

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 19986 of 2016

Date of decision : August 27, 2018

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Balwan Singh

.....Petitioner

Versus

Haryana Dairy Development Cooperative Federation
Ltd. and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sandeep Singal, Advocate for the petitioner.

Mr. Deepak Balyan, Advocate for the respondents.

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RITU BAHRI, J.

The petitioner is seeking writ of certiorari for quashing the order dated 31.8.2016 (Annexure P-7), whereby the respondents have withdrawn the regularization order of the petitioner dated 28.4.2016 (Annexure P-3).

The petitioner was initially appointed on temporary basis on 21.9.1987 and continued till 30.11.1988 His services were terminated by the respondents orally. Aggrieved with his termination, the petitioner challenged the same and the Industrial Tribunal-cum-Labour Court, Rohtak vide its award dated 28.11.1994 (Annexure P-1) reinstated him with

continuity of service and 50% back wages. In compliance with the said award, the petitioner was reinstated in service w.e.f 30.11.1994. The said award was challenged by the respondent-Management by way of filing CWP No. 16305 of 1995 before this Court and the same was dismissed vide order dated 18.12.2015 (Annexure P-2). While dismissing the writ petition, this Court observed that the services of the petitioner was deemed to be regularized w.e.f 30.11.1994. In compliance of this order, respondent no.3 issued order dated 28.4.2016 (Annexure P-3), whereby the services of the petitioner were regularized w.e.f 30.11.1994 along with all consequential benefits. Thereafter, a show cause notice dated 18.6.2016 (Annexure P-4) was issued to the petitioner to the effect that the services of the petitioner have been wrongly regularized and the order of regularization has been inadvertently issued and therefore, explanation of the petitioner was sought as to why the order of regularization dated 28.4.2016 be not withdrawn with retrospective effect. Said show cause notice was challenged by the petitioner by way of filing CWP No.13819 of 2016 before this Court and the same was disposed of vide order dated 15.7.2016 (Annexure P-5) directing the petitioner to file detailed reply to the charge sheet. The petitioner filed his reply dated 19.7.2016 (Annexure P-6). Thereafter order dated 31.8.2016 (Annexure P-7) was passed withdrawing order dated 28.4.2016 with retrospective effect. Hence the present writ petition.

The respondents in the written statement took a stand that in pursuance of the dismissal of CWP No.16305 of 1995 on 18.12.2015, an amount of Rs.33,170/- i.e 50% back wages for the period the petitioner

remained out of service has already been reimbursed vide office order dated 2.8.2016. It has been submitted therein that the order dated 28.4.2016 was passed inadvertently by mistake on the basis of misinterpretation of the order of the High Court. Keeping in view the judgment passed by Hon'ble the Supreme Court in the case of *Secretary, State of Karnataka vs. Umadevi (2006) 4 SCC 1*, the continuity of service as granted by the Labour Court could not be taken into account for regularizing his service.

In the present case, pursuant to the award dated 28.11.1994 (Annexure P-1) passed by the Labour Court, the petitioner was reinstated in service on 30.11.1994. Since, he was held entitled to the work with continuity of service, he was granted benefit of continuity of service from 30.11.1987 till 30.11.1994. When the writ petition filed by the respondent-Management against the award of the Labour Court (CWP No. 16305 of 1995) was dismissed on 18.12.2015, he had already put in 28 years of continuous service. Reference at this stage can be made to a letter dated 28.4.1995 (Annexure P-8), which has been passed by the Haryana Dairy Development Cooperative Federation Limited regularizing the services of a number of employees w.e.f 1.4.1995. This order has not been disputed by the respondents in the written statement. Hence once the Department itself has regularized the services of a number of employees w.e.f 1.4.1995, it was the duty of the respondents to explain in the written statement as to on what basis, the services had been regularized vide Annexure P-8 w.e.f 1.4.1995. The respondents have not chosen to place on record the Instructions, rather they have taken the plea by referring to the judgment passed by the Hon'ble

the Supreme Court in *Uma Devi's case (supra)*. Even this judgment cannot help the respondents as recently Hon'ble the Supreme Court in the case of *Malathi Das (Retd.) Now P.B Mahishy and others vs. Suresh and others, 2014 (2) CLR 168* has held that parity has to be maintained while regularizing the services of similarly placed employees

In the present case while withdrawing the order of regularization vide order dated 31.8.2016 (Annexure P-7), no express reason has been given for the same. Moreover keeping in view that the petitioner has been working with the respondents since 21.9.1987 and the regularization order has been passed vide letter dated 28.4.1995 (Annexure P-8), the petitioner has to be granted the benefit of parity.

In view of all that has been discussed above and in view of the judgment of Hon'ble the Supreme Court in *Malathi Das's case (supra)*, present writ petition is being allowed and the impugned order dated 31.8.2016 (Annexure P-7) is being set aside. The petitioner will get all the consequential benefits of the order of regularization dated 28.4.2016 (Annexure P-3) passed in his favour. The respondents are directed to pay costs of Rs.10,000/- to the petitioner.

August 27, 2018

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No