been working in the Department since November, 1990/ March, 1991 and there was no break in service for more than one month at a time. He was in service on 30.09.2003 and had completed more than 240 days.

List on 10.10.2018.

Meanwhile, Mr. Rathee to get instructions.”

8. An affidavit of the Divisional Forest Officer, Seed Collection Division, Punjab dated December 06, 2018 has been filed today which is taken on record. Contents have been perused. Counsel were heard at length and judgment was reserved on December 11, 2018 which is being pronounced today with the conclusions that follow.

9. In sub-para (vi) of para.3 of the affidavit, it has been mentioned that an office order No.5 dated June 16, 2011 was passed by the then DFO, Seed Division, Pinjore in response to the letter issued by the Principal Chief Conservator of Forests, Haryana dated February 10, 2011 seeking information with regard to daily wage labour entitled for regularization. It is confessed in the affidavit that the then DFO, Seed Division, Pinjore skipped the fact that the petitioner continued on the post in view of the interim directions issued by this Court in the present case and was on the working strength. In response to the interim order dated September 26, 2018 reproduced above, the deponent has made the following admissions and submissions:-

10. The case of the petitioner due to inadvertent error of the DFO, Seed Division, Pinjore overlooking the name of the petitioner for creation of posts of labourer after passing of the speaking order dated November 02,

2011 was not forwarded to the PCCF, Haryana by the office of the DFO resulting in the petitioner being ignored. The matter was examined by the office of the PCCF wherein it was observed that till the case of the petitioner is not decided till then it would not be advisable to act upon in any manner in this case till its final outcome. The request of the petitioner had been declined under the policy instructions of 1996. There is no prayer in the instant petition for consideration of regularization under the policy of 2003. The policy of 2003 has been rescinded by the Government by letter dated April 25, 2007. Therefore, the case of the petitioner could not have been considered other than what was done vide Order No.5 dated June 16, 2011 passed by the then DFO. An apology has been tendered at the end of the affidavit that in case of any inadvertent error or omission the deponent tenders unconditional and unqualified apology for the same.

11. In short, the case of the petitioner has been kept hanging to await the final result of this case. A perusal of the office order No.5 dated June 16, 2011 (P-7) makes it apparent that the petitioner has worked continuously since 1991. There has been no break in his service for more than one month at a time. He was in service on September 30, 2003 with the requisite number of days. The letter admits that cases of regularization of services of those workers who were entitled for the same before the passing of the judgment in State of Karnataka and others v. Uma Devi, (2006) 4 SCC 1 dated April 10, 2006, could not be forwarded till date “for certain reasons”. The letter recommended that in terms of the above, the petitioner is entitled to be regularized in service w.e.f. October 01, 2003 and he has given in writing that in case his service is regularized as above, he will

withdraw his writ petition pending in the High Court, that is, the present one. The written undertaking was enclosed for perusal of the PCCF, Haryana. It is also stated that the speaking order dated June 16, 2011 under reference shall be effective when the petitioner withdraws his petition. The order also says that as there is no post in Group-D, it is necessary that the post may be created by the Government and the proposal for creation of the post is being forwarded to the higher authorities. The worker shall be regularized in service as soon as sanction for creation of post is received. Accordingly, the petitioner has antecedent rights for regularization under the 2003 policy prior to the pronouncement in *Uma Devi's* case having worked continuously since 1991.

12. Apart from the policy of 2003 the previous policy of March 07, 1996 is worthwhile to advert to, to find whether the petitioner was entitled to regularization under that policy. That policy was adopted for regularization of work charge/casual/daily rated employees. The petitioner's case fall under daily rated employees. The relevant part of the policy applicable to this case and to the petitioner's retrospective rights is reproduced below:-

“CASUAL/DAILY RATED EMPLOYEES :

The casual and daily rated employees who have completed five years service on 31st January, 1996, shall be regularized provided they have worked for a minimum period of 240 days in each year and the break in service in any year is not more than one month at a time. Such employees who have worked on different designations in the same department shall also be regularised if they fulfil other conditions. On regularisation they shall be put in the time scale of pay

applicable to the lowest group D cadre in the Govt. and they would be entitled to all other allowances and benefits available to regular govt servants of the corresponding grade.”

13. By the subsequent policy dated March 18, 1996 the matter was reconsidered and the period of five years was reduced to three years service as on January 31, 1996 instead of five years service on January 31, 1996 which shorter period of time shall make for eligibility for regularization. It is apparent that the case of the petitioner falls squarely in the amended policy of March 18, 1996; he having completed three years of service on the appointed date. It is only the ineptitude and apathy of the department that this case is lingering on only to await the result of this petition which eminently deserves to be allowed as the petitioner's case is manifestly covered by both the policies of 1996 and 2003. If the petitioner's right crystallized under the 1996 policy then the benefit deserves to be given to him and it can no longer be withheld. If the engagement has continued since 1990, or may be part of it of a litigious nature and the stay orders have been continued in operation till date then there is a presumption that there was continued need for work underscoring the necessity for creation and sanctioning of post. There is a presumptive sanction by long passage of time and it is ordered accordingly.

14. As a result of the above discussion, this petition is allowed. The petitioner is held entitled to regularization under the 1996 policy in preference to the policy of 2003 which in any case, the petitioner is entitled to under the virtue of orders already passed by the department in his favour.

The department is directed to consider passing a formal order of sanction and of regularization within two months from the date of receipt of this

order. The petitioner is held entitled on equitable considerations to the difference of arrears of wages/salary and other consequential benefits with effect from the date of the first motion order i.e. January 31, 2000.

18.12.2018
manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No