

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 15148 of 2015 (O&M)

Date of decision : July 02, 2018

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Chet Ram

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Rakesh Nagpal, Advocate for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General,
Haryana.

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RITU BAHRI, J.

C.M No. 13723 of 2016

C.M is allowed. Replication to the written statement filed by respondent no.3 on behalf of respondents no. 2 and 3 is taken on record.

CWP No. 15148 of 2015

The petitioner is seeking writ of certiorari for quashing the letter dated 17.3.2015 (Annexure P-4) , whereby the case of the petitioner for regularization was rejected on the ground that the petitioner was not appointed through any approved source of recruitment and was not appointed against any sanctioned post.

The petitioner is relying on the policies issued by the State

Government to regularize the services of Group D/ Daily wages employees. As per the State Government policy dated 27.5.1993, the persons who have completed five years of service, their services should be regularised. On 7.3.1995, the State Government has issued another policy that the Group D/ daily wage employees who have completed five years of service as on 31.1.1996, their services should be regularized. The said instruction were modified on 18.3.1996 to the extent that the Group D/daily wages employees who have completed three years services instead of five years on 31.1.1996, their services be regularized. Further as per the policy dated 1.10.2003 (Annexure P-5), the State Government issued another policy that the Group D/daily wages employees who have completed three years service on 30.9.2003 are entitled for regularization. The petitioner has referred to a policy of regularization dated 18.6.2014 (Annexure P-6) issued by the State of Government of Haryana to the effect that the persons who had been working for the last 3 years and were in service on 28.5.2014, their services should be regularized.

On notice, written statement has been filed on behalf of respondents no. 2 & 3 taking the stand that all the policies of regularization of services of ad hoc/contractual/daily wage and part time workers issued in the year 1997, 1999, 2003 and 2004 have already been withdrawn by the Government of Haryana in the light of the judgment titled as, '**Secretary State of Karnataka Vs. Uma Devi reported in (2006) 4 SCC 1'**. The petitioner was never appointed by the Forest Department, Haryana and he did not complete 240 days in any calender year nor in the preceding year from the alleged date of his termination as there was no post. The work in the Forest Department is seasonal in nature.

Thereafter, in compliance with the order dated 23.4.2018, an affidavit was filed by Sunder Lal, HFS, Divisional Forest Officer, Jhajjar. In this affidavit, a stand was taken that the petitioner was a daily wage worker and was engaged for seasonal work. As per the Regularization Policy of 2003 dated 01.10.2003 subsequently amended thereto dated 10.2.2004 (Annexure R-1), the petitioner does not fulfill the criteria of regularization as he has not worked for 240 days in each year for the requisite number of years as mandated by the policy dated 1.10.2003. Thus his case cannot be equated with those in CWP No. 1824 of 2014 'Surjit Kaur Vs. State of Punjab and others ' (Annexure P-8) as also in CWP No.1381 of 2011 'Sukhpal son of Shri Sunehra Singh vs. State of Haryana and others' (Anneuxre P-9). The Labour Court, Rohtak passed an award dated 14.2.2012 (Annexure P-1) and reinstated the petitioner on his previous post with continuity of service and 50% back wages from the date of demand notice i.e 13.12.2004. Hence petitioner Chet Ram was awarded continuity in service for the period of 13.12.2004 to 14.2.2012.

Counsel for the petitioner has referred to the Award dated 14.2.2012 (Annexure P-1), wherein it has been observed that the petitioner has been engaged as Beldar-cum-Mali and he worked from 01.01.1983 to 31.12.2002. His services were illegally terminated without following the due procedure on 1.1.2003. While setting aside the termination, it has been observed that he had rendered continuous services for 240 days in the preceding 12 months of his termination on 31.12.2002. As neither any notice was served upon him nor any compensation was paid to him, so there is violation of Section 25-F of the Industrial Disputes Act, 1947. Petitioner was held entitled to be reinstated on his previous post with continuity of

