

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-13086 of 2016

Date of decision: - 30.08.2019

Shakuntla and another

....Petitioners

Versus

Chief Administrator, HUDA, Panchkula and others

.....Respondents

***CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present:- Mr. Deepak Aggarwal, Advocate for  
Mr. Rohit Gupta, Advocate for the petitioners.

Mr. Pankaj Kundra, Advocate for  
Mr. Deepak Sabharwal, Advocate for the respondents.

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**Harsimran Singh Sethi, J. (Oral)**

In the present writ petition, the claim of the petitioners is that late husband of petitioner No. 1 is entitled for regularization of his services under the Policy dated 01.10.2003 (Annexure P-11) and the said benefit should be granted to him and also for revising the benefits, which her husband and petitioner No. 1 will receive for the service rendered by her late husband with the respondents including the arrears of salary and the revised pensionary benefits by granting him the benefit of regularization with retrospective effect.

The facts of the present case as mentioned in the writ petition are that the late husband of petitioner No. 1, namely, Narain Dutt was

appointed as Chowkidar with the respondents on 01.01.1994. He continued working till 22.12.1995 when his services were terminated. The late husband of petitioner No. 1 challenged the termination by raising an Industrial Dispute. The said industrial dispute was decided by the Labour Court vide Award dated 10.12.2002 (Annexure P-2) and the order of terminating services of late husband of petitioner No. 1 was set-aside and the husband of petitioner No. 1 was directed to be reinstated with continuity of service but back wages only from the date of demand notice. The relevant paragraph of the order is as under:-

*“I, therefore, set-aside termination order of the workman and order for his reinstatement with continuity of service and full back wages from the date of demand notice i.e. 02.12.1999.”*

The respondents moved an application for setting-aside the Award dated 10.12.2002 (Annexure P-2) passed in favour of the husband of petitioner No. 1, which application was also dismissed. Thereafter, a challenge was made to the Award before this Court in CWP No. 18013 of 2005, which was also dismissed vide order dated 18.11.2005 (Annexure P-4).

After the dismissal of the writ petition, the husband of petitioner No. 1 was allowed to join duty on 03.03.2006 and he was granted the back wages as awarded to him by the labour Court vide Award dated 10.12.2002 (Annexure P-2). Late husband of petitioner No. 1 continued working, when his services were regularized by the respondents on 20.10.2014 under the Policy dated 18.06.2014 and thereafter, he, unfortunately, died while in service on 01.04.2016.

The claim of the petitioners is that husband of petitioner No. 1 was entitled for regularization of his services under the Regularization Policy issued by the Government of Haryana in the year 2003 and, therefore, the services of the late husband of petitioner No. 1 should be regularized from the year 2003 instead of 20.10.2014. In support of the claim, a reliance has been placed by the learned counsel for the petitioners on the order passed by a co-ordinate Bench of this Court in CWP No. 14291 of 2016, decided on 05.09.2018 titled as ***Joga Ram Vs. State of Haryana and others.***

Learned counsel for the petitioners argues that Sh. Joga Ram and the late husband of petitioner No. 1 were similarly situated as the services of Sh. Joga Ram were also terminated and he was also reinstated in the year 2006 and said Joga Ram approached this Court by filing the above mentioned writ petition claiming the benefit of regularization from the year 2003, which benefit has been allowed by the Court in his favour and Sh. Joga Ram has already been extended the benefit of regularization of his services from 2003. Learned counsel for the petitioner argues that once a similarly situated person has been granted the benefit of regularization of the services w.e.f. 2003, the same benefit needs to be extended to the late husband of petitioner No. 1 with consequential benefits or releasing the pensionary benefits to the petitioners alongwith arrears.

Learned counsel for the respondents is unable to rebut the factual averments stated above. In the reply filed to the writ petition, it has been admitted that case of Joga Ram and husband of the petitioner was rejected by the respondents as the same was not covered under the Policy

dated 01.10.2003 (Annexure P-11) by stating that neither Sh. Joga Ram nor the husband of petitioner No. 1 were in service in 2003, which was one of the condition required under the Regularization Policy of 2003 as their services had been terminated and both of them had only been reinstated in the year 2006. The relevant portion of the reply is as under :-

*“8. That in reply to the para No. 8 it is submitted that Sh. Vijay Pal was regularized w.e.f. 01.07.2004 on 17.04.2006, when the Govt. had not withdrawn the regularization policy dated 01.10.2003 & 10.02.2004. The said office of Executive Engineer HUDA Division Panipat was brought under the superintendence of the Respondent No. 3 i.e. Superintending Engineer HUDA RGEN Circle Sonapat on 27.08.2009. It is submitted that the representation of the workman dated 28.10.2015 was received in the office of Respondent No. 3 through XEN HUDA Division Panipat vide letter No. 12714 dated 04.11.2015. Thereupon the Respondent No. 3 vide his letter No. 8429 dated 26.11.2015 sent the applications of Sh. Narain Dutt, Chowkidar and the other of Sh. Joga Ram, Beldar claiming to regularization w.e.f. 01.10.2003, to the Respondent No. 2 with the request to look into these representations and to render guidance so as to take necessary action accordingly. The Respondent No. 2 vide his letter No. 448 dated 11.01.2006 made the following observations:-*

