

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGRH

Letters Patent Appeal No.682 of 2019 (O&M)

Date of Decision: 21.05.2019

State of Haryana and others

..Appellants

Versus

Ram Karan

..Respondent

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

Present : Mr. Sharad Aggarwal, Assistant Advocate General, Haryana,
for the appellants.

KRISHNA MURARI, CHIEF JUSTICE (oral)

CMA No. 1634-LPA of 2019

Heard. For the reasons mentioned in the application, delay of 20 days in filing the appeal is condoned. Application stands disposed of.

LPA No. 682 of 2019

This intra-court appeal under Clause X of the Letters Patent has been filed by the appellants challenging the judgment and order dated 18.12.2018 passed by the learned Single Judge allowing the petition filed by the respondent herein.

2. Facts in brief necessary for the adjudication of the controversy at hands can be summarized as under:-

The respondent was appointed as a Helper-cum-Seeds Cleaner in November, 1990 in the Seeds Laboratory, Pinjore in the Forest Department of the State of Haryana on a fixed salary of Rs.750/- per month. In December, 1995, his status was changed to a daily wage employee and was being paid on DC rates. The respondent filed a writ petition before this Court being Civil Writ Petition No. 10750 of 1999 seeking a direction to

command the State authorities to regularize his services as per the two circulars issued by the State of Haryana dated 07.03.1996 and 18.03.1996. Vide circular dated 07.03.1996 it was provided that all those who have completed five years of service as casual or daily wage employees on 31.01.1996 were entitled to be regularized. The condition of five years was relaxed to three years vide subsequent notification dated 18.03.1996. The writ petition was disposed of by directing the State Authorities to decide the representation within three months. The Appellant Authorities vide order dated 17.11.1999 not only rejected the representation of the petitioner-respondent but at the same time made a recommendation for his disengagement. Aggrieved the writ petition out of which the present appeal arises was filed by the respondent.

3. During the pendency of the writ petition, the service of the respondent was transferred from Pinjore to another forest unit in village Mirpur in District Yamuna Nagar which was situated at a distance of more than 100 Kilometer. On an application made by the petitioner in the pending writ petition, the transfer order was stayed vide order dated 05.08.2003. When the writ petition was heard by the learned Single Judge on 26.09.2018, the following order was passed:-

“The Department to show cause why this matter should not be allowed in terms of office order No.5 dated 16.06.2011 (Annexure P-7), in which there is a clear statement that the petitioner is entitled to be regularized in service w.e.f. 01.10.2003. The Department has taken in writing from the petitioner that his services will be regularized in case he withdraws the present petition and the order dated 16.06.2011 will be made effective. It was also recorded that no post in Group D was available i.e. till 16.06.2011 and the Divisional Forest Officer, Seed Collection Division, Pinjore

had recommended that a post may be created and as such the proposal was forwarded to the higher authorities. The State to justify non-creation of a post to accommodate the claim of the petitioner, who has been working in the Department since November, 1990/March,1991 and there was no break in service for more than one month at a time. He was in service on 30.09.2003 and had completed more than 240 days.”

4. Learned Single Judge while deciding the writ petition has noticed the fact setout in an affidavit of the Divisional Forest Officer, Seed Collection Division, Punjab, wherein it was stated that in response to the letter issued by the Principal Chief Conservator of Forests, Haryana, dated 10.02.2011 seeking information with regard to daily wage labourers entitled for regularization, the District Forest Officer, Seed Division, Pinjore, while providing information inadvertently omitted the name of the respondent-petitioner though he continued to work on the post in view of the interim directions of this Court. On subsequent examination of the matter pertaining to the respondent-petitioner, the State authorities took a decision not to act any further in a manner awaiting the final outcome of the writ petition. Subsequently, another policy for regularization was enforced in 2003 after rescinding the policy of 1996 and even then the case of the respondent-petitioner was not considered.

5. Learned Single Judge has also made a reference to the letter dated 16.06.2011 of the appellants authorities acknowledging that due to certain reasons the regularization of services of such workers including the respondent-petitioner who were entitled for the same could not be forwarded and a recommendation was made that the respondent-petitioner is entitled to be regularized in service w.e.f. 01.10.2003. Learned Single Judge has also noticed the fact that on the asking of the State Authorities the respondent-

petitioner given in writing that in case his services are regularized w.e.f. 01.10.2003 he will withdraw his petition pending in the High Court. The policy of regularization notified in 1996 provides as under:-

“CASUAL/DAILY RATED EMPLOYEES :

The casual and daily rated employees who have completed five years 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 designations in the same department shall also be regularised if they fulfil other conditions. On regularisation they shall be put in the time scale of pay applicable to the lowest group D cadre in the Govt. and they would be entitled to all other allowances and benefits available to regular govt servants of the corresponding grade.”

6. Analyzing the factual aspect of the matter, the learned Single Judge has returned a categorical finding that the respondent-petitioner has worked continuously since 1991 and there has been no break in service for more than one month. The fact that the respondent-petitioner was in service on 30.09.2003 when the regularization policy was promulgated having completed the period prescribed, the learned Single Judge also returned a finding that the case of the respondent-petitioner falls squarely in the amended policy of 18.03.1996, he having completed three years of service on the appointed date. It is only because of inaptitude and apathy of the department that his services were not regularized and the matter was kept on lingering. On the basis of the aforesaid facts and circumstances, the learned Single Judge held that the respondent-petitioner was entitled to regularization under the 1996 policy.

7. Having gone through the pleadings of the parties as also the judgment of the learned Single Judge we are also of the considered opinion that the respondent-petitioner is entitled to regularization under the 1996 policy particularly when the Department itself had passed the order in his favour subject to the condition that he withdraw the writ petition but subsequently resiled and kept the matter pending awaiting outcome of the writ petition.

8. Learned Assistant Advocate General, Haryana, vehemently contended that since the policy of 1996 was subsequently replaced by the policy of 2003, the respondent-petitioner cannot be held entitled for regularization under the said policy. The argument is fallacious. The right for regularization accrued in favour of the respondent-petitioner when the policy was very much in force and an undertaking was also obtained from him to withdraw the writ petition on being regularized and the right of the respondent-petitioner crystallized during the currency of the policy. The State Authorities cannot be permitted to take advantage of their own apathy.

9. Thus we see no good ground to take a view different from the one taken by the learned Single Judge. The appeal is devoid of merits and accordingly stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

21.05.2019
ravinder

Whether speaking/non-speaking: Speaking
Whether reportable : Yes/No.