

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

**CWP No. 11021 of 2013
Date of Decision: 17.01.2018**

Mohinder Singh

...Petitioner

Vs.

State of Haryana and others

...Respondents

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

Present Mr. R.S. Mamli, Advocate
 for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

RAJIV NARAIN RAINA, J. (Oral)

The petitioner did labour work in the Forest Department on daily wages from February 1985 to 31.10.1999. This service was continuous. He was thrown out of employment. He challenged the illegal termination. . On a reference, the Labour Court, Ambala by the award dated 31.04.2004 had set aside the termination on 31.10.1999 and awarded reinstatement with continuity of service but without back wages.

The petitioner was reinstated to service in the Forest Department and has been on employment rolls since then. His services were regularized by order dated 12.01.2006, a copy of which is placed at Annex. P-7. The order was passed on directions issued by the Division Bench of this Court in CWP No. 2173 of 2007 calling upon the respondent-Department to pass a speaking order. In passing the

order, the Deputy Conservator of Forests, Yamuna Nagar had kept in view the award of the Labour Court dated 21.04.2004 and held the petitioner entitled to regularization as per policy dated 01.10.2003.

Sadly, this order was not given effect to in view of the judgment in Secretary, State of Karnataka and others Vs Uma Devi (3) and others, (2006) 4 SCC 1 pronounced on 10.04.2006. In the meanwhile, persons junior to the petitioner who had been appointed after him in the years 1986 to 2000 and whose names figure in paragraph No.13 of the amended writ petition have been regularized in service as they completed 10 years of service.

It is admitted in the reply that the persons whose names figure in paragraph No.13 have been regularized on the dates mentioned therein ranging from the year 2004 to 2016 under the prevailing policy instructions of the State Government.

In cases where the Labour Court awards reinstatement by setting aside the termination as illegal, it creates a legal fiction of continuity as if the termination order was never passed and the petitioner is deemed to be in service throughout the intervening period. In such cases all the natural consequences would follow and become part of the fiction to be imagined as real. When the benefit of the legal fiction is given to the petitioner, then his case for regularization would stand secure and the order Annex. P-7 would be rendered ineffective, illegal and void. As a result, the order dated 12.01.2006 has to be

revived and given effect to by carrying backward and forward the legal fiction and to achieve this status the petitioner has to be treated similarly as his juniors who were retained in service and fortunately were regularized.

It may be worthwhile mentioning that the decision of the Supreme Court in *Uma Devi (3)* case (supra) stands explained three years later in the celebrated case in Maharashtra Road Transport Corporation and another Vs. Casteribe Rajya P. Karamchhari Sanghatana, (2009) 8 SCC 556, the Supreme Court holding that the principles in *Uma Devi* do not apply to industrial adjudication before Labour Courts and Tribunals.

The entire position has been exhaustively explained by this Court in Khajjan Singh Vs. State of Haryana, 2014 SCC Online P&H 10865 : 2015 (2) RSJ 135 : 2015 (1) S.C.T. 604 that the benefit of regularization is to be given in cases where awards of reinstatement have been passed by the Labour Courts granting continuity of service retrospectively. Then award-holders would have to be put back to the original position by counting the period spent out of service litigating to vindicate their infringed industrial rights.

There is another compulsion on the Court which is to grant similar relief to award created similarly situated persons by virtue of Article 14 of the Constitution of India which guarantees equal treatment and equality before the law. By fiction the petitioner's case is as good as

the case of the nine other employees mentioned in paragraph No.13 of the writ petition. Furthermore, when facts are not disputed then the writ Court can apply principles of industrial law directly in proceedings under Article 226 of the Constitution of India as explained in *Khajjan Singh's* case (supra).

Learned counsel for the petitioner relies on the Division Bench judgment in Dalip Singh Vs. State of Haryana; 1993 (3) SCT 385. In this case the Court held that awards of Labour Court are statutory in character under Section 18 of the Industrial Disputes Act, 1947. They have the effect of conferring rights on the petitioners-workmen to be deemed in service. The intervening period is not to be treated differently for regularization in accordance with the policy of the Government. Therefore, the argument of the learned law officer raised on behalf of the Government that the terms and conditions of the policy have not been satisfied has to be summarily rejected because of the legal fiction created by the labour court and the bad action of the department in wrongfully terminating the services of the petitioner leaving him in forced idleness and out of service from the year 1993 to 2004 and till date of the actual reinstatement.

In view of the above, this petition is allowed and the order of regularization dated 12.01.2006 (Annex P-7) is made absolute and effective from the day it was passed. Consequently, the order dated 03.11.2006 (Annex P-11) is quashed as it is illegal and arbitrary.

The respondent Department shall consider the case of the petitioner for grant of consequential benefits on par with the persons mentioned in paragraph 13 of the petition. The financial benefits/arrears of difference of pay etc. be calculated and handed over to the petitioner within three months from the date of receipt of certified copy of the order. In default of payment, the amount in default will carry 9% interest till realization.

(RAJIV NARAIN RAINA)
JUDGE

17.01.2018
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Whether speaking/reasoned : *Yes*
Whether reportable : *No*