

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.12632 of 2014 (O&M)

Date of Decision: 22.01.2019

Harpal Singh

... Petitioner

Versus

Managing Director State Warehousing Corporation and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. K.K. Kang, Advocate
for the petitioner.

Mr. Jitendra Sharma, Advocate
for the respondents.

ARUN MONGA, J. (ORAL)

1. The present petition has been filed, inter alia, for issuance of a writ in the nature of mandamus, directing the respondents to regularize the service of the petitioner, who has been in service w.e.f. 01.06.1995. The petitioner is seeking compliance of the Notification dated 01.10.2003 followed by another Notification dated 10.02.2004 (Annexure P-10) Colly.

2. Succinctly, the facts as stated in the petition are that, petitioner, after his appointment as Godown Chowkidar on 01.06.1995, was posted at Haryana State Warehousing Unit No.1, Sirsa, on daily wage basis against the sanctioned vacant post of Godown Attendant-cum-watchman. However, his services were terminated on 16.04.1996. This led to Labour Court proceedings which culminated in award dated 28.04.2003 (Annexure P-1). Thereby, the petitioner was directed to be reinstated with continuity of the service and 25%

back wages. Pursuant thereto, the petitioner was reinstated by the respondent/Corporation vide order dated 08.08.2003 (Annexure P-2).

3. The petitioner states that another co-worker, namely, Rajesh Kumar was also similarly appointed as a Chowkidar in September, 1991 and his services too were terminated. Upon challenge thereto, the Labour Court vide an award dated 14.06.2001 (Annexure P-3), directed the respondents/Corporation for his reinstatement with continuity in service but without back wages. In compliance of the award, the respondents/Corporation, reinstated the said Rajesh Kumar in service vide order dated 11.11.2002 (Annexure P-4) and gave him the pay scale of Rs.750--870-940. Thereafter, the pay scale of the post of Rajesh Kumar has been revised from time to time and he was even granted a promotion in Haryana Warehousing Corporation.

4. On the other hand, the petitioner was reinstated merely as a casual labour and his request for granting him parity with, Rajesh Kumar was not heeded to. Feeling aggrieved by the discrimination, and the arbitrariness resorted by the respondents/Corporation, the petitioner submitted various representations to the respondents/Corporation seeking regularization of his services at par with similarly situated employee i.e. Rajesh Kumar. Petitioner also sought benefit of the Notification dated 01.10.2003 issued by the Government of Haryana.

5. It would be pertinent to note here, that the Government of Haryana issued notifications dated 01.10.2003 and 10.02.2004 both Annexure P-10 Colly herein, followed by Notification dated 18.06.2014 (Annexure P-11), granting the benefit of regularization of employees/workers who were initially appointed on workcharge/daily wages basis. As per the said notifications those employees, who have completed three years service on Group D post(s) on 30th September,

2003 and were in service on that day, shall be regularized. Seeking compliance thereof, the petitioner also caused issuance of a legal notice dated 11.01.2007 (Annexure P-5) followed by letter dated 29.09.2010 (Annexure P-6). The District Manager of respondents/Corporation vide his letter dated 01.10.2010 (Annexure P-7), favorably recommended the case of the petitioner and forwarded the same to the Managing Director. District Manager stated therein that the petitioner was a hard worker and sincere towards his duties and requested that his case for regularization be considered sympathetically.

6. Having waited, the petitioner yet again submitted another representation dated 06.07.2013 (Annexure P-8). His representation was once again strongly recommended by the Manager of the respondents/Corporation vide his note dated 06.07.2013 put on the representation itself. District Manager opined that the petitioner would prove himself to be an asset to the Corporation, his case ought to be considered sympathetically and hence a strong recommendation for regularization of services was made therein.

7. Yet again, no result came forth, necessitating submission of another representation dated 01.08.2013 (Annexure P-9), which was once again recommended by the District Manager in the following terms:-

“Forwarded in original to the Manager Director HSWC Panchkula with the remarks that the request of the official is quite genuine, the working and conduct of the official is outstanding hence, it is strongly recommended that the services of the official may please be regularized.”

