

CWP No. 6135 of 2017,
CWP No. 2812 of 2018,
CWP No. 4902 of 2018,
CWP No. 4900 of 2018,
CWP No. 4723 of 2018,
CWP No. 25750 of 2017

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 6135 of 2017
Date of decision : September 26, 2018

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Suresh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CWP No. 2812 of 2018

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Satyawan

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CWP No. 4902 of 2018

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Jagbir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CWP No. 4900 of 2018

Subhas Chander
.....Petitioner

Versus

State of Haryana and others
.....Respondents

CWP No. 4723 of 2018

Pawan Kumar
.....Petitioner

Versus

State of Haryana and others
.....Respondents

CWP No. 25750 of 2017

Sube Singh and others
.....Petitioners

Versus

State of Haryana and others
.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. R.S Sangwan, Advocate for the petitioners.

Mr. Siddharth Sanwaria, DAG, Haryana.

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RITU BAHRI, J.

By this common judgment, above mentioned six writ petitions shall stand disposed of as common question of facts and law are involved in all these petitions. However, for the sake of convenience, facts are being extracted from **CWP No. 6135 of 2017.**

The petitioner is seeking writ of certiorari for quashing the order dated 4.1.2017 (Annexure P-19) passed by respondent no.3, whereby the petitioner was denied the benefit of regularization of service on completion of 240 days. Moreover vide this order he was also held not entitled for the pay fixation at par with other workman. By way of the present writ petition, directions have been sought to the respondents to pre-pone the date of regularization of services of the petitioner to the retrospective date (as per his entitlement) in view of the policy dated 13.2.1979 (Annexure P-4) and fix the pay at par with his juniors on the principle of '*equal pay for equal work*' and regularize the services of the petitioner with all consequential benefits on completion of 240 days service.

The petitioner filed CWP No. 17504 of 2016 which was disposed of by this Court vide order dated 10.11.2016 with the direction to

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the respondents to consider and decide the advance notice dated 3.3.2015 (Annexure P-18) in accordance with law within a period of four months. The advance notice was decided by respondent no.3 and the claim of the petitioner was rejected vide order dated 4.1.2017 (Annexure P-19). A perusal of the impugned order shows that the petitioner Suresh Kumar S/o Raghu Nath was appointed as helper on daily wages on 29.5.1993 with the benefit of 50% arrears thereof. He was further promoted notionally to the post of Asst. Fitter w.e.f 1.3.2001 vide office order dated 30.10.2014. On his further representation dated 22.8.2014, he was promoted to the post of Fitter w.e.f 29.11.2011 notionally i.e the date from which his junior workman Sh. Satyvir S/o Sh. Dharam Singh was promoted as Fitter. Thereafter, this post was merged into the post of Mechanic w.e.f 23.12.2011 as well as the post of Sh. Satvir Singh s/o Dharam Singh his junior workman was also merged with Mechanic w.e.f 23.12.2011. Keeping in view this, he had been granted the benefit of regularization of service w.e.f 1.4.1993, notional promotion as fitter w.e.f 29.11.2004 and merger of the post of Fitter into the post of Mechanic w.e.f 23.12.2011 equal the benefits granted his junior workman Satyvir Singh s/o Dharam Singh Mechanic i.e respondent no.4 of this writ petition. Vide this order, it was held that there was no provision in the Govt. Instructions to regularize his services on completion of 240 days daily wage service. Whereas the matter of pay fixation at par with other workmen is concerned, he is not entitled for the

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same as they are enjoying the benefits of pay fixation etc. on the basis of technical pay scale granted to them as a personal measure, which is also sub judice. Thus, the legal notice (Annexure P-18) was rejected.

Counsel for the petitioner has argued that initially, the petitioner was appointed on recommendation by the concerned Employment Exchange on daily wage basis on 29.11.1984 (Annexure P-1) along with number of other employees in the Haryana Roadways. His services continued to be extended from time to time continuously. Vide order of termination order dated 10.1.1989, services of the petitioner were terminated without complying with the principles of law and natural justice and without affording him any opportunity of being heard. He was taken back in service w.e.f 19.1.1989 on daily wage basis and he was allowed to be continued as daily wager by the respondents. Thereafter, the petitioner filed CWP No. 19212 of 1998 in this Court for counting period from 28.11.1984 to 18.1.1989 and decide further period for regularization of his services counting whole service from the date juniors to him has been regularized with all consequential benefits. This writ petition was allowed vide order dated 5.9.2013 (Annexure P-2) and it was held that the petitioner would be deemed to be in daily wage service from the date of initial appointment in 1984 till 1998 with a right of consideration for regularization of services under the policy on parity with others whose services stand regularized. LPA No. 490 of 2014 was filed against this

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judgment, which was also disposed of vide order dated 31.3.2014 directing the State Authorities to regularize the services of the petitioner in terms of the order passed by this Court dated 5.9.2013 and all the benefits be calculated notionally and arrears be paid to the extent of 50% agreed between the parties. The entire service rendered on daily wages was ordered to be counted towards calculation of pensionary benefits. Thereafter the petitioners' services were regularized w.e.f 1.4.1993.

He has finally argued that though vide the judgment passed by this Court in LPA No. 490 of 2014 vide order dated 31.3.2014, the petitioner was granted benefit of continuity of service with 50% back wages and the entire service rendered by the petitioner on daily wages was ordered to be counted towards calculation of pensionary benefits, however, this aspect has been totally ignored by the respondents in rejecting his claim vide order dated 4.1.2017 (Annexure P-19).