*Whether the officials were eligible at that time for regularization w.e.f. 01.10.2003 as per HUDA policy, if yes, reason not to regularize at that time?*

*Details facts of each case with recommendation as per regularization policy.*

*That as Sh. Narain Dutt were not on the role of HUDA's Establishment & in other words they were not in service at the time of the said regularization policy dated 01.10.2003 and they had not completed three years continuous daily wages services as on 30.09.2003, therefore, the regularization case of Sh. Narain Dutt and Sh. Joga Ram was not found fit for regularization under the policy dated 01.10.2003. As per the proviso-1 of the notification dated 18.06.2014 it was laid down that the employee who were left from regularization due to administrative reason, but otherwise eligible shall be regularized w.e.f. The date(s) they were eligible for regularization, as per the notification dated 18.06.2014 regarding to amendment in the notification dated 13.04.2007 as quoted above in reply to para-7 above. The cases of the said Sh. Narain Dutt and Sh. Joga Ram since had not been kept pending due to administrative reason. As such, the matter was again not referred by the Respondent No. 3 to the Respondent No. 2 in reply to the above said observations. A copy of the letter dated 26.11.2015 is annexed herewith as Annexure R-1 & a copy of the letter dated 11.01.2016 is annexed herewith as Annexure R-2.”*

Learned counsel for the respondents is also unable to deny the fact that the benefit as being asked for by the petitioners in respect of the regularization of the services of husband of petitioner No. 1 with effect from the year 2003 is on same ground as being claimed by Sh. Joga Ram, which benefit has already been granted by this Court and the judgment of this Court stands implemented qua Joga Ram. Even the LPA No. 714 of 2019 preferred against the said judgment granting benefits to Joga Ram stands dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The facts, which have been stated are not in dispute and rather same have been very fairly admitted by the learned counsel appearing on behalf of the respondents. Once, it is admitted that the case of the petitioners was similar to that of Sh. Joga Ram, therefore, late husband of petitioner No. 1 becomes entitled for the grant of the benefit of regularization with effect from the year 2003 as extended by this Court to Sh. Joga Ram while deciding CWP No. 14291 of 2016, on 05.09.2018. This Court while deciding ***Joga Ram's case (supra)*** held as under:-

*“A perusal of the policy dated 01.10.2003 shows that adhoc/contract employees, who have completed three years of service as on 30.09.2003 should be made regular, provided that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period.*

*In the facts of the present case, the petitioner was appointed as Beldar on daily wage in the year 1987 and continuously worked till 30.04.1996. Thereafter, he was terminated on 01.05.1996. He has been reinstated with continuity of service and full back wages vide award dated 02.01.2003 (Annexure P-1). Benefit of continuity of service would mean that the petitioner has been in regular service from 1987 till 02.01.2003.*

*Moreover, after dismissal of the writ petition (CWP No.5217 of 2004) of respondents on 04.04.2005 (Annexure P-2), award (Annexure P-1) has also attained finality. Hence, from 1987 till 2003 i.e. the date of award, the petitioner has been continue in*

*service for almost 16 years. As per reply filed by respondent Nos. 1 and 2, after passing of the award on 02.01.2003, the petitioner joined back on 03.04.2006, as necessary administrative approval was accorded by the Chief Administrator, HUDA to implement the award on 30.03.2006. Hence, after the judgment passed by this Court on 04.04.2005 till 03.04.2006, the break in service cannot be attributed to the petitioner. It was on account of the administrative exigency that the letter of appointment could not be issued to the petitioner. In these circumstances, the break in service till he joined on 03.04.2006 cannot be made basis to deny him the benefit of continuity of service. He should have been deemed to be on duty during the said period. Therefore, the case of petitioner for regularization has to be considered as per policy of regularization dated 01.10.2003 (Annexure P-10).*

*In view of the above discussion, this petition is allowed and the respondents are directed to consider the case of the petitioner for regularization as per policy dated 01.10.2003 (Annexure P-10) and pass appropriate order regularizing his services with all consequential benefits.”*

Once, a similarly situated employee has been granted benefit as being sought by the petitioners in respect of the service rendered by late husband of petitioner No. 1 and the said judgment has already been upheld by the Letters Patent Bench and the learned counsel appearing on behalf of the respondents has not been able to differentiate the facts relating to Sh. Joga Ram with that of husband of petitioner No. 1 in any manner, the present writ petition is allowed in same terms as ***Joga Ram's case (supra)***.

The respondents are directed to consider the case of the late husband of petitioner No. 1 for regularization as per the Policy dated 01.10.2003 (Annexure P-11) and pass an appropriate order of regularization

of his services with all consequential benefits within a period of three months from the receipt of the certified copy of this order.

August 30, 2019  
*kanchan*

( HARSIMRAN SINGH SETHI )  
JUDGE

Whether reasoned/speaking?

Whether reportable?

Yes

Yes