

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

**CWP No. 15778 of 2015
Date of Decision: 18.07.2018**

Mahesh Chand

...Petitioner

Vs.

State of Haryana and others

...Respondents

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

Present: Mr. Rajesh Arora, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

Mr. Mahender Singh Chahal, Advocate
for respondent No.2.

RAJIV NARAIN RAINA, J. (Oral)

1. The services of the petitioner were terminated on 18.08.2000 without notice, notice pay and payment of compensation, the petitioner qualifying as 'workman' under the Industrial Disputes Act, 1947. The petitioner raised an industrial dispute challenging the termination order by way of a reference registered before the Labour Court for adjudication. The reference was answered in favour of the workman. The termination order was held unjustified and the Labour Court by its award dated 06.06.2002 reinstated the petitioner with continuity of service and with full back wages. The award has attained finality on 24.03.2003. Armed with the award of reinstatement, the petitioner made a representation to the Deputy Commissioner, Gurgaon

who heads the School Management to reinstate him with full back wages. It is submitted that sometime in the year 2005, Delhi Public School, Nuh was taken over by the Mewat Model Schools Society, which is a society receiving grant-in-aid from the Haryana Government. In short, the Society is deemed to have taken over the assets and liabilities of the Delhi Public School and the new management stepping into the shoes of the DPS. The request for reinstatement was resisted by the Mewat Model Schools Society and after 10 years the petitioner has been reinstated to service vide order order 09.04.2012 (Annex. P-4) in compliance of the award dated 06.06.2002. He was allowed to join duty as Peon-cum-Chowkidar at Mewat Model School, Nuh. He was directed to report to the Principal for joining his duties. He joined service and back wages were released to him w.e.f. 18.08.2000. In the year 2014, the petitioner staked his claim for regularization of services in terms of the order dated 07.06.2004 passed by the Deputy Commissioner, Gurgaon-cum-Chairman, Mewat Model Schools Society, Nuh regularizing services of 13 employees mentioned in the order with immediate effect under the Haryana Government policy notification GSR-24/Const./Art-309/2003. These 13 employees were appointed after the petitioner services were terminated and are, therefore, junior to him. The petitioner claims regularization on par with his juniors whose services stands regularized w.e.f. 07.07.2004.

2. The petitioner was appointed on 07.08.1997 and had

obviously completed more than 3 years of service up to 30.09.2003, which is the cut off date in the policy of 2003. Having reinstated the petitioner and paid him back wages, the respondent-Management has since been issuing appointment letters on contractual basis for fixed period of 03 months w.e.f. 27.02.2015 on DC rates. Extensions have been granted on 03 monthly basis and that position continues to obtain. From the appointment order dated 30.05.2014 (Annex.P-6) it is pointed out by the learned counsel for the Society that the petitioner has only been put back to his position at the time of termination when he served on contractual basis, and, therefore, that position cannot be changed to the detriment of the Society and to the advantage of the petitioner.

3. While it is so argued, the main question has not been answered by the Society, that is, of a right accruing to the petitioner on the strength of the award of the Labour Court granting him continuity of service to be treated in similar fashion as his juniors who admittedly were regularized in service vide Govt. order dated 07.07.2004. If the persons named in the order dated 07.07.2004 are junior to the petitioner in service either in Delhi Public School or Mewat Model School, Nuh, then those employees were in no better position than the petitioner with deemed continuity as their services themselves were on contract just like the petitioner. Therefore, the petitioner and the persons junior to him stand on the same footing to be treated equally by fiction, if their services were regularized from contract to regular, they all would have

to be treated similarly to give effect to the equality clause in Article 14 of the Constitution of India. The legal position in view of Article 14 and the right of person deprived of service by an illegal order of termination set aside by the labour court has in similar circumstances been explained by the Supreme Court in Hari Nandan Prasad and another Vs. Employer I/R to Management of FCI and another (2014) 7 SCC 190 and by this Court in Khajjan Singh and others Vs. State of Haryana and others, ILR 2014 PH 363. Both matters arise out of the Labour Court awards granting deemed continuity from the date of termination. The stand of the respondent-Society that the petitioner has rightly been put to continuity as a contractual employee for 03 months at a time is a ruse to circumvent the award of the Labour Court and to skirt around it which is legally impermissible.

4. In these facts and circumstances, this Court applies the principle of non-discrimination to bring relief of regularization with retrospective effect from the date juniors in service have been regularized without court intervention, by allowing the writ petition. Direction is issued to respondent No 2 to regularize the services of the petitioner in terms of the order dated 07.07.2004 by giving him continuity of service from the date of initial appointment with all consequential benefits including inter se seniority with the juniors who were retained in service but other than those benefits which have already been granted and disbursed. The successive appointment orders

for 03 months each on contractual basis are ordered to be invalidated as
illegal and arbitrary to the extent indicated for the reasons stated above.

18.07.2018
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(RAJIV NARAIN RAINA)
JUDGE

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