In the written statement filed on behalf of respondents no. 1 to 4, it was admitted that the petitioner was appointed on daily wage basis in Haryana Roadways, Delhi Depot in the year of 1984 as Helper. It was further stated that vide Instructions dated 5.6.1992 (Annexure R-1), a decision was taken to regularize the services of the daily wage employees in Haryana Roadways and in this backdrop, his services were regularized w.e.f 1.5.1992. On the basis of Instructions dated 19.2.1979, the petitioner was not entitled for regularization of his services as he was not in service at the

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relevant time and this fact has been clarified by the department vide memo dated 12.1.2004 (Annexure R-2). At the time of appointment of the petitioner on daily wages basis, no policy for regularization of employees appointed on daily wages basis (Group 'D') was in existence. Therefore, the services of petitioner have rightly been regularized as per the policy of the Department dated 27.5.1993. It was further submitted in the written statement that the petition is time barred as the same has been filed after more than three years had expired whereas the service of petitioner was regularized on 20.5.2014 w.e.f 1.4.1993.

Heard counsel for the parties and thoroughly gone through the facts of the case. The respondents are not disputing that in compliance with the order dated 5.9.2013 passed by this Court in CWP No. 19212 of 1998 titled, 'Suresh Kumar vs. State of Haryana and others' after counting the daily wages period from 29.11.1984 to 17.9.1998 as duty period, service of the petitioner was regularized w.e.f 1.4.1993 vide order dated 20.5.2014 under the policy dated 27.5.1993. The question for consideration is which policy was applicable at the time for regularization of the services when the petitioner was appointed on 29.11.1984 The petitioner has placed on record Instructions dated 13.2.1979 (Annexure P-4) issued by the Transport Department. As per these Instructions, Conductors, Drivers and workshop staff up to the post of Mechanic (Class-III) appointed through Employment Exchange should be regularized from the date they completed 240 days of

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continuous service. The benefit of these Instructions have been extended to all the employees by this Court in *CWP No. 6315 of 1998* titled, '*Jaimal Singh and others vs. State of Haryana and another*' and *CWP No. 5532 of 2000*, '*Kuldeep Singh and another vs. State of Haryana and another*' decided on 19.12.2011 and the same was upheld by the *LPA No.862 of 2012* titled, '*The State of Haryana and another vs. Kuldeep Singh and others*' decided on 2.7.2012 (Annexure P-6) by this Court. The above said judgments have attained finality and have been complied with by the respondents. A perusal of these judgments shows that in all these cases, the Transport Department had regularized the employees on the basis of policy framed on 11.5.1994 (Annexure R-1) seeking to regularize the services of ad hoc employees who have completed 2 years service as on 31.3.1993. While allowing the writ petition, it was held that they had been appointed way back in the year 1987-88 and they had a right to be considered for regularization as per the policy. The writ petitions were allowed that once the Department had taken a conscious decision to regularize the services after completing 240 days and some of the employees who were appointed along with the petitioners had been regularized after 240 days, the petitioners would be regularized as per the policy dated 11.5.1994. The writ petitions were allowed and the appeal of the State was dismissed. In the case of *Jagdish Singh and others vs. State of Haryana and others (CWP No. 18714 of 2013)* decided on *18.5.2016 (Annexure P-7)*, the petitioners

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were working as Conductors/Drivers/Mechanic in the respondent-department. They initially joined the Department as daily wagers/contractual employees. They joined the service on 22.6.1992 as contractual employees and were regularized on 14.8.1994. They were seeking benefit of regularization after completing 240 days of continuous service. While deciding this case, reference was made to a judgment in the case of ***Randhir Singh and others vs. State of Haryana and others*** passed in ***CWP No. 4743 of 1986*** decided on ***17.2.1986***. In this case petitioners were working as ticket verifiers since long time but were not regularized. The writ petition was allowed and the petitioners who had completed 240 days service in a year were held entitled to be considered for appointment in the order of their length of service. Reference was also made to a judgment in ***Jaimal Singh's case (supra)***. While allowing the writ petition, it was held that the Instructions dated 28.7.1994 (Annexure R-2) are prospective in nature and for all those petitioners, who were appointed before this date, are to be extended the benefit of policy dated 19.2.1979 after completing 240 days of service in a year. Once the Department had regularized the services of helpers, conductors, drives, TVFs w.e.f the date they had completed 240 days of service, who joined in the year 1992 in view of policy dated 19.2.1979, the petitioners have also to be extended the same benefit. Thus the writ petitions were allowed and directions were given to the respondents to pre-pone the date of regularization of service of the petitioners on the

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basis of Haryana Government policy dated 19.2.1979 on completion of 240 days of service. Petitioners were held entitled to all consequential benefits.

The ratio of the above said judgments is directly applicable to the facts of the present case. The petitioner is thus entitled to the benefit of the Instructions dated 13.2.1979 (Annexure P-4) as he was employed through Employment Exchange but his services could not be regularized as per the policy. As per the petitioner, one Satbir Singh had joined the service much after the petitioner but his services had been regularized after completing 240 days of service vide order (Annexure P-9). Once juniors have been given the benefit of regularization after completing 240 days of service, the petitioner has a right to be considered for regularization as per policy dated 13.2.1979 (Annexure P-4).

In view of all that has been discussed above, the writ petitions are being allowed. Order dated 4.1.2017 (Annexure P-19) is hereby set aside. A direction is being given to the respondents to consider the case of the petitioners and regularize their services as per the policy 13.2.1979 (Annexure P-4) with all consequential benefits at par with their juniors.

26.9.2018

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**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No