

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

(I) CWP No.22647 of 2017
Date of Decision: 02.05.2019.

Anand Singh ...Petitioner
Versus

State of Haryana and others ...Respondents

(II) CWP No.21691 of 2016
Date of Decision: 02.05.2019.

Shri Krishan ...Petitioner
Versus

State of Haryana and others ...Respondents

(III) CWP No.24750 of 2017
Date of Decision: 02.05.2019.

Satish Kumar and others ...Petitioners
Versus

State of Haryana and others ...Respondents

AND

(IV) CWP No.11032 of 2019
Date of Decision: 02.05.2019.

Mahabir Singh and another ...Petitioners
Versus

State of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice B.S.Walia

Present: Mr. Vikas Lochab, Advocate for the petitioner(s) in all cases.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S.Walia, J., (Oral)

1. This order shall decide CWP Nos.21691 of 2016, 22647 of 2017, 24750 of 2017 and 11032 of 2019, as common questions of law and

facts are involved. However, for the purposes of decision, reference is being made to the facts of CWP No.22647 of 2017 and reply to the same.

2. The writ petition has been filed claiming regularization w.e.f. a date earlier than the date from which regularization has already been granted to the petitioner. The prayer of the petitioner is that he should have been granted regularization w.e.f. the date he completed 240 days of continuous service from the date of initial appointment. Details of appointment and regularization as also the dates on which the claim was agitated by the petitioner/s in each writ petition is as under:-

i) CWP No.22647 of 2017:-

The petitioner was appointed on the post of helper-cum-mechanic on daily wage basis on 03.06.1989 and was regularized in service vide office order No.460/EA/RK dated 10.04.1996 w.e.f. 01.02.1996 in terms of instructions issued by the Govt. of Haryana i.e. 6/38/95-2GS-1 dated 07.03.1996 and Transport Commissioner, Haryana, Chandigarh vide letter No.3256-3306/CA5/C dated 25.03.1996. The petitioner served legal notice dated 12.08.2013 upon the respondents to regularize his service as helper w.e.f. date of completion of 240 days continuous service along with consequential benefits including pay and arrears as well as interest @ 18% per annum. Thereafter, the petitioner approached this Court by way of CWP No.27846 of 2013 and this Court vide order dated 18.12.2013 disposed of the writ petition with a direction to respondent No.3 to decide the claim of the petitioner within sixty days from the date of receipt of certified copy of the order. Aggrieved by non-compliance with order dated 18.12.2013 passed by this Court in

CWP No.27846 of 2013, the petitioner again approached this Court by way of COCP No.2477 of 2014, where after, respondent No.3 rejected the legal notice/representation of the petitioner vide order Annexure P/5 dated 25.06.2014, which has been challenged by way of the present writ petition on 27.09.2017.

ii) CWP No.21691 of 2016:-

The petitioner was appointed on the post of helper-cum-mechanic on daily wages basis on 13.10.1995 and was regularized in service vide office order No.326/EA/ECW dated 18.04.2004 w.e.f. 01.10.2003 as per instructions No.GSR/24/Const/Art/309/2003 dated 01.10.2003 issued by Haryana Govt and GSR5/Conts/ART/309/2004 dated 10.02.2004 as well as letter No.1891-1919/Spl./Asstt./E-43 dated 02.03.2004 issued by the Transport Commissioner, Haryana, Chandigarh. The petitioner served legal notice dated 12.11.2013 upon the respondents to regularize his service as helper on completion of 240 days continuous service along with consequential benefits including pay and arrears besides interest @ 18% per annum. Thereafter, the petitioner filed CWP No.22215 of 2014 which was disposed of vide order dated 18.11.2014 with a direction to respondent no.3 to decide the claim of the petitioner within four months. Aggrieved by non-compliance of order dated 18.11.2014 passed by this Court in CWP No.22215 of 2014, the petitioner approached this Court by way COCP No.1773 of 2015, where after, respondent No.3 rejected the legal notice/representation of the petitioner vide

order Annexure P/5 dated 01.04.2016 and the same has been challenged by way of the present writ petition on 17.10.2016.

iii) CWP No.24750 of 2017 :-

Petitioner No.1 was appointed on the post of helper-cum-mechanic on daily wage basis on 01.02.1994, while petitioner No.2 was appointed on the post of helper-cum-carpenter on daily wage basis on 01.02.1995, petitioner No.3 was appointed on the post of helper-cum-electrician on daily wage basis on 01.05.1995 and petitioner No.4 was appointed on the post of helper-cum-electrician on daily wage basis in the year 1994 and all the petitioners were regularized in service w.e.f. 01.10.2003. The petitioners served legal notice dated 05.07.2017, upon the respondents to regularize their service as helper w.e.f. date of completion of 240 days continuous service along with consequential benefits including pay and arrears as also interest @ 18% per annum which has not been decided till date and the petitioners have filed the present writ petition on 30.10.2017 seeking the relief as prayed for in the legal notice.

iv) CWP No.11032 of 2019:-

Petitioners were appointed on the post of sweeper, on daily wage basis on 25.01.1994 and 17.01.1991 respectively and were regularized in service w.e.f. 01.10.2003. The petitioners served legal notice dated 24.01.2019, upon the respondents to regularize their service as helper w.e.f. date of completion of 240 days continuous service along with consequential benefits including pay and arrears as also interest @ 18% per annum which has not been decided till date and the petitioners have

filed the present writ petition on 25.04.2019 seeking the relief as prayed for in the legal notice.

