

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

CWP No. 27092 of 2015

Date of Decision: 05.09.2018

Varinder and another

...Petitioners

Vs.

State of Haryana and others

...Respondents

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

Present: Mr. Rajesh Goyal, Advocate for the petitioners.

Ms. Shruti Jain Goyal, DAG Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. This petition deserves to be allowed for the simple reason that persons appointed later than the petitioners as Mali-cum-Chowkidar were regularized under the Haryana Government policy dated 01.10.2003.

2. The petitioners were appointed on 01.07.1995 & 01.04.1997 respectively while their juniors, namely, one Jiyaji Sharma was appointed on 19.08.1995, Rinku Lal s/o Shri Som Nath on 01.04.1997, Vimal Chauhan son of Rohtash Kumar on 01.03.1999, Shree Krishan S/o Biru Ram on 01.01.1997, Naresh Kumar S/o Arjun Singh on 03.02.1997 have been regularized in terms of the policy dated 01.10.2003.

3. The petitioners challenged their termination by filing a reference under Section 10 (1) of the Industrial Disputes Act, 1947.

Both the petitioners were reinstated to service on daily wage basis following awards of Labour Court. The awards have attained finality as State failed up to the Supreme Court in litigation. The termination of the petitioners was held to be illegal and they were reinstated in service with continuity. Thus, they must be deemed to continue in service as on 01.10.2003 as held in LPA No. 1903 of 2014 **State of Haryana and others Vs. Jiyaji Sharma**, decided on 21.01.2015. The Division Bench held that Jiyaji Sharma cannot be denied the benefits on par with the other similarly situated employees for no fault of his, namely, on account of the department having issued illegal orders of termination. The Division Bench relied upon and quoted from the decision of the Supreme Court in **Hari Nandan Prasad and another Vs. Employer I/R to Mangmt. of FCI and another**, (2014) 7 SCC 190 and the relevant part is reproduced below:

“However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over worker itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator

*would be achieving the equality by upholding
Art. 14, rather than violating this
constitutional provision”*

4. After hearing learned counsel for the parties, I am satisfied that this case deserves affirmative intervention in favour of the petitioners because persons junior to them who continued to serve and were not retrenched have had their services regularized under the Policy circular dated 01.10.2003.

5. In these facts and circumstances, this Court is bound to apply the principle of non-discrimination to bring relief of regularization with retrospective effect from the date juniors in service were regularized. The promise of Article 14 is best achieved by allowing the writ petition. It is ordered accordingly.

6. A direction is issued to the respondents to treat petitioner No. 1 on par with Jiyaji Sharma and petitioner No.2 in parity with Vimal Chauhan. Appropriate orders shall be passed without any delay preferably within 6 weeks from service of certified copy of the order.

(RAJIV NARAIN RAINA)
JUDGE

05.09.2018

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