

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

CWP No.24913 of 2017

Date of decision: 23.07.2019.

Rajender Singh Yadav ...Petitioner
versus

State of Haryana and others ...Respondents

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

Present: Mr. Abhilaksh Grover, Advocate for the petitioner.

Mr. Saurav Mohunta, DAG, Haryana.

B.S. Walia, J.

1. Prayer in the writ petition is for issuance of a writ of Mandamus directing the respondents to reconsider the decision taken vide Annexure P/3 dated 17.03.2015 and to regularize the service of the petitioner in terms of order of this Court Annexure P/4 dated 18.05.2016 in CWP No.4984 of 2014, in case titled as Shyam Sunder and others vs. State of Haryana and others, as the said writ petition was decided after passing of order dated 17.03.2015, by taking into account that petitioner Nos.3 to 5 therein were appointed later than the petitioner and were granted regularization from the year 1987, whereas the petitioner was granted the said benefit w.e.f. 01.05.1992.

2. Brief facts of the case leading to the filing of the writ petition is that the petitioner was appointed as Helper (Carpenter) on daily wage basis w.e.f. 20.03.1986 and continued working as such till 30.04.1992, that as per instructions / policy decision Annexure P/2 dated 19.02.1979 issued by the Transport Department, Haryana, conductors/drivers and workshop staff upto

the post of Mechanic (Class-III) who had completed 240 days of continuous service, were to be regularized and in view thereof the petitioner's services were regularized on the post of Assistant Carpenter w.e.f. 01.05.1992 in terms of order of the Transport Commissioner, Haryana dated 05.06.1992, directing amongst others, the General Manager, Haryana Roadways, Chandigarh to regularize the service of daily wage employees.

3. That one Sukhdev Singh who was appointed along with the petitioner filed CWP No.21231 of 2008, praying that he had wrongly been regularized on the post of Assistant Turner w.e.f. 05.06.1992, as against his entitlement to be regularized as Turner. The writ petition was allowed on 22.04.2010 and Sukhdev Singh was held entitled to be regularized on the post of turner w.e.f. 01.05.1992 in terms of order dated 18.06.1992 along with all consequential benefits.

4. Thereafter, the petitioner who had all along been maintaining a stoic silence submitted representation dated 28.02.2011 and 18.11.2011 praying for regularization in same terms as allowed to Sukhdev Singh. On not receiving any response the petitioner served legal notice Annexure P/6 dated 18.03.2014 on the respondents. When even the legal notice evinced no response, the petitioner invoked the jurisdiction of this Court by way of CWP No.8404 of 2014. The same was disposed of vide order dated 05.05.2014 by directing respondent No. 1 to consider and decide the legal notice Annexure P/6 dated 18.03.2014. Pursuant thereto, vide order Annexure P/3 dated 17.03.2015, services of the petitioner and others were regularized w.e.f. 01.05.1992 on the post of Carpenter along with all consequential benefits.

5. Thereafter, the petitioner learnt of decision of a bunch of writ petitions vide common order Annexure P/4 dated 18.05.2016 i.e. CWP No.18714 of 2013 in case titled as Jagdish Chand and others vs. State of Haryana and others and other connected writ petitions allowing benefit of regularization w.e.f. date of completion of 240 days of service. Thereupon the petitioner filed the instant writ petition on the plea that petitioner Nos.3 to 5 in CWP No.4984 of 2014, in case titled as Shyam Sunder and others (supra), were appointed later than him as evident from their date of joining i.e.

Name of petitioner in CWP No.4984 of 2014,	Date of Joining
Petitioner No.3 Bishember Nath	01.01.1987
Petitioner No.4 Kuldeep Kumar	October, 1987
Petitioner No.5 Sukhdev Singh	January, 1988

6. That plea of the petitioner is that since petitioners in CWP No.4984 of 2014 appointed later than the petitioner as Conductors/Driver and Mechanics on daily wage basis/contractual basis were granted regularization vide order of this court, Annexure P/4 dated 18.05.2016 w.e.f. date of completion of 240 days from date of joining service in view of Haryana Government Policy Annexure P/2 dated 19.02.1979., he was also required to be regularized on completion of 240 days of service and since order Annexure P/4 dated 18.05.2016 was passed after order Annexure P/3 dated 17.03.2015 regularising the services of the petitioner as carpenter w.e.f. 01.02.1992, his case was required to be reconsidered.

