

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

**CWP-21964-2013 (O&M)
Date of decision : 12.03.2019**

Harmesh Chand

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. K.S. Kahlon, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner, *inter alia*, seeks issuance of Mandamus directing the respondents to regularize the services of the petitioner w.e.f. 22.05.1986 as per circular dated 19.05.1989 (Annexure P-3) or in the alternate, to regularize the services of the petitioner w.e.f. 01.12.1994 at par with his juniors who were regularized vide office order dated 24.06.1997 (Annexure P-4).

It is contended that on 22.05.1981, the petitioner was appointed as Patrolman on work-charge basis. On 28.05.1982, his services were terminated without complying with the provisions of Sections 25S and 25G of the Industrial Disputes Act. Aggrieved against, the petitioner approached learned Labour Court which vide Award dated 05.09.1989 (Annexure P-1),

answered the reference in favour of the petitioner with the direction to reinstate the petitioner in service along with continuity of service and full back wages. The respondents challenged the Award before this Court by filing CWP-7665-1990, which was also dismissed. Consequently, the petitioner was taken back in service. It is further submitted that as per Circular dated 19.05.1989 (Annexure P-3), the work-charge employees who had completed 5 years of service were entitled to regularization. However, in spite of reinstating the petitioner with continuity of service and full back-wages, the services of the petitioner were not regularized w.e.f. 21.05.1986, rather, the same were regularised w.e.f. 24.05.2011.

The grouse of the petitioner is that many employees junior to the petitioner including one Satpal Singh, who joined the service on 14.04.1983, were given regularization w.e.f. 01.12.1994 vide order dated 24.06.1997 (Annexure P-4). The petitioner had admittedly joined the services w.e.f. 22.05.1981, whereas, his services came to be regularized w.e.f. 24.05.2011, which is illegal and arbitrary.

On the other hand, learned State counsel submits that the petitioner is not entitled to regularization of services w.e.f. 22.05.1986 as he was not in service on the relevant date.

Heard.

It is to be noticed that the petitioner joined the respondent-department w.e.f. 22.05.1981 on work-charge basis. His services were terminated on 28.05.1982. Against the order of termination, the petitioner approached learned Labour Court which passed Award in favour of the

petitioner directing the respondents to reinstate the petitioner with continuity of service and full back-wages. The respondents approached this Court against the Award passed by the Labour Court. However, the writ petition filed by the Department was dismissed by this Court vide judgment dated 15.11.2006 (Annexure P-2). Consequently, the petitioner was reinstated in service with full back-wages. Therefore, once it has been the admitted position that the petitioner was taken back in service with continuity of service and full back-wages, the stand of the respondents that he was not in service as on 22.05.1986, is misconceived. The respondents have not denied the fact that services of several employees junior to the petitioner, including one Satpal, who joined the Department on 14.04.1983, i.e. subsequent to the joining of the petitioner on 22.05.1981, were regularized w.e.f. 01.12.1994 vide order dated 24.06.1997 (Annexure P-4). There does not seem any cogent reason to deny the benefit of seniority to the petitioner in the same manner.

Hon'ble the Kerala High Court, in ***V. Punnam Thomas Vs. State of Kerala, AIR 1969 Kerala 91***, observed as under:-

“The Government is not and should not be as free as individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it

will deal.”

From the facts and circumstances of the instant case, it is established that the petitioner has been discriminated against and the same needs to be rectified.

In view of the above, the services of the petitioner are ordered to be regularized w.e.f. 01.12.1994, the date from which similar benefit has been granted to the junior of the petitioner, namely, Satpal, along with all consequential benefits including pension and other retiral benefits. The necessary exercise be completed within a period of six weeks from the date of receipt of a certified copy of this judgment. The arrears, if any, be paid to the petitioner within six weeks thereafter.

Allowed.

12.03.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No