

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

CWP No.14291 of 2016 (O&M)

Date of decision: 05.09.2018

Joga Ram

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Abha Rathore, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Ms. Geeta Sharma, Advocate,
for respondent No.2.

Ritu Bahri, J.

CM No.4996-CWP-2018

The application is for permission to amend the present petition. Applicant-petitioner is also seeking to place on record regularization policy dated 01.10.2003 (Annexure P-10).

For the reasons stated in the application, same is allowed and the present petition is allowed to be amended as prayed for.

Amended petition along with copy of policy dated 01.10.2003 (Annexure P-10) is taken on record.

CWP No.14291 of 2016

The petitioner is seeking a writ of certiorari/mandamus for modifying the order of regularization dated 24.10.2014 (Annexure P-4) and grant of benefit of regularization as per policy dated 07/18.03.1996

(Annexure P-9).

The petitioner was appointed as Beldar on daily wage in the year 1987. He continued to work till 30.04.1996 with respondent No.2-Haryana Urban Development Authority and thereafter, his services were terminated on 01.05.1996. Consequently, vide award dated 02.01.2003 (Annexure P-1) passed by the Industrial Tribunal-cum-Labour Court, Panipat, he was reinstated with continuity of service and full back wages. Respondent No.2 challenged the said award by filing CWP No.5217 of 2004, which was dismissed vide order dated 04.04.2005 (Annexure P-2) passed by this Court. After about one year of dismissal of the petition, the petitioner was taken back on duty. He was given back wages to the tune of Rs.1,84,539/- w.e.f. 12.10.1998. Copy of payment calculation is annexed as Annexure P-8. On 29.07.2011, a new policy of regularization was framed by Government of Haryana. Finally, the petitioner was regularized vide order dated 20.10.2014 (Annexure P-4) w.e.f. 18.06.2014. As per petitioner, some of the employees have been regularized by the respondents w.e.f. 1996, whereas others have been regularized w.e.f. 2003 and 2004 etc. By way of present petition, the petitioner is seeking direction that he should be paid back wages as per the award dated 02.01.2003 (Annexure P-1) from 30.04.1996 instead of 12.10.1998 and he should be regularized as per policy dated 01.10.2003 because he had completed three years as on 30.09.2003.

Upon notice, written statement on behalf of respondents has been filed by admitting the appointment of petitioner, his termination, passing of award by the Labour Court and dismissal of the writ petition filed by the respondents on 04.04.2005. Along with the reply, the respondents have placed on record copy of letter dated 30.03.2006 (Annexure R-1), whereby the petitioner was asked to join back on duty. Pursuant to the said letter, he

joined his duty on 03.04.2006 as Beldar as per joining report (Annexure R-2). It is stated that the total amount of back wages came to Rs.1,84,539/-, which was paid to the petitioner vide cheque No.128144 dated 26.04.2006 (Annexure R-3). It is reiterated that as per notification dated 29.07.2011 (Annexure R-7), services of the petitioner had been rightly regularized. It is further stated that the petitioner is not covered under the policy of 2006 as he had not completed 10 years of service as daily wager as on 10.04.2006. Hence, he has been rightly regularized w.e.f. 18.06.2014 as Beldar as per Government notification (Part II) dated 18.06.2014 (Annexure R-9).

A perusal of the policy dated 01.10.2003 shows that adhoc/contract employees, who have completed three years of service as on 30.09.2003 should be made regular, provided that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period.

In the facts of the present case, the petitioner was appointed as Beldar on daily wage in the year 1987 and continuously worked till 30.04.1996. Thereafter, he was terminated on 01.05.1996. He has been reinstated with continuity of service and full back wages vide award dated 02.01.2003 (Annexure P-1). Benefit of continuity of service would mean that the petitioner has been in regular service from 1987 till 02.01.2003. Moreover, after dismissal of the writ petition (CWP No.5217 of 2004) of respondents on 04.04.2005 (Annexure P-2), award (Annexure P-1) has also attained finality. Hence, from 1987 till 2003 i.e. the date of award, the petitioner has been continue in service for almost 16 years. As per reply

field by respondent Nos. 1 and 2, after passing of the award on 02.01.2003, the petitioner joined back on 03.04.2006, as necessary administrative approval was accorded by the Chief Administrator, HUDA to implement the award on 30.03.2006. Hence, after the judgment passed by this Court on 04.04.2005 till 03.04.2006, the break in service cannot be attributed to the petitioner. It was on account of the administrative exigency that the letter of appointment could not be issued to the petitioner. In these circumstances, the break in service till he joined on 03.04.2006 cannot be made basis to deny him the benefit of continuity of service. He should have been deemed to be on duty during the said period. Therefore, the case of petitioner for regularization has to be considered as per policy of regularization dated 01.10.2003 (Annexure P-10).

In view of the above discussion, this petition is allowed and the respondents are directed to consider the case of the petitioner for regularization as per policy dated 01.10.2003 (Annexure P-10) and pass appropriate order regularizing his services with all consequential benefits.

05.09.2018
ajp

(RITU BAHRI)
JUDGE

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