

CWP No.12978 of 2012

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

CWP No.12978 of 2012

Date of decision : 06.02.2019

Deep Chand through LRs & others

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Sh.R.K.Malik, Senior Advocate with
Ms.Kanu Sharma, Advocate for the petitioner.

Sh.Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

After hearing the parties at length, this Court had crystallized the controversy in hand in an interim order dated 20.02.2018 upon which the learned State counsel sought time to furnish a specific affidavit disclosing as to on what account the claim of the late petitioner, represented through his heirs and LRs for regularisation of service of Deep Chand in terms of the 2003 Policy of the Haryana Government could be declined. State counsel was directed to obtain appropriate instructions from the department.

An affidavit has been filed by Sh. Rajesh Arya, Divisional Forest Officer, Bhiwani. In paragraph 5 of the affidavit, it is conceded that the late petitioner fulfilled all the conditions in the regularisation policy, 2003 but as the said policy was withdrawn in 2007 and revived by another policy notification dated 18.6.2014, therefore, their claim could not be considered. In order to take the discussion forward, the order dated

20.02.2018 crystallizing the dispute is reproduced below:

“A writ in the nature of Certiorari is prayed for, to quash the impugned order dated 7.5.2012 (Annexure P-15), whereby the claim of the petitioners for regularisation of their services, in terms of the policy decisions (Annexures P-5 to P-9), has since been rejected.

Concededly, the petitioners were appointed as Malis on daily wages, between 1985 to 1991. Their services were terminated w.e.f. 11.9.1998, 1.10.1999 and 1.1.2000, respectively. However, the Labour Court, vide separate awards, ordered reinstatement of petitioners No.2 and 3 with continuity of service and 50% back wages. Whereas, petitioner No.1 was denied back wages, but was reinstated with continuity of service. Concededly, the award rendered by the Labour Court has since attained finality. Meaning thereby, all the petitioners are in service of the respondents for over 25 years. The letter (Annexure P-10), written by the Forest Division Officer, Bhiwani, to the Forest Guard, Western Sub Division, Hisar, reveals that the requisite details of the petitioners were forwarded for regularising their services, as their claims were covered under the 2003 Policy. Further, the information obtained by the petitioners under the RTI, i.e. letter dated 14.2.2011 (Annexure P-16), also shows that although all the seven employees, whose details are tabulated therein, were way too juniors to the petitioners, but their services were regularised w.e.f. September, 2003.

Primarily, the stand set out in the written statement is: that claim of the petitioners was required to be considered in terms of the policy dated 29.7.2011, which postulates that a daily wager, who had completed 10 years of service on 10.4.2006, and was still in service, could be considered, provided he was appointed against a sanctioned vacant post, and was not continuing pursuant to any orders of a Court or a Tribunal.

Prima facie, the reason assigned by the respondents appears to be erroneous, as the letter (Annexure P-10) itself

reveals that the claim of the petitioners was required to be considered under the 2003 Policy. Once the petitioners were reinstated with continuity of service, and the award rendered by the Labour Court having been accepted and complied with, they would be deemed to have been in service since their initial appointments. And since it is not disputed that persons, as indicated in the letter (Annexure P-16), appointed much later than the petitioner, have since been regularised w.e.f. September 2003, there hardly exists any reason, as to why the claim of the petitioners for regularisation, from the same date, could be ignored.

Faced with this, learned State counsel prays for a short accommodation to furnish a specific affidavit, as to on what grounds, in the given situation, the claim of the petitioners could be declined, and obtain appropriate instructions.

Adjourned to 28.3.2018.

A photocopy of this order be placed on the file of connected case.”

Be that as it may, presently, the case hinges not on the policy of 2014 or the fate of that Policy depending on the outcome of the SLP(C) No.31566 of 2018 in the Supreme Court arising out of CWP No.17206 of 2014 titled 'Yogesh Tyagi & another Vs. State of Haryana & others' decided on 31.05.2018, but the real issue in this case is based on pre-existing rights of Deep Chand under the policy of 2003 coming from labour court award of reinstatement and resulting discrimination amongst those who are deemed equal as it is not denied by the State that similarly situated persons have already been regularised by the department while the petitioner was left out litigating before the Labour Court against his illegal order of termination from service. Late workman Deep Chand has in his favour an award of reinstatement with continuity of service. Whether back wages have been granted in full or in part is of no concern to the case in hand in which the

prayer is for ante-dated regularisation of the petitioner having spent 25 to 30 years of service with the department on daily wages, actual and by fiction of the award.

After all, it is the Divisional Forest Officer Bhiwani himself who has now disclosed in his affidavit that the petitioner fulfills all the conditions of regularisation policy, 2003. In case persons junior to the petitioners have been regularised, then the respondents are duty bound to confer the same relief and they cannot be seen to discriminate on the specious plea that the SLP is pending, when the awards of the Labour Court awarding reinstatement and continuity of service have attained finality. In order to restore the balance and to give the LRs of the late petitioner their pre-existing rights and consequential monetary dues based on the award of the labour Court granting continuity of service from the date of initial appointment, the impugned order must be removed from the way. The rule laid down by the Supreme Court in Hari Nandan Prasad & another V. Employer I/R to Management of FCI & another, (2014) 7 SCC 190 has to be given full effect to. The operative part of the relevant directions, as extracted from the passage in the judgment, is reproduced below :

“However, wherever it is found that similarly situated workmen are regularised 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 regularisation in such cases may be legally justified, otherwise, non-regularisation of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.”

In view of the position explained above, I find considerable substance in this petition and it deserves to be allowed. A direction is issued to the respondents to consider the case of the petitioners according to regularisation policy 2003 and to regularise the services of late Deep Chand from the date his juniors were regularised in the department.

Mr Malik points out that in the earlier case i.e. CWP 2088 of 2012, late Deep Chand had approached this Court seeking regularisation and directions were issued to the department to consider and decide his representation. The impugned order has been passed as a result of those directions, which office order has been challenged in this petition.

In view of the above discussion, the petition is allowed. The impugned order dated 07.05.2012 declining relief is quashed by issuing a writ of certiorari. Fresh orders are directed to be passed as per policy of 2003 in the light of this order within two months from the date of supply of copy of this order.

As a result, all the service benefits will be released in favour of the LR's notionally prior to the date of filing of the earlier writ petition i.e. 3.2.2012 and actual payment thereafter. Amount be calculated and disbursed within the same time frame of two months. In default of payment, the amount in default will carry interest at the rate of 10% per annum till realization, in which case the officer who has to sanction and release the dues will pay interest from his pocket, which will not be reimbursed by the State.

06.02.2019

Meenu/Vimal

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No