

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

LPA No.156 of 2016 (O&M)

Date of Decision: 28.08.2018

State of Haryana & Ors.

...Appellants

VS.

Pawan Kumar

... Respondent

**Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Sudip Ahluwalia**

Present: Mr. Ravi Dutt Sharma, DAG Haryana

Mr.Jagjeet Beniwal, Advocate for the respondent

SURYA KANT J. (Oral)

(1) State of Haryana has preferred this Letters Patent Appeal against the order dated 30.07.2015 whereby learned Single Judge allowed the writ petition filed by the respondent and has directed to regularize his services on the post of Blacksmith w.e.f. 01.02.1996 instead of 01.10.2003 with all consequential benefits.

(2) On November 22, 2016, this Court directed the appellant to consider the claim of respondent for regularization of services w.e.f. 31.01.1996 on notional basis without giving him any monetary benefit.

(3) In deference to that order, the General Manager, Haryana Roadways, Chandigarh has passed order dated 22.05.2017 (A1) whereby services of the respondent have been regularized on the post of Blacksmith w.e.f. 31.01.1996 on notional basis further holding that he will not be entitled for any monetary benefit.

(4) The appellants, however, have pressed the appeal on merits as according to them, the respondent had no claim on merits and it was highly belated and suffered from delay and laches.

(5) The facts may be noticed briefly.

(6) The respondent was appointed on the post of Blacksmith on daily wage basis w.e.f. 19.03.1993. He continued to serve uninterruptedly (except notional breaks) till his services were regularized w.e.f. 01.10.2003 in terms of the Government policies dated 01.10.2003 and 10.02.2004. The respondent thereafter is said to have represented to consider his claim for regularization of services as per the previous Government policies dated 07.03.1996 (wrongly mentioned as dated 27th May, 1993) and 18.03.1996 (P2&P3). His claim was not considered. The respondent allegedly made a representation on 21.05.2012 (P6) also and thereafter filed a writ petition in the year 2012 which was withdrawn with liberty to pursue his remedy before the department (P8). He again filed CWP No.8411 of 2013 which has been allowed by learned Single Judge vide order under appeal holding that services of the respondent shall be deemed to have been regularized w.e.f. 01.02.1996 with all consequential benefits.

(7) The stand of the appellants before learned Single Judge was that the respondent was not entitled to seek regularization of services without completing three years' service on daily wages and since he fulfilled such eligibility conditions only as per the subsequent Government policies dated 01.10.2003 and 10.02.2004, his services were rightly regularized w.e.f. 01.10.2003.

(8) The issue which thus falls for consideration is whether or not the respondent could seek regularization of services in terms of the previous Government policies dated 07.03.1996 and 18.03.1996 (P2 & P3)? The relevant clause in the policy dated 07.03.1996 (P2) reads as follows:-

“The casual and daily rated employees, who have completed five year on 31st January, 1996 and were in

service on 31st January, 1996 shall be regularized provided they have worked for a minimum period of 240 days in each year and the break in service in any year is not more than one month at a time. Such employees who have worked on different posts having different designation in the same department shall also be regularized if they fulfill their conditions. On regularization they shall be put in the time scale of pay applicable to the lowest ground 'D' cadre in the Government and they would be entitled to all other allowances and benefits available to regular Government servants of the corresponding grade."

[emphasis by us]

(9) From the plain reading of the above-reproduced clause, it may be seen that if a daily rated employee had completed five years' service on 31.01.1996 and was in service on 31.01.1996, he was entitled to regularization of services provided that such daily rated employee had worked for a minimum period of 240 days in each year and the break in service in any year was not more than one month at a time.

(10) The above-stated policy dated 07.03.1996 (P2) was further modified on 18.03.1996 (P3) and the total daily rated service of five years was reduced to three years. The relevant part of the policy dated 18.03.1996 (P3) reads as follow:-

"2. This matter has further been considered and after careful consideration it has now been decided to regularize the services of all those work-charged/casual/daily rated employees who have completed 3 years service on 31st January, 1996 and fulfill other conditions laid down in Haryana Government letter of even number dated 7th March, 1996.

3. Accordingly, Government instructions issued vide letter of even number dated 7th March, 1996 should be

considered as modified to the extent that the Work-charged/Casual/Daily rated employees with 3 years service on 31st January, 1996 instead of 5 years service on 31st January, 1996 shall be eligible for regularization”

[emphasis applied]

(11) The respondent was admittedly appointed on daily wage basis on 19.03.1993. In terms of the above-reproduced policies, he was entitled to be considered for regularization of service on completion of three years of daily rated service provided that he had worked for 240 days in each year.

(12) In other words, if the respondent had completed 240 days or more in each year after his appointment on 19.03.1993, he was entitled to regularisation of services w.e.f. 01.02.1996 in terms of the above-reproduced 1996 policies.

(13) In preliminary submission No.2 of the written statement, it is candidly acknowledged that the respondent had actually completed 240 days in a year but his claim was controverted on the plea that he had not completed three years' service as on 31.01.1996. Such a plea was obviously in conflict with the above-reproduced Government policies of 1996.

(14) The respondent thus was erroneously denied the benefit of regularization w.e.f. 01.02.1996. In this regard, he has rightly relied upon two Division Bench judgments of this Court in **Ram Dhari vs. The Chief Wildlife Warden, Haryana and another, 1996 (1) SLR 722** and another unreported decision in CWP No.5750 of 2003 decided on 12.12.2005 (P5).

(15) The respondent, however, cannot deny the fact that he approached this Court at a highly belated stage and his writ petition could be turned down on the ground of delay and laches alone. Learned Single Judge, nevertheless, entertained his writ petition and proceeded to decide the same on merits. In

such a situation, learned Single Judge ought to have struck balance between the enforceable right and equity *inasmuch* as the respondent ought not to have been awarded all the consequential benefits. The interest of justice would have been adequately met by directing that services of respondent be regularized notionally w.e.f. the due date without paying any arrears of pay. The order under appeal dated 30.07.2015 thus stands modified to that extent.

(16) We are not inclined to interfere with the date of regularization as granted by learned Single Judge for another additional reason that the respondent has meanwhile retired from service on attaining the age of superannuation.

(17) In the light of the above discussion, the order dated 30.07.2015 of learned Single Judge is modified and the appeal is disposed of holding that respondent is entitled to regularization of services w.e.f. 01.02.1996 but on notional basis.

(18) Ordered accordingly.

(Surya Kant)
Judge

28.08.2018
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No