

CM-1464-C-2019 in/& RSA-65-2008

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

CM-1464-C-2019 in/& RSA-65-2008
Date of Decision: 06th November, 2019

State of Haryana & others

...Appellants

Versus

Dwarki Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Manish Dadwal, AAG, Haryana,
for the non-applicant/appellants.

Mr. Jagdish Manchanda, Advocate
for the applicant - respondent.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM-1464-C-2019 has been moved for directing the appellants to pay the salary to the applicant – respondent and for dismissal of the Regular Second Appeal in the light of the various judgments passed by this Court, which would cover the case of the applicant – respondent in her favour, one of which is CWP No.2326 of 2011, titled as 'Chhabi Singh & others Vs. State of Haryana & others', decided on 20.05.2015. Letters Patent Appeal preferred by the State of Haryana against the said judgment i.e. LPA No.1700 of 2015 has been dismissed by the Division Bench of this Court on 10.10.2017. There has been no further approach by the State of Haryana before the Hon'ble Supreme Court. Reference has also been made to the judgment passed by this Court in CWP No.11368 of 2012, titled as 'Gian Chand & ors. Vs. Haryana Vidyut Parsaran Nigam Ltd. & ors.', decided on 22.04.2014, against which, Letters Patent Appeal No.1126 of

2014, titled as 'Haryana Vidyut Parsaran Nigam Ltd. & others Vs. Gian Chand & others', was preferred, which was resulted in dismissal thereof on 17.07.2014. Special Leave to Appeal (Civil) No.31306 of 2014 preferred by the Haryana Vidyut Parsaran Nigam Ltd. before the Hon'ble Supreme Court against the said order dated 17.07.2014 has also been dismissed. That apart, another case where State has preferred Special Leave Petition i.e. in CWP No.11789 of 1997, titled as 'Raj Kumar & others Vs. State of Haryana & others', decided on 12.12.2011, which was challenged in LPA No.1407 of 2018, titled as 'Haryana Vidyut Parsaran Nigam Limited Jind & others Vs. Ranbir Singh', decided on 17.09.2018, has also resulted in dismissal.

2. Counsel for the State has submitted that there is distinction between the present case and that of the petitioners in the judgments which have been referred to above. He asserts that present is a case where respondent – plaintiff after having initially being appointed in service was terminated. The said order of termination was challenged by her by raising an industrial dispute, which was allowed and an award was passed in her favour directing reinstatement of the respondent – plaintiff in service with continuity and therefore, at the relevant time when the instructions were issued by the State Government and made applicable for regularization of the services of the employees, she did not fulfill the requisite length/continuity period in service. This, he asserts on the basis of the fact that there was break in service of the respondent – plaintiff on the ground that she was not actually working at the relevant time when the instructions came into force leading to the completion of the continuous period in

service. Apart from that, counsel has not been able to point out any other distinction with regard to the applicability of the judgments on which reliance has been placed by the learned counsel for the applicant – respondent.

3. I have considered the submissions made by the learned counsel for the applicant – respondent as well as learned counsel for the State but am unable to accept the distinction which has been sought to be drawn by the counsel for the State for the simple reason that on an order of reinstatement in service of the respondent – plaintiff passed by the Labour Court, it is not in dispute that she was granted all consequential benefits including continuity of service. What, therefore, has come out is that the termination of the services of the respondent – plaintiff were found to be illegal by the Labour Court and therefore, she was ordered to be reinstated in service with all consequential benefits including continuity of service, meaning thereby that her termination order was set aside and therefore, the presumption would be that she continued in service for all intents and purposes, which would include counting the period, for which she had not worked rather she was not allowed to work. If that be so, the objection as raised by the learned counsel for the State cannot be accepted with regard to the applicability of the judgments on which reliance has been placed by the counsel for the applicant – respondent.

4. This Court is satisfied that the claim of the applicant – respondent is covered in her favour by the judgments which have been referred to above especially when the said judgments have attained finality

upto the Hon'ble Supreme Court. It may be added here that the suit which was preferred by the respondent – plaintiff was decreed by the trial Court, appeal against which preferred by the State stands dismissed and this is the Regular Second Appeal before this Court.

5. The findings as recorded by the Courts below are based upon proper appreciation of the pleadings and the evidence available on record and the question with regard to the grant of benefit of regularization of services stands covered in favour of the respondent – plaintiff by the various judgments passed by this Court, which have been referred to above.

6. In the impugned judgments, concurrent findings have been returned by both the Courts below which, being in accordance with the pleadings and the evidence brought on record, do not call for any interference by this Court, as there is no misreading or non-consideration of the material available on record nor is there any perversity or illegality in the same. Further, no substantial question of law is involved in the present appeal, which would call for any interference by this Court in the present appeal.

7. In view of the above, CM-1464-C-2019 is allowed. Regular Second Appeal is taken on board and dismissed in above terms.

06th November, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No