

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

**CWP-20724-2014 (O&M)
Date of decision : 11.12.2018**

Jasbir Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rohiteshwar Singh, Advocate for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

JITENDRA CHAUHAN, J.

By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner, *inter alia*, seeks issuance of a writ in the nature of Mandamus directing the respondents to regularize his services at par with his juniors, whose services were regularized w.e.f. 01.08.1995 vide letter dated 17.12.2012 (Annexure P-4).

It is the case of the petitioner that he was appointed by respondent No.2 as Ticket Verifier/Conductor on work charge basis on 01.04.1987. The services of the petitioner were terminated by respondent No.3 on 28.02.1989. The petitioner served demand notice dated 31.10.1994 to respondent No.3, however, the matter was referred to learned Labour Court, which allowed the claim of the petitioner vide order dated 26.07.1999, and the petitioner was granted continuity of service. The order

of learned Labour Court was challenged by respondent No.3 by filing CWP-9346-2001, which was dismissed vide judgment dated 05.07.2001. The SLP filed thereagainst was also dismissed by Hon'ble the Supreme Court vide order dated 22.07.2002. Thereafter, the petitioner was reinstated in service by respondent No.3 on 08.06.2001 (Annexure P-1). Vide order dated 30.06.2003 (Annexure P-2), the services of the petitioner were regularized but his regularization was considered as fresh appointment without granting the benefits of past service including pay protection. Meanwhile, the Punjab Roadways Construction Cell was merged with the Punjab Roadways Workshop on 01.08.1995 and the employees of the earlier were adjusted in different depots of Punjab Roadways. Since, the services of some of the employees of erstwhile Punjab Roadways Construction Cell were not regularized, they moved representation to respondent No.1 and 2. After considering their claim, 47 employees of the said Construction Cell were regularized vide order dated 09.02.2012 from the date of passing of the order. Those 47 employees made further representation dated 08.06.2012 to respondent No.1 to consider their case for regularization from the 01.08.1995, which was also accepted vide order dated 17.12.2012 (Annexure P-4). It was also provided that their previous services will be counted for pensionary benefits.

The grouse of the petitioner is that some of the employees out of 47 employees referred to hereinabove, are junior to the petitioner.

On the other hand, learned State counsel has submitted that as against the claim of the petitioner, he worked as a daily-wager and not on

work-charge basis. Therefore, the petitioner cannot claim parity with the 47 employees in question.

Heard.

It is to be noticed that the petitioner joined the respondent-Department on 01.04.1987. However, his services were terminated on 28.02.1989. On raising a dispute, his case was referred to learned Labour Court, which allowed the claim of the petitioner vide order dated 26.07.1999, with continuity of service. The order passed by learned Labour Court was affirmed by this Court as also by Hon'ble the Supreme Court. Ultimately, the petitioner was reinstated in service on 08.06.2001. Admittedly, the services of 47 employees who joined the Punjab Roadways after merger of Punjab Roadways Construction Cell have been regularized w.e.f. 01.08.1995 including those who are junior to the petitioner. Whereas, the services of the petitioner were regularized w.e.f. 30.06.2003 (Annexure P-2). The only ground taken to deny the petitioner of the benefit claimed is that he had been working as a daily wager and not on work-charge basis which stands negated from order dated 30.06.2003 (Annexure P-2), the order of regularization of the petitioner wherein, the petitioner has been reflected as work-charge employee. Therefore, the stand taken by the State is contrary to order dated 30.06.2003 passed on the recommendations dated 22.06.2003 made by the committee of the Head Office. Thus, assertion of the respondents is highly misconceived and therefore, is rejected. Hon'ble the Supreme Court in *Kasturi Lal Lakshmi Reddy v. State of J And K (1980) 4 SCC 1*, has observed as under:-

"Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental

action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every Government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it

may, in a given case, furnish evidence of mala fides."

From the facts and circumstances of the instant case, it is established that the petitioner has been discriminated against and the same needs to be rectified.

In view of the above, the petitioner is ordered to be regularized w.e.f. 01.08.1995, at par with his juniors along with all consequential benefits.

Allowed.

11.12.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No