3. Learned counsel for the petitioner contended that the petitioner was entitled to regularization w.e.f. the date he completed 240 days continuous service w.e.f. the date of initial appointment as per policy of regularization issued by the Govt. of Haryana, vide instructions No.1682-92/A-3/HAR dated 19.02.1979 and as was done in the case of similarly situated employees.

4. Per contra, learned Sr. DAG contends that services of the petitioner were regularized vide order No.460/EA/RK dated 10.06.1996 w.e.f. 01.02.1996 while instructions dated 19.02.1979 issued by the State Transport Controller, Haryana, on the basis of which, the petitioners had been claiming relief were not applicable as said instructions were issued by the State Transport Controller, Haryana for regularizing services of conductors, driver and workshop staff upto the post of Mechanic (Class-III), who had been appointed through the employment exchange from time to time and who had completed 240 days service as on 19.02.1979. Thereafter, various instructions were circulated with regard to regularization as framed within the purview of Article 309 of the Constitution of India but the petitioner was not entitled to regularization in terms of instructions dated 19.02.1979 because he had not completed 240 days continuous service as on 19.02.1979 nor he was appointed or engaged through employment exchange. Learned Sr. DAG further contended that services of the petitioner were regularized vide order dated 10.06.1996 w.e.f. 01.02.1996, thus the incident pertained to cause of action which arose seventeen years ago and the claim was thus time barred. Reliance in respect thereto was placed on the decision of this Court in LPA No.1662 of 2015, decided on 31.08.2016, titled as

Sukhbir Singh and others vs. State of Haryana and others, wherein claim of the petitioners therein which was made after delay of over twelve years was held to be time barred. Likewise, reliance was also placed on the decision of this Court in CWP No.19404 of 2013 and other connected cases decided on 07.11.2016 and CWP No.21612 of 2016 decided on 04.04.2018, and the writ petitions dismissed on ground of delay and laches. Reliance was also placed on the decision of this Court dated 15.11.2018 in CWP No.14092 of 2016, rejecting the claim on the basis of letter dated 12.01.2004 by clarifying that services of employees were to be regularized only under a specific policy framed under Article 309 of the Constitution of India and in no case could benefit of regularization in terms of instructions dated 19.02.1979 be given to an employee who was not in service as on 19.02.1979. Reliance has also been placed upon paragraph No.53 of the decision of Hon'ble the Supreme Court in the case of **Uma Devi vs State of Haryana 2006 (4) SCC 1** as well as paragraph No.20 of the decision of Punjab and Haryana High Court in **Rajinder Kumar vs. State of Haryana 2006 (2) PLR 474**, wherein it was held that old case regarding regularization of service of drivers, conductors and workshop staff etc. could not be reopened at a belated stage. Learned State counsel contended that the petitioner had been claiming benefit at par with other employees who had been given benefit in derogation of the provisions of law. Reference in this regard was made to the decision of Hon'ble the Supreme Court in Civil Appeal No.2273 of 2011 in case titled as Chaman Lal vs. State of Punjab and others, decided on 16.05.2014, wherein it was held that in case a benefit had been conferred upon someone wrongly, inadvertently, the same may not be a ground to grant similar relief to others. In the light of the position as noted above, learned State counsel

contended that the claim of the petitioners was misconceived, therefore, the writ petitions were liable to be dismissed.

5. I have considered the submission of learned counsel for the parties.

6. A perusal of the factual background of CWP No.22647 of 2017 reveals that the petitioner was appointed on the post of helper-cum-mechanic on daily wages basis on 03.06.1989 and was regularized in service vide order dated 10.06.1996 w.e.f. 01.02.1996, in compliance of instructions issued by the Government of Haryana, bearing No.6/38/95-2GS-1 dated 07.03.1996. Although the petitioner was regularized on 10.06.1996 w.e.f. 01.02.1996, a legal notice was served by the petitioner only on 12.08.2013 requiring the respondents to regularize his services on the post of helper w.e.f. the date of completion of 240 days, where after, he filed CWP No.27846 of 2013, which was disposed of vide order dated 18.12.2013, directing respondent No.3 to consider and decide the claim of the petitioner within 60 days from the date of receipt of order. Thereafter, petitioner filed COCP No.2477 of 2014 and in the meantime, respondent No.3 rejected the legal notice/representation of the petitioner vide order dated 25.06.2014. A perusal of Annexure P/5 dated 25.06.2014 reveals that the claim of the petitioner was rejected in view of instructions contained in paragraph No.53 of the judgment of Hon'ble the Supreme Court in Uma Devi's case (supra) as well as paragraph No.20 of the decision of this Court in Rajinder Singh's case (supra). In the instant case also, the petitioner who was regularized on 10.06.1996 w.e.f. 01.02.1996 woke up for the first time in the year 2013 and served legal notice dated 12.08.2013 upon the respondents to regularize his service w.e.f. the date of completion of 240 days. The petitioner has placed reliance on the decision in Civil Suit No.180 of 2010, titled Surat Singh vs.

