

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

LPA No. 1704 of 2018 (O&M)

Date of Decision: 30.10.2018

Mewat Model School Society, Nuh

.....Appellant

versus

Mahesh Chand and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Naveen S.Bhardwaj, Advocate, for the appellant.

KRISHNA MURARI, CHIEF JUSTICE (oral)

CM No. 4448-LPA of 2018

Heard. For the reasons mentioned in the application, delay of 66 days in filing the appeal is condoned. Application stands disposed of.

LPA No. 1704 of 2018

This intra court appeal filed under Clause X of the Letters Patent is directed against the judgment and order dated 18.07.2018 passed by the learned Single Judge allowing the writ petition filed by respondent No.1 herein.

2. Undisputed facts are that the respondent-workman raised an industrial dispute with respect to termination of his service on 18.08.2000 which was without any notice and payment of compensation. A reference was made to the Labour Court which was answered in favour of the respondent-workman and the termination order was held to be unjustified vide award dated 06.06.2002. The respondent-workman was directed to be reinstated with continuity of service and full back wages. Admittedly, the award attained finality.

3. A representation was made by the respondent-workman before the management of the school which was headed by the Deputy Commissioner, Gurgaon to implement the award and to reinstate him with full back wages. However, before the award could be implemented, Delhi Public School, Nuh where he was employed was taken over by Mewat Model School Society which was on the list of grant-in-aid of Government of Haryana. Delhi Public School, Nuh was taken over by the society alongwith all its assets and liabilities and the new management stepped into the shoes of the earlier management. Ultimately, after about 10 years vide order dated 09.04.2012 the respondent-workman was reinstated back. He joined his services and back wages were released to him w.e.f. 18.08.2000. Thereafter the respondent-workman made a claim for regularization of his services in terms of order dated 07.06.2004 passed by Deputy Commissioner, Gurgaon in his capacity as Chairman of the Mewat Model School Society regularizing the services of 13 employees under the policy of the Haryana Government.

4. There is no dispute about the fact that the services of 13 employees which were regularized were appointed after the service of the respondent-workman was terminated and thus were junior to him. When his services were not regularized the respondent-workman approached this Court by filing the writ petition.

5. It is contended on behalf of the appellant that the petitioner was reinstated back to his original position as it was at the time of termination of his service which was on contractual basis.

6. Learned Single Judge repelled the aforesaid arguments mainly on the ground that the award passed by the Labour Court, which had attained finality, directed reinstatement with continuity of service and full back

wages. Learned Single Judge also found that the services of 13 employees who were junior to the respondent-workman and had been regularized were also appointed on contractual basis and thus there was especially no reason to discriminate the respondent-workman.

7. The termination order which was subsequently declared to be unjustified and illegal was the only stumbling block, otherwise had the respondent-workman continued in service, he would also have been entitled for regularization like other similarly situated 13 employees who were junior to him. Once the termination order was found to be illegal and unjustified and reinstatement order was directed with continuity of service and full back wages, it would be deemed as if there was no termination and the respondent-workman was entitled to the same treatment as was meted out to 13 similarly situated employees junior to him.

8. Learned Single Judge while applying the principle of non-discrimination to grant relief of regularization to the respondent-workman has placed reliance upon the decision of the Hon'ble Apex Court in case ***Hari Nandan Prasad and another v. Employer I/R to Management of Food Corporation of India and another (2014) 7 Supreme Court Cases 190*** wherein in paragraph-39 it has been observed:-

“39.....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 workers 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.”

9. In view of the aforesaid law laid down by the Hon'ble Apex Court, no exception can be taken to the impugned judgment passed by the learned Single Judge so as to cause any interference in the same. Appeal accordingly stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

30.10.2018
ravinder

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