

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9371 of 2017
Date of Decision: 07.08.2018

Suresh Chand @ Suresh Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.B.S.Mittal, Advocate, for the petitioners.

Mr.Gaurav Jindal, Addl.A.G.Haryana.

RITU BAHRI, J. (ORAL)

Petitioner is seeking directions to the respondents to prepone the date of the regularization of service of the petitioner from 05.09.2001 to the date on which the petitioner completed two years of service on contract basis with all consequential benefits as per the policy dated 28.07.1994 (Annexure P-2) as the case of the petitioner is covered by the judgment passed in CWP No.14111 of 2001 dated 18.05.2009 (Annexure P-3).

As per policy dated 28.07.1994 (Annexure P-2), there was an agreement arrived at between the Transport Department and recognized Union of Haryana Roadways Workers on 16.06.1994. As per agreement, the services of the drivers/conductors who completes two years service on contractual basis, should be regularized against vacancy. The respondents are not disputing the fact that the petitioner was appointed on 28.06.1994. However, his services have been regularized vide order dated 05.09.2001 (Annexure P-1). The petitioner has placed on record the judgments in the case of Mukesh Kumar Vs. The State of Haryana and others passed in CWP

others Vs. State of Haryana and others passed in CWP No.14111 of 2001 passed on 18.05.2009 (Annexure P-3). In the aforesaid cited case, the case of regularization was denied by the respondents on the ground that regularization policy i.e. 28.07.1994 (Annexure P-2) had been withdrawn on 17.11.1995. This ground was rejected by the Court as withdrawal of the policy would not have the effect of obliterating the writ petitioner's right and the writ petitioners could have been regularized after completion of two years as the vacancies were available. In the above mentioned case, respondents had not denied that the vacancies for the said post has not been available against which the services of the petitioners could have been regularized. Thereafter, the writ petitions were allowed. Against the CWP No.14111 of 2001, an LPA No.91 of 2010 titled State of Haryana and others Vs. Pardeep Kumar and other was filed which was dismissed by the division Bench of this Court vide judgment dated 25.01.2010. Thereafter, similar situated employees were held entitled to the regularization of the service.

Learned counsel for the State has argued that petitioner's case has been considered in view of the Govt. Instructions No.1224-1245/A2/E3 dated 23.03.1998 and he has been regularized on 05.09.2001 as petitioner is not entitled for regularization after completed 2 years of his service because he did not complete two years of his service as on 28.07.1994 as per Govt. Instructions letter No.12353-73/A1/E3 dated 28.07.1994 (Annexure P-2). Later on, it was decided by the Government the above said instruction has also been withdrawn on 17.11.1995. Further he argued that petitioner has not impleaded the name of his juniors as party in the present writ petition whose services have been regularized prior to that of petitioner. As such, the case of

Learned counsel for the respondents has argued that in fact the policy of 28.07.1994 was withdrawn by the policy of 17.11.1995. The Court is of the opinion that subsequent withdrawal of the policy would not have the effect of obliterating the petitioners' right. Since the petitioner was working on contract basis and he was regularized against the vacant post on 2001, respondents cannot take a plea that no vacancy was available at the time when the petitioners completed two years. Because, if the post was not sanctioned, the petitioner would work on contract.

In view of the above, this writ petition is allowed with a direction to the respondents to consider the cases of regularization of services of the petitioner in terms of the policy dated 28.07.1994 (Annexure P-2). The aforesaid exercise be done with a period of two months from the date of receipt of this order.

(RITU BAHRI)
JUDGE

07.08.2018
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No