

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

CWP-18636-2014 (O&M)
Date of decision : 03.08.2018

Dev Raj

...Petitioner(s)

Versus

Chief Engineer, Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vishal Aggarwal, Advocate,
for the petitioner(s).

Ms. Kanica Sachdeva, AAG, Punjab.

JITENDRA CHAUHAN, J.

By way of the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks issuance of a direction to the respondents to regularize his services w.e.f. 01.12.1994 instead of 23.01.2001.

Learned counsel for the petitioner contends that the action of the respondents wherein his services have been regularized w.e.f. 23.01.2001 is discriminatory as the services of all similarly situated persons stood regularized w.e.f. 01.12.1994. Even the services of daily-wager, Bodh Raj and others, who had remained absent from duty for 1900 days, stood regularized by the respondents. Similarly, services of Ganesh Pal, who remained absent from duty for 487 days have also been regularised.

On the other hand, learned State counsel submits that the petitioner's case has not been considered for regularization w.e.f. 01.12.1994 on account of his wilful absence from duty for a period of 458

days. Moreover, there is no record to substantiate the argument nor there are reasons on record as to why the petitioner, who allegedly had wilfully absented for 458 days, was again taken back on the establishment. It is admitted fact that the services of co-worker Ganesh Pal who remained absent for 487 days had been regularised.

Heard.

This Court in ***State of Punjab Vs. President, Karamchari Welfare Union-cum-Consumer Welfare Association and another, CWP-15682-2009, decided on 15.09.2011***, while dealing with a similar question had held as under:-

“Ganesh Pal, member of respondent No.1, raised an industrial dispute, claiming regularisation of his service from 01.12.1994 instead of from 23.01.2001, in accordance with policy dated 28.05.1998. The notification dated 28.05.1998 specifically states that workmen at Sr. Nos.166, 167, 171 to 174, 177, 181 and 183 to 191 do not fulfill the conditions for regularisation of their services if their absence period is deducted. Vide communication dated 30.11.1998, the Superintending Engineer, PWD (B&R) Branch, Patiala, recommended that if the absence period of work-charge employees Mangal Ram and Desh Raj, at Sr.Nos.166 and 181, is reduced, then these employees would complete 10 years of service as on 30.11.1994. The services of these workmen were regularised on 23.09.1997 w.e.f. 01.01.1992 whereas the services of Bodh Raj were regularised w.e.f. 01.12.1994 by treating the period of absence as period spent on duty. The petitioner's service was however regularised from 23.01.2001, without including the period of absence. The Labour Court has

after considering the entire controversy, held as follows: -

“8. It is not disputed that the services of the workman has been regularised w.e.f. 26.07.2001 in the scale of 2620-4140. Now, question for determination is, whether his services are required to be regularised with effect from 1.12.1994 like other coworkers? The issuance of policy decision by the Punjab Govt. for regularization of services of work charge employees, vide Memo No.3/15/95-1-ES(3)/2756 dated 28.5.1998 has also not been disputed, vide which work charge/daily wager employees have been made regular, the copy of which has been placed on record as Ex.W/3. In his cross examination, the workman Ganesh Pal as WW-1 has stated that he joined the respondent management w.e.f. 2.8.83 as barrier man on daily wage basis and has also admitted that he remained absent for 487 days between the period from 1.8.1983 to 30.11.1994. Shri Dalbir Singh MW-1, the witness of the management has admitted in his cross examination that the employees mentioned at page 9 of Ex. W/3, whose services have been regularised w.e.f. 1.12.1994, are having more than 1900 absent days. Thus, the contention of the respondent that the services of the workman could not be regularised w.e.f. 1.12.1994 because he was having 487 absent days during his service from 2.8.83 to 1.12.94 is

neither tenable nor justified. I, therefore, hold that the services of the workman Ganesh Pal are required to be regularised w.e.f. 1.12.1994, alike others in the pay scale attached to the post of regular barrierman/Beldar with all consequential benefits. The issue is accordingly decided in favour of the workman and against the respondent.”

It is, therefore, apparent that the workman has not been granted parity viz.a.viz. other employees who were extended a similar benefit. The Government cannot adopt a different criteria for different workmen and condone the period of absence in the case of other employees/workmen while denying this benefit to Ganesh Pal. The Labour Court, has therefore, rightly held that services of Ganesh Pal have to be regularised from 01.12.1994. As regards the letter issued by the Assistant Collector, Grade-I, and Labour and Conciliation Officer, Gurdaspur, to enforce the award, suffice it to say that no argument has been addressed to impugn its correctness.”

The respondents have tried to draw a distinction in the cases of the petitioner vis-a-vis the case cited above on the ground of wilful absence from duties for about 458 days, whereas, the workman in the cited case, i.e. Ganesh Pal, had remained absent on account of litigation. However, except the bald assertion, there is nothing on record to conclude that the petitioner remained wilfully absent from duties for the period in question. Hon'ble the Supreme Court, in ***V. Punnam Thomas Vs. State of Kerala, AIR 1969***

Kerala 91, observed as under:-

“The Government is not and should not be as free as individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

The factum of the petitioner's joining the services on 13.08.1983 is not disputed. The wilful absence of the petitioner is not proved. The petitioner is absolutely on the same pedestal i.e. with his co-worker, Ganesh Pal, and therefore, deserves to be treated in the same manner.

As a consequence of the above discussion, the instant petition is allowed with a direction to regularize the services of the petitioner w.e.f. 01.12.1994 and all consequential benefits flowing therefrom be granted to him within a period of 45 days from the day of receipt of a certified copy of this judgment.

03.08.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No