

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

CWP No. 16220 of 2015 (O&M)

Date of Decision: 10.09.2018

Birender Singh

...Petitioner

Vs.

Haryana Seeds Development Corporation Limited and others

...Respondents

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

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep K. Rana, Advocate
for the petitioners.

Ms. Aanchal Thakur, Advocate
for respondent No.1.

RAJIV NARAIN RAINA, J. (Oral)

1. By way of this petition, the petitioner claims regularization from the dates his juniors were regularized in service. The facts leading to the filing of this petition are as follows: the petitioner was appointed as Salesman on contractual basis by the respondent-Corporation on 23.09.1986. The character of his appointment was changed from contract to *ad hoc* by an office order dated 19.02.1987. His services were terminated on 25.01.1988. He raised an industrial dispute which was referred to the Labour Court for adjudication on account of the conciliation proceedings failing to bring about a settlement between the disputants. The Labour Court set aside the illegal termination by its award dated 23.12.1994 granting reinstatement with continuity of

service and full back wages. Dissatisfied with the award the respondent-Corporation filed writ petition bearing number CWP No. 11623 of 1996, titled Haryana Seeds Development Corporation Ltd. Vs. Presiding Officer, Labour Court, Panipat in this Court on 27.07.1996. The writ petition was dismissed on 28.05.2010. The award was maintained with the modification that the petitioner would get only 50% back wages.

2. That was not the end of the matter. The Corporation filed an intra Court appeal in LPA No. 1527 of 2010 before the Division Bench of this Court and the same was dismissed on 11.11.2010. With the Tribunal and two layers of litigation ending up against the Corporation, the litigating stamina of the Corporation was not exhausted and they preferred special leave petition before the Supreme Court in SLP (Civil) 27619 of 2011 against the judgment dated 11.11.2010 and the same was dismissed on 09.09.2013. The petitioner was reinstated to service on 22.11.2013 having been kept out of service litigating with an award in his favour made 19 years ago, which was rather unfortunate.

3. Armed with the order of reinstatement and continuity of service by the Tribunal and upheld up to the Supreme Court, the petitioner staked his claim representing that he should be given the benefit of regularization from the date when his juniors in service as Salesman on ad hoc basis were retained in service and obtained the benefit of regularization by the Corporation on 30.09.1988 without any

Court intervention. The services of those juniors were regularized in 2014 with retrospective effect from 30.09.1988. The petitioner services were regularized under the regularization policy dated 24.12.2014 (Annex. P-15) on completion of 3 years service prior to the cut off date.

4. His prayer is that when his juniors were regularized on 30.09.1988, a fact not disputed before me, then it appears he has a valuable right to similar treatment by virtue of the deeming fiction of continuity in the award to make him equal to persons who were regularized on 30.09.1988 and were junior to him from the dates of initial appointment. If this is the undisputed position then it follows a priori that petitioner would have a right to be treated on parity with junior and handed the benefit of regularization from the date when the juniors were promoted so as to remove any discrimination and arbitrariness and bring to him relief in line with the spirit of Article 14 of the Constitution of India.

5. Hostile and invidious discrimination is by itself a valid ground of awarding relief so that equals are treated equally, fairly and reasonably. It may be mentioned that persons junior were regularized under the Haryana Govt. Policy instructions of 1997 covering cases of regularization of services of daily wagers, temporary workers and ad hoc employees.

6. For relief in this case, Mr. Malik relies on the judgment of the Supreme Court in Hari Nandan Prasad and another Vs. Employer

I/R to Mangmt. Of FCI and another, 2014 (7) SCC 190 and a decision on the same point in which Mr. Malik appeared in CWP No. 21400 of 2013 titled Amit Kumar Vs. State of Haryana and others decided on 07.05.2017 by learned Single Judge of this Court granting relief on point of discrimination.

7. In view of above, this writ petition is allowed. The order dated 24.12.2014 is modified and it is directed that consideration for regularizing the service of the petitioner will date back to when the admitted juniors, appointed later were regularized i.e. 30.09.1988. As far as pecuniary consequential benefits are concerned they will be notional. The petitioner is held entitled to 50% of the back wages from the date of the award ie. 23.12.1994 till realization. All other non-pecuniary service benefits will flow as though the illegal termination order was never passed.

(RAJIV NARAIN RAINA)
JUDGE

10.09.2018

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