

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

CWP No.11685 of 2016

Date of Decision: 29.08.2018

Samunder Singh

.....Petitioner

Vs.

Haryana Urban Development Authority and others.....Respondents

CWP No.11605 of 2016

Jagdish

.....Petitioner

Vs.

Haryana Urban Development Authority and others.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Y.P.Malik, Advocate, for the petitioner.

Mr.H.N.Mehtani, Advocate, for respondent No.3.
(in CWP No.11685 of 2016).

Mr.S.S.Moni, Advocate, for respondent No.3
(in CWP No.11605 of 2016).

RITU BAHRI, J. (ORAL)

This common judgment shall dispose of above mentioned two writ petitions common questions of law and facts are involved. The facts are taken from CWP No.11685 of 2016.

The petitioner-Samunder Singh is seeking directions to the respondents to regularize the services of the petitioner, in view of the govt. Notification dated 01.10.2003 as he has been reinstated in service with continuity of service and other consequential services benefits vide

Labour Court award (annexure P-1).

Petitioner is a class IV employee serving as Survey Khalasi in the office of the Estate Officer, Hisar on daily wages w.e.f. 20.9.1995 by the respondent No.3 and he served up to 30.11.1996 when his services were terminated. Then he raised an industrial dispute. Ultimately, the learned Industrial Tribunal-cum-Hisar, answered the Award (Annexure P-1) in his favour on 09.02.2006 holding him entitled to reinstatement into service with continuity of service and all other consequential service benefits alongwith 50% back wages from the date of demand notice. The Award (Annexure P-1) was not implemented, the petitioner made representation dated 05.05.2006 to the respondent No.3 requesting therein to allow him to rejoin his duty and to release him the consequential service benefits.

Thereafter, respondent No.3/Department has filed writ petition i.e. CWP No.14371 of 2006 which was dismissed by the Division Bench of the Court vide judgment dated 08.09.2006 (Annexure P-2).

Thereafter, petitioner was joined his service on 13.10.2006 vide memo dated 12.10.2006 (Annexure P-3). He made several representations for regularization of his services but no action has been taken by the respondent/Department in this regard. Thereafter, he served a legal notice dated 28.03.2016 (Annexure P-5) but no action has also been taken in this regard. Hence, the present writ petition.

By way of this writ petition, petitioner has drawn the attention to the Haryana Government Policy vide notification dated 01.10.2003 for regularization his service which has been amendment dated vide

Government Notification dated 10.02.2004 and after incorporating this amendment, the relevant portion of the Govt. Notification dated 01.10.2003, as it existed pertaining to the regularization of services of the daily wages employees.

The stand taken by the respondent/HUDA is that the petitioner has filed the present writ petition after a delay of more than 9 years which is hopelessly time barred. The have referred to the judgment of the Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi AIR 2006 SC1806 (2006) 4 SCC 1 whereby, appointment of the petitioner was not according to the Articles 14 and 16 of the Constitution of India and in these circumstances, petitioner had no legal right to be regularized in service. It has been further mentioned in the written statement that regularization policy under which the petitioner is claiming regularization of his service, has been withdrawn by the State Government vide notification dated 13.04.2007 (Annexure R-1) and consequent policy instructions dated 25.04.2007 (Annexure R-2) .

The short question for consideration in the present case would be what is the effect of order of Tribunal after reinstatement of the petitioner. The answer is that the services of the petitioner was terminated on 30.11.1996 and on account of the Award of the Tribunal, he was reinstated on 13.10.2006. The regularization policy has been withdrawn vide order dated 25.04.2007 (Annexure R-2) but on account of grant of continuity of service granted by the learned labour Court, he was entitled for regularization as per policy dated 01.10.2003 and as such, he has completed required service for regularization of 3 years on 13.10.2006. A

reference can be made to the judgment of Malathi Das (Retd.) Now P.B. Mahishy & Ors. Vs. Suresh & Ors.(2013) 14 SCC 65 wherein, it has been held that benefit of regularization cannot be denied to the persons if their juniors have been promoted prior to them and parity has to be maintained by extending the benefit of regularization to all the daily wagers.

In the present case, respondents have regularised number of employees pursuant to the policy dated 01/10/2003 (Annexure R-1) and hence the petitioner's claim cannot be rejected as the policy has been withdrawn vide order dated 25.04.2007 (Annexure R-2).

This Court in the case of Raj Pal Vs. Huda and Others passed in CWP No.22606 of 2012 (Anneuxre P-6) has given the directions to the respondents/Department for regularization of services of the petitioner who had been terminated and he was also reinstated vide Labour Court Award with all consequential benefits and continuity of service.

In the identical writ petition i.e. CWP No.11605 of 2016, petitioner who was appointed as Chowkidar on 01.10.1994 by the respondent No.3 and his services were terminated on 30.06.1996. He also raised his dispute before the Industrial Tribunal and vide Award dated 22.08.2006, he was reinstated by the Department but his services were not regularised inspite of several representation. Hence, he has filed present writ petition.

In view of the ratio of the judgments referred above, the both the writ petitions are allowed with a directions to the respondents to regularize the services of both the petitioners i.e. Samunder Singh and

and petitioners would not be entitled to any back wages, but will be entitled to benefit of continuity of services and other consequential benefits with a costs of Rs.25,000/- which is to be deposited with the Registry of this Court . This exercise shall be completed within a period of three months from the date of receipt of certified copy of this Court.

(RITU BAHRI)
JUDGE

29.08.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No