service and 50% back wages from the date of demand notice i.e 13.12.2004. A perusal of the award further shows that Rohtash Singh, Forest Guard appearing on behalf of the Department was examined as WW-2 who stated that some of the summoned record was not made available to him to produce the same and he cannot produce even in future. In his cross-examination, he admitted that Rambir S/o Partap R/o Village Dubaldhan, Distt. Jhajjar joined the service with the respondent/Management on 6/1997 as daily wager, Jai Singh S/o Parbhu Ram joined the service with the respondent/Management on 6/1996 as daily wager. He deposed that he has not brought the record of muster roll and muster roll issue register for the period from 1996 December 2000 and he cannot produce even in future. Statement of WW-2 Rohtash Singh, Forest Guard raised the presumption against the respondent/Management. Thus an adverse inference was drawn against the respondent/Management for not producing the summoned record.

The petitioner has placed on record information given by the Department (Annexure P-7), whereby the employees who were appointed after the petitioner have been regularized and this document (Annexure P-7) has not been disputed by the State in the written statement. The stand taken was that they were regularized as they fulfilled the terms and conditions of the policies issued by the State Government. The petitioner as per the Award dated 14.2.2012 (Annexure P-1) had been working since January 1983 and his services were set aside in 2003. He was deprived to work in the Department after 2002 in wrongful manner. Reference at this stage can be made to a judgment of a Co-ordinate Bench of this Court in the case of `Ram Avtar and others vs. State of Haryana and others (CWP No. 2202 of

2016)` decided on 19.2.2018. In this case all the petitioners had been working as Labourer/Mali on daily wages for very long. Petitioners No. 1 & 2 were appointed in the year 1982 while petitioner no.3 and petitioner no.4 were appointed in the year 1983 and 1995 respectively. The services of petitioner no.1 and petitioner no.2 were terminated in the year 1995 and 2003 respectively. Against their illegal termination, they approached the Labour Court and returned with the Awards of reinstatement dated 20.1.2010 and 11.5.2006 respectively. Since the services of petitioners no. 3 & 4 were never terminated they continued from the initial dates. Juniors, who had been appointed in the years 1992, 1993 & 1994 had been regularized w.e.f 01.10.2003 by the Forest Department. The only reason for denying regularization to the petitioners as mentioned in the written statement was that the policy dated 18.6.2014 has been stayed by the Division Bench vide interim order dated 02.09.2016 passed in CWP No. 17206 of 2015 titled, 'Yogesh Tyagi & another vs. State of Haryana and others' and the matter is pending. The Court further proceeded after taking into account that the petitioners had been working as Malis since long and if the Class IV employees junior to the petitioners had been regularized, the petitioners had to be placed on par with them to tune the rights of the petitioners with Article 14 of the Constitution of India.

A reference at this stage can be made to a judgment of Hon'ble the Supreme Court in the case of ***Hari Nandan Prasad and another vs. Employer I/R to Mangmt. of FCI and another, 2014(2) SCR 955***, whereby while examining a case of award passed by the Labour Court, Hon'ble the Supreme Court held that where there are posts available, in the absence of any unfair labour practice the labour Court would not give direction for

regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. In paragraph 34, it was observed as under:

34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to [Art.14](#) of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. 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.

In the facts of the present case as per Annexure P-7, persons

junior to the petitioners appointed way back in the years 1984, 1990, 1991, 1992, 1993 and 1994, have since been regularized. Only ground for rejection of the claim of the petitioner is that he has been reinstated w.e.f the date of the demand notice and does not fulfill the conditions of regularization policy of 2003. Since the persons junior have already been regularized as per Annexure P-7, the impugned order dated 17.3.2015 (Annexure P-4) is set aside. A direction is issued to the respondents to consider the cases of the petitioners for regularization w.e.f the date when juniors were brought on regular cadre as per policy and to grant them the same relief with all consequential benefits flowing therefrom. Let the consideration take place within two months from the date of receiving of certified copy of this order.

July 02, 2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No