7. Stand of the respondents in the reply is that the writ petition suffers from delay and laches, besides there is no challenge to order Annexure P/3 dated 17.03.2015 passed pursuant to the orders dated 10.04.2014 in CWP No. 8404/2014 wherein he had sought regularization on the post of carpenter instead of Assistant Carpenter w.e.f. 01.05.1992 in view of the decision of this Court in CWP No.21231 of 2008 decided on 22.04.2010 i.e. Sukhdev Singh's case (supra), that the petitioner had joined Transport Department in the year 1985, therefore, policies for regularization of the subsequent years were applicable and his case was not covered under policy instructions Annexure P/2 dated 19.02.1979.

8. Sole argument of learned counsel for the petitioner is that in view of decision Annexure P/4 dated 18.05.2016, the petitioner is entitled to regularization on completion of 240 days of service instead of w.e.f. 01.05.1992 as ordered vide Annexure P/3.

9. Learned Deputy Advocate General on the other hand contended that the writ petition was liable to be dismissed on the short ground of delay and laches and it was not open to the petitioner to do a complete volte face from the claim as set up in legal notice Annexure P/6 dated 18.03.2014, for regularization to the post of Carpenter w.e.f. 01.05.1992, as per decision in Sukhdev Singh's case (supra) and to thereafter claim regularization w.e.f. date of completion of 240 days of service on the basis of subsequent decision Annexure P/4 dated 18.05.2016 in the case of Conductors/Drivers etc. who were ordered to be regularized on completion of 240 days of service in terms of instructions Annexure P/2 dated 19.02.1979.

10. I have considered the submissions of learned counsel for the parties and am of the considered view that the writ petition is bereft of merit in view of the fact that admittedly the petitioner was regularized on the post of Assistant Carpenter in terms of orders dated 18.06.1992 w.e.f. 01.05.1992. The petitioner maintained a stoic silence and it is only after decision dated 22.04.2010 in CWP No.21213 of 2008, granting benefit of regularization to Sukhdev Singh on the post of Turner w.e.f. 01.05.1992 instead of on the post of Assistant Turner that the petitioner woke up and submitted representations dated 28.02.2011 and 18.11.2011 followed by legal notice Annexure P/6 dated 18.03.2014 claiming regularization as Carpenter instead of Assistant Carpenter w.e.f. 01.05.1992 on the same lines as in the case of Sukhdev Singh's case (supra). The said benefit was granted to the petitioner vide order Annexure P/3 dated 17.03.2015 and the petitioner was held entitled to regularization as Carpenter w.e.f. 01.05.1992 along with all consequential benefits. Thereafter, CWP No.18714 of 2013, Jagdish Chand's case (supra) and other connected writ petitions came to be decided on 18.05.2016, as per which, the petitioners in said writ petitions who were working as Conductors/Drivers etc., were held entitled to regularization on completion of 240 days of service in terms of policy Annexure P/2 dated 19.01.1979. Thereafter, the petitioner again invoked the jurisdiction of this Court by way of instant writ petition in October, 2017, praying for issuance of directions to the respondents to reconsider decision Annexure P/3 dated 17.03.2015 and to regularize his services as Carpenter w.e.f. date of completion of 240 days service in terms of order of this Court Annexure P/4 dated 18.05.2016.

11. Undoubtedly, the petitioner joined service as Helper (Carpenter) on daily wage basis w.e.f. 20.03.1986 and was regularized as Assistant Carpenter in the year 1992 w.e.f. 01.05.1992. However, the petitioner did not agitate any grievance in respect thereto till the year 2011 when he claims to have submitted two representations in terms of decision in Sukhdev Singh's case (supra), who had been regularized on the post of Assistant Turner w.e.f. 01.05.1992 but on the basis of writ petition filed by him in the year 2008 was held entitled to be regularized on the post of Turner w.e.f. 01.05.1992. Thereafter, the petitioner served legal notice Annexure P/6 dated 18.03.2014, where after he filed CWP No.8404 of 2014, which was disposed of vide order dated 05.05.2014, directing the respondents to consider and decide legal notice, whereupon order Annexure P/3 dated 17.03.2015 was passed granting benefit of regularization on the post of Carpenter instead of Assistant Carpenter w.e.f. 01.05.1992 along with all consequential benefits as had been prayed for by the petitioner in legal notice Annexure P/6 dated 18.03.2014. Claim for reconsideration of the date of regularization w.e.f. the date of completion of 240 days in service from the date of appointment in the light of decision of this Court dated 18.05.2016 is misconceived. The petitioner was fortunate that the respondents acceded to his claim after a glaring delay of 22 years and granted him the benefit of regularization on the post of Carpenter w.e.f. 01.05.1992 along with all consequential benefits vide order Annexure P/3 dated 17.03.2015. The claim now for regularization on the post of Carpenter w.e.f. completion of 240 days in service instead of 01.05.1992 is hit by delay and laches, besides there is no challenge to order Annexure P/3 dated 17.03.2015 regularizing the service of the petitioner as Carpenter w.e.f. 01.05.1992.

