

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

**CWP-21607-2016
Date of Decision: 29.10.2019**

Tanashekhar Alia Thana Sekar and Another

... Petitioners

v/s

U.T. Administration through Advisor, Chandigarh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present :- Mr. Ashok Sharma Nabhewala, Advocate
for the petitioners.

Mr. Ashish Rawal, Advocate
for respondents No. 3 and 4.

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ARUN MONGA, J. (ORAL)

1. Inter alia, issuance of a writ in the nature of certiorari has been sought to quash an order dated 20.07.2016 (Annexure P-10) impugned herein, whereby claim of the petitioners for regularization in service has been denied to them.

2. Having heard the rival contentions of the learned counsel and upon conjoint perusal of the pleadings herein particularly, the impugned order dated 20.7.2016, I am of the view that the writ petition merits acceptance in view of the conceded stand that emerges viz-a-viz the juniors of the petitioners, who were regularized in service but the claim of the petitioners was rejected ostensibly on the ground that they have themselves denied to be regularized as Beldar in the year, 2011 when their juniors were

given the said benefit.

3. Further, it is stated in the order that since they have not completed 10 years of service till December, 2006, therefore, they cannot be regularized in view of the Instructions dated 8.7.2015, which are not under challenge.

4. The later argument first. A perusal of the Instructions dated 8.7.2015 leaves no manner of doubt that services of daily wager/work charge employees (Group 'C' and 'D') are to be regularized on completion of 10 years of service. Admittedly, both the petitioners were appointed in the year, 1983 and continued to work as daily wagers in Group 'D' until 14.8.2006 when they were re-designated from the post of Beldar to Mason, which is stated to be a Group 'C' post. Even after their re-designation into Group 'C', their services were not regularized and they continued to work on daily wages.

5. The position that emerges thus is that right from the inception, if the total period of service of the petitioners is counted then the petitioners have rendered 35 years of service on daily wages collectively in Group 'C' and 'D'.

6. I see, therefore, no reason as to why Instructions dated 8.7.2015 are not applicable to the petitioners and, therefore, the stand of the respondent-Corporation that since the petitioners had not rendered 10 years of service in Group 'C' and, therefore, they cannot be regularized is not sustainable in law. As already stated, the Instructions state that 10 years of service has to be counted for Group 'C' and 'D' collectively and not in one category alone, as long as it is established that services have not been regularized.

7. Another aspect of the matter though may not be very relevant but since it is stated so in the impugned order, therefore, the same is being noticed. Inasmuch as, it is stated that the petitioners were merely re-designated from a daily wager Beldar to a daily wager Mason and seeing from that angle, it appears that the Corporation also concedes that it was merely a case of re-designation and not promotion. Regardless, conceded position thus is that petitioners continued to work on daily wages. It is irrelevant whether they were promoted or re-designated once it is established that their juniors have been conferred benefit of regularization and they have metted out merely on the ground that they were promoted/re-designated as Mason even though they continued to be daily wagers for past more than 35 years.

8. The other stand of the respondent-Corporation is that petitioners had themselves denied regularization in the year, 2011 when admittedly they were eligible to be regularized as Beldar and therefore, cannot now seek regularization is absurd, to say the least. The entire spirit and intent of regularization Policy/Instructions is that those who are on daily wages/work charge basis and in whatever capacity have rendered 10 years of service in Group 'C' and 'D' are entitled to be regularized.

9. In the premise, therefore, it is irrelevant whether the petitioners had denied to be regularized or not once it is a conceded position by the Corporation that they continued to be on daily wages from past 35 years. Seeing from any angle, the defence taken by the respondent-Corporation is not sustainable in law.

10. Learned counsel for the petitioner relies on the judgment rendered by Apex Court titled as ***U.T. Chandigarh and another vs. Sampat***

and others contained at Annexure P-6. The relevant thereof is reproduced hereinbelow.

“xxxx Pursuant to the directions given by this Court, the Union of India framed the scheme for regularization of services in the year, 1996, relevant portion of which reads as follow:-

xxxx xxxx

(vi) Daily wage employees who have completed 10 years or more services as on 31.08.1995 shall be considered for regularization w.e.f. 31.8.1995 on the availability of posts. Such employees shall be entitled for minimum of the scale w.e.f. the date of their regularization. On regularization, these employees shall be liable for transfer anywhere within the Engineering Department, U.T. Chandigarh.

(vii) In respect of all such daily wages employees, who have not yet completed 10 years service, a special review should be carried out at the level of Head of Department regarding their requirement.”

11. After perusal of the above judgment, vis a vis 1996 regularisation scheme, *ibid*, I am convinced that the case of the petitioners is squarely covered by the same. That apart, a persusal of the instructions also leaves no manner of doubt that case of the petitioners is covered by regularization Scheme 'Clause vii' thereof. On this ground alone petitioners, therefore, deserve to be regularized on parity with their juniors.

12. In the premise, the writ petition is allowed and the impugned order dated 20.07.2016 is set aside with a direction to the respondent-Corporation to regularize the services of the petitioners with effect from the same date when their juniors were regularized.

13. It is, however, made clear that since in the course of arguments,

learned counsel for the petitioners has stated that petitioners would not seek seniority over and above their juniors, who have already been regularized in the year, 2011, they shall accordingly be not entitled to the benefit of seniority.

14. This Court appreciates the stand taken by learned counsel for the petitioners. In any case, those who are currently senior to the petitioners are not even a party to the present writ petition and cannot be lose their seniority without being heard. Thus to avoid litigation, it is directed that the petitioners shall be kept at bottom of the seniority list viz-a-viz their juniors, who have already been regularized. As regards pecuniary benefits, the same shall be confined to 38 months' prior to the filing of the writ petition along with interest @ 6% per annum.

15. Let the needful be done within a period of three months from the date of certified copy of this order.

16. Disposed of in the above terms.

29.10.2019
Janki

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No