State of Haryana and others, in which the learned Civil Judge (Senior Division), Bhiwani decreed the claim of the plaintiff therein for regularization of service w.e.f. date of completion of 240 days. Petitioner has also placed reliance on record various decisions passed over the years, wherein directions were issued for regularization of services of employees who had invoked the jurisdiction of the Court w.e.f. the date of completion of 240 days of service.

7. Admittedly the petitioner was regularized in the year 1996, whereas he woke up in the year 2013 when he served a legal notice. Thereafter, the petitioner approached this writ court leading to issuance of directions to the authorities to decide the claim of the petitioner, which eventually was rejected vide order Annexure P/5. Claim of regularization is based on decisions passed from time to time. LPA No.1662 of 2015 arose out of a writ petition filed in the year 2012 pertaining to claim for regularization w.e.f. completion of 240 days after a lapse of number of years from the date of regularization i.e. 01.04.1993. The writ petition was disposed of with a direction to the authorities to consider and decide the claim which was rejected vide order dated 11.12.2014. Thereafter, the petitioners therein filed another writ petition in the year 2014 which was dismissed by the learned Single Judge on ground of delay and laches. The Division Bench upheld the decision of the learned Single Judge dismissing the writ petition on ground of delay and laches. Relevant extract of the decision of the Division Bench in LPA No.1662 of 2015 is reproduced as under :-

“7. The fact that the appellants took no steps to claim the benefit of Government policy of 1979 for over 12 years is not in dispute. They cannot take the benefit of Jaimal Singh's case (supra) as the writ petitioners in that case had approached this

Court in the year 1998 while the appellants remained fence-sitters. Even as per Jaimal Singh's case, there was no cutoff date for the purpose of regularization of services. Much was to depend upon as to how many posts were sanctioned in a depot. All the writ petitioners of that case were not made regular w.e.f. 01.04.1987.

8. Assuming that the appellants are similarly placed yet they lost their right as neither such claim was put up before the competent authority nor they approached any other forum within a reasonable period. In this view of the matter, the rejection of their claim by learned Single Judge on the ground of delay and laches calls for no interference by this Court.

9. Dismissed.”

8. In Surjit Singh and another vs. State of Haryana and others CWP No.22796 of 2016, learned Single Judge of this Court dismissed the writ petition claiming regularization of service after a delay of 21 years in approaching the writ Court, in the light of the decision of Hon'ble the Supreme Court in **State of UP and others vs. Arvind Kumar Srivastava and others 2015 (1) SCC 347**, in which it was held that fence-sitters who have waived their rights for long and acquiesced to a state of things would not be entitled to the benefit as granted to other similarly situated persons as they ceased to be similarly situated for the purposes of obligations in terms of Article 14 of the Constitution of India.

9. The mere fact that this Court directed the representation of the petitioner to be considered and decided would not confer a right on the petitioner to contend that delay and laches had been waived as it is settled law that where a direction is issued to decide a representation, the same is to be decided in accordance with law. In this context, decision of Hon'ble the Supreme Court in C. Jacob Vs. Director of Geology & Mining of Ministry

and another 2009 (10) SCC 115 can be referred to.

10. Likewise, a coordinate bench of this Court in CWP No.1705 of 2014, titled as Ram Niwas and another vs. State of Haryana and others, dismissed the writ petition on the ground of delay and lachess from 2002 to 2012 on the part of the petitioners as the date of regularization of the petitioner therein was 08.10.2002 w.e.f 01.02.1996, whereas the claim for regularization was w.e.f. 01.03.1990. The Coordinate Bench of this Court held that the petitioners cause of action qua grievance arose in the year 2002 but they approached the High Court in the year 2012. Thus, there was inordinate delay and lachess for the period 2002 to 2012 on the part of the petitioners. Accordingly, while relying upon the decision of this Court in LPA No.1662 of 2015, the Coordinate Bench dismissed the writ petition on the ground of inordinate delay and lachess.

11. In view of the petitioner/s acquiescing in the decision for a long period of time and approaching this Court after more than a decade thereafter in all the writ petitions to claim regularization from a date earlier then the date on which they were regularized instead of having approached Court within a reasonable period of time of accrual of cause of action, the writ petitions are hit by delay and lachess.

12. Accordingly, finding no merit in the writ petitions, the same are dismissed.

(B.S.WALIA)
JUDGE

02.05.2019.
rajesh.k.khurana

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