8. Petitioner waited for favourable response for almost a year but no decision was taken to regularize him as per the applicable policies. In the above circumstances, the petitioner was eventually left with no choice but to file the

present petition to seek regularization of his services on parity with the similarly situated employees of the Corporation. He has also sought compliance of Notifications dated 01.10.2003 and 10.02.2004 issued by the Government of Haryana.

9. In the written statement filed by the respondents it has not been denied that the petitioner was appointed in 1995 on daily wage basis against the sanctioned vacant post of Godown Attendant-cum-watchman. However, a stand has been taken that there is no sanctioned vacant post of Godown Attendant-cum-watchman (GACW) after 28.11.2003 as the Cadre of GACW has been declared as diminishing cadre by the State Government, vide its memo dated 28.11.2003 (Annexure R-1).

9. Regarding the recommendations made by the District Manager from time to time as noted above, the respondents have stated that the same were examined by the competent authority and were found to be devoid of merits. Therefore, the representations submitted by the petitioner were filed after due examination.

10. Qua the parity sought by the petitioner with his co-worker i.e. Rajesh Kumar, the admitted stand taken by the respondents is that Rajesh Kumar was indeed engaged as a casual labour. But the respondents have maintained a stoic silence as to how then he was reinstated in regular employment pursuant to the award of the Labour Court, while the petitioner was reinstated as casual labour. It has not been denied that the petitioner is not similarly situated with Rajesh Kumar.

11. Before proceeding further, it would be instructive to reproduce the relevant portions of the notifications qua regularization issued by Government of Haryana from time to time. First, Notification dated 01.10.2003:-

“3. Daily Wage Employees (Group D).

“Only such daily wage employees who have completed three years services on Group D post(s) on 30th September, 2003 and were in service on 30th September, 2003 shall be regularized against their respective Group D posts provided they fulfill the requisite qualifications and were originally appointed against vacant posts. Provided further that they have worked for a minimum of 240 days in each year and if a breach in service of a daily wage employee(s) has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinarily longer period. However, if the break in service has been caused due to the fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days.”

Notification dated 10.02.2004 (Annexure P/10) provides as under:

“...8. In the case of daily wage Group C and D employees, only those daily wage employees shall be regularized who had been engaged before 31.1.96 provided they fulfill the other conditions.”

Relevant text of notification dated 16.06.2014 (Annexure P/11) reads thus:

“...The services of Group C and Group D employees/works engaged on contract basis by the Government/ approved agency of the State Government be regularized if they fulfill the following conditions, namely:- (i) that the employee/worker should have worked for not less than 3 (three) yeas as on 28th May, 2014 and is still in service...”

12. It is not disputed by the respondents that the petitioner fulfilled the prescribed requirements for regularization of service as per the notifications, *ibid*.

13. However, the respondents are contesting the petitioner’s claim for regularization of service on the ground that after 28.11.2003, there is no sanctioned post of Godown Attendant as the cadre of GACW has been declared

a diminishing cadre by the State Government.

14. It is obvious that this stand of the respondents is contrary to their own notifications, of which the relevant parts have been reproduced above. In my opinion, the petitioner is legally entitled to and he cannot be denied his legal and legitimate entitlement to regularization of service for no fault on his part. The respondents claim that now there is no sanctioned post of Godown Attendant is not tenable. It is the responsibility of the respondents to find a sanctioned vacancy and if a sanctioned post is not available, then to sanction/create a post for the petitioner and give him the benefit of regularization of service. Even otherwise, on the ground of parity with similarly placed person(s) also, the petitioner is entitled to the benefit of regularization. While, Rajesh Kumar has been given the benefit way back, but the petitioner has been discriminated and has been unjustifiably denied his claim to seek regularization.

15. Accordingly, the petition is allowed and the respondents are directed to regularize the services of the petitioner w.e.f. from the date when Rajesh Kumar was granted the benefit of regularization. The petitioner shall be entitled to all consequential pecuniary benefits with interest @ 9% per annum . Let needful be done within four months.

22.01.2019

rekha sharma

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*