

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH****Date of decision: 28.02.2018****CWP No.24998 of 2016**

Ram Dhan

...Petitioner

Vs.

Haryana State Industrial & Infrastructure Development Corporation Limited  
& another

...Respondents

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

Present: Mr. Jangjit Singh Dahiya, Advocate, for the petitioner.

Ms. Adrija Das, Advocate, for  
Mr. Amar Vivek, Advocate, for the respondents.**RAJIV NARAIN RAINA, J. (ORAL)**

The petitioner was appointed as Supervisor/Mate on 01.02.2000 by the HSIDC (now HSIIDC). His services were terminated on 19.05.2005. The petitioner raised an industrial dispute by serving a demand notice on the Management on 03.02.2006. The conciliation proceedings failed to bring about a settlement of the dispute. The dispute was referred to the Industrial Tribunal -cum- Labour Court, Panipat. One of the defences of the Management was that the petitioner-workman had not been directly appointed by the Corporation, but came through a service provider, namely, M/s Citadel Security Services. The Labour Court considered the issue on the evidence led by the parties and held that the Management had failed to produce any evidence on the part of M/s Citadel Security Services to the effect that the workman is its employee. The Labour Court held that

relationship of employer-employee existed between the parties. There was no dispute that the workman/petitioner had put in 240 days in each of the years of past service. The Labour Court set aside the termination as illegal by award dated 21.03.2012, as it was found in breach of the conditions precedent in Section 25-F of the Industrial Disputes Act, 1947 for want of payment of retrenchment compensation at the time of termination. The workman/petitioner was granted reinstatement with continuity of service and 25% back wages from the date of demand notice i.e. 03.02.2006.

Aggrieved by the Award, the Management carried CWP No.13997 of 2012, which was dismissed by this Court on 14.03.2013 since no ground for interference was found to be made out. This Court noticed in the cross-examination, as held by the Labour Court, that no suggestion was put by the Corporation to the workman that his services were terminated by M/s Citadal Security Services. There was failure on the part of the Management to produce authentic record regarding the attendance and salary disbursement to disprove the relationship of employer and employee. The workman had produced 64 pages of the attendance register before the Tribunal, which may not have been exhibited, but were marked documents. The learned Single Judge in judicial review of the award held that in these circumstances onus shifted on the Management to disprove relationship of master and servant which it failed to discharge. The adverse inference drawn by the Labour Court was accordingly legal and valid and based on legally acceptable reason.

Still aggrieved by the order of the learned Single Judge, the Management carried LPA No.1348 of 2013. The Division Bench declined to interfere in appeal against the main relief, but on the concession given by

the workman's counsel, the order was modified to the extent of withdrawing 25% back wages to workman. At the same time, the appellate bench directed the Management to reinstate the workman within three weeks from the date of the order i.e. 08.01.2014 failing which the workman may claim 25% back wages.

Since the order passed by the Division Bench was not complied with within the stipulated period, the petitioner/workman filed an application before the Court of Additional Civil Judge (Senior Division), Panipat for implementation of the award and claimed 25% back wages in execution. By order dated 29.11.2014, the Additional Civil Judge (Senior Division), Panipat directed the Management/respondents to pay 25% back wages by 03.01.2015 failing which it was directed that the Additional General Manager, HOD (P&A) shall appear in person. After the order was passed, the Management moved CM No.4487-LPA-2014 before the Division Bench for extension of time by one week for implementation of the order dated 08.01.2014. That application was dismissed by an elaborate order dated 08.05.2015 and the back wages were ordered to be restored to be paid within four weeks from the date of the order. The relevant extract of the order reads as follows:

“The respondent -workman has been agitating against his illegal termination since the year 2006 and must have incurred considerable expenses besides the agony of being forced to go from one Court to another to defend his claim. The order directing that respondent-workman be joined in service within three weeks failing which he may claim 25% back wages was passed to ensure that the benefit of the decision is immediately available to him. He is a handicapped person having 70% disability. The amount that would have to be paid to him is not too large.

In the facts and circumstances of the case, we are not inclined to grant the prayer of the applicant-appellant for extension of time and the application is accordingly dismissed. The back wages shall be paid within four weeks from today.”

The amount has been paid within the time allowed.

However, the Management was not satisfied with any of the orders and carried SLP to the Supreme Court, which petition was dismissed in limine on 14.12.2015 on the ground of delay as well as on merits. The Award of the Labour Court has attained finality.

Law requires that workman's continuity of service has to be accounted for from 19.05.2005 i.e. the date of illegal termination. It would be deemed as if the order of termination was never passed and the petitioner continued and in this process would reap the benefit of any policy of regularization which fell on the way. In this petition, the prayer is for regularization of services on the ground that those employees who were not terminated and with whom he worked shoulder-to-shoulder have admittedly been regularized by the Management.

Learned counsel appearing for the Management concedes that a categorical statement has been made in the written statement filed to contest this petition, that the petitioner's colleagues have been regularized. Thus, when colleagues have been regularized, then the case of the petitioner comes within the scope and protection of Article 14 of the Constitution to prevent discrimination and restore equality. The relief sought in the petition deserves to be granted to the petitioner and his services ordered to be declared regular from the date when his first of the colleague was regularized. This is the guarantee of the equality clause in Article 14. For this right, Mr. Dahiya cites the Supreme Court judgment in Hari Nandan Prasad & another Vs.

Employer I/R to Management of FCI & another, 2014 (2) SCT 234 and the decision of learned Single Judge in Khajjan Singh Vs. State of Haryana & others, (2015) 1 SCT 604, which ruling has been upheld in appeal etc.

Accordingly and as a result of the above discussion, this petition is allowed. The impugned reason contained in the reply to the legal notice (Annex P-9) is quashed. The respondents are directed to pass an order keeping in view the directions in this order and in the aforesaid two decisions. The regularization would be with all consequential benefits. Thus, the arrears of difference of salary be calculated and paid to the petitioner within a period of two months from the date of receiving of certified copy of this order, failing which the amount in default will earn interest at the rate of 12% per annum till payment.

**28.02.2018**  
Vimal

**[RAJIV NARAIN RAINA]**  
**JUDGE**

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|-----------------------------------|------------|
| <i>Whether speaking/reasoned:</i> | <i>Yes</i> |
| <i>Whether Reportable:</i>        | <i>No</i>  |