

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

**CWP No. 23525 of 2013
Date of Decision: 08.01.2018**

Ramesh Chander

...Petitioner

Vs.

State of Haryana and others

...Respondents

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

Present: Mr. Ram Niwas Sharma, Advocate,
for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 25.07.2013 (Annexure P-12) and to consider the claim of the petitioner for regularization of his services w.e.f. 31.01.1996 under the policies then prevailing and with all consequential benefits.

2. Even on the date of termination of services in the year 1991, the petitioner had not completed 240 days as daily wager and had no accrued vested rights. In the previous writ petition filed by him in the year 1991, this Court held as much but applying the principles of Sections 25G and 25H of the Industrial Disputes Act, 1947 on finding that some persons junior to the petitioner were retained in service and,

therefore, the petitioner had a right to re-entry via reinstatement in service through the doors of the aforesaid two provisions of the Act. Accordingly, the previous writ petition i.e. CWP No. 3175 of 1991 was decided on 29.08.2008 with the following directions:

“As a sequel of the above discussion, this petition succeeds and is accepted, with a direction to respondent Nos. 1 to 3 to reinstate the petitioner by issuing an appointment letter to him within one month from the date of receipt of a certified copy of this order. However, taking into consideration the peculiarity of facts and circumstances of this case, the petitioner will not be entitled to any back wages or compensation.”

3. This order meant that the petitioner would be offered appointment within one month of its passing which direction has been complied with by the department since the petitioner was issued an appointment letter which granted no continuity. Notably, back wages and compensation was denied by this Court. Continuity of service was not granted by this Court in the order. The appointment could only mean a fresh appointment. The judgment was not based on discrimination by application of Article 14 of the Constitution but on industrial law principles in the ID Act and the case was decided in a direct writ. The writ court has not the amplitude of power exercised by

an industrial adjudicator sitting in a labour court. In the absence of creation of an antecedent legal fiction in the relief part of the judgment in CWP No. 3175 of 1991, this Court in the present petition cannot create anything further by way of pre-existing and retrospective right since the order dated 29.08.2008 has attained finality. Neither did the petitioner question his appointment letter issued in the wake of the orders of this Court dated 29.08.2008 taking the petitioner back into service on daily wages after about 18 years as per letter dated 19.11.2010 Annex P-4. However, actual joining was in October 2008 or thereabout.

4. I have, therefore, no reason to set aside the impugned order declining the legal notice dated 03.02.2012. The Engineer-in-Chief, Haryana, Public Health Engineering Department, Panchkula by his impugned order dated 25.07.2013 has rejected the legal notice holding that the period from December 1990 till 30.09.2008 cannot be counted as service period. Since the period cannot be treated as in service for that period, and in the absence of any positive directions in the first writ petition indicating otherwise, the petitioner to my mind cannot claim regularization of service under the policies of April 1993 and March 1996, and, therefore, also under the subsequent policies of October 2003 and 2011. Moreover, the petitioner has retired from service on superannuation after his services were regularized under the policy of 2014.

5. No ground for interference is made out. Hence, the petition is dismissed with the preceding observations.

08.01.2018

kv

(RAJIV NARAIN RAINA)
JUDGE

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