10. In LPA No.2035 of 2016, decided on 12.01.2017, in case titled as Sudarshan Kumar Kapoor and another vs Chief Secretary, Government of Punjab and others, a Division Bench of this Court upheld the decision of the learned Single Judge declining to interfere in the seniority on the ground of delay and laches and that the appellant therein being in the position of fence-sitter. Relevant extract of the aforementioned decision is reproduced as under:-

“It is well settled that where a person has allowed the grass to grow under his feet by acquiescence and who remained a fence-sitter when the others were before the Courts of law for the enforcement of their rights, the former(s) cannot seek parity with the later(s). The appellants in the instant case woke up only after some of the similarly placed persons had successfully got the benefits by timely approaching the Court. In this view of the matter, the order passed by the learned Single Judge calls for no interference.”

11. Likewise, in LPA No.1662 of 2015, in case titled as Sukhbir Singh and others vs. State of Haryana and others, a Division Bench of this Court, upheld the dismissal of the claim of the appellants seeking benefit of regularization in terms of government policy of the year 1979 on ground of delay of 12 years. Relevant extract of the same is reproduced as under :

5. We have heard learned counsel for the parties and gone through the record. There is no denial to the fact that after regularization of their services w.e.f. 01.04.1993, the appellants woke up first time in the year 2012 and raised claim for

retrospective regularization. The said claim was based upon a decision of this Court dated 19.12.2011 rendered in the case of *Jaimal Singh and others Vs. State of Haryana and another (CWP No.6135 of 1998)* where this Court directed the State Government to identify the Depot-wise requirement of post of Ticket Verifiers and sanction the requisite posts so that their services could be regularized. The State Government undertook such exercise and the writ-petitioners in that case were made regular w.e.f. 01.04.1987.

6. It is in the light of these facts that the appellants also wanted the dates of regularization of their services to be antedated.

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 cut off 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.”

12. No doubt the petitioner got a direction from this Court in CWP No.8404 of 2014 on 05.05.2014 for regularization to the post of Carpenter instead of Assistant Carpenter w.e.f. 01.05.1992 and a result thereof, the claim of the petitioner was acceded to by the respondents. In **Union of India and others vs. M.K. Sarkar-2010(2)SCC59**, while relying upon its decision in **C. Jacob Vs. Director of Geology and Mining and another 2009 (1) SCC 115**, Hon'ble the Supreme Court held that neither a Court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend limitation or erase the delay and laches. Relevant extract of the decision in **M.K. Sarkar's case (supra)** as well as **C. Jaacob's case (supra)** are reproduced as under :-

“When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time- barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live'

issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

"The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realise the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and

grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

13. That although the petitioner has been granted regularization as Carpenter w.e.f. 01.05.1992 despite his having invoked the writ jurisdiction of this Court in the year 2014 i.e. 22 years after the accrual of cause of action, yet the instant writ petition is after 25 years in respect of a claim for regularization w.e.f. 1987 that too without any representation having been made to the respondents after decision Annexure P/3 dated 17.03.2015 for regularization of service on completion of 240 days service by modifying order Annexure P/3 dated 17.03.2015, in terms of policy dated 19.01.1979 or for that matter challenging decision Annexure P/3 dated 17.03.2015 and is based solely on the subsequent decision of this Court dated 18.05.2016 in CWP No.18714 of 2013/ CWP No.4984 of 2014. However, even if a representation had been made for grant of benefit in the year 2017 for regularization w.e.f. 1987, the same in view of the decision of Hon'ble the Supreme Court in **C. Jacob's case (supra)** and **M.K. Sarkar's case (supra)** as well as Division Bench decisions of this Hon'ble Court in **Sudarshan Kumar Kapoor and Sukhbir Singh's** cases would be hit by delay and laches.

15. The writ petition is bereft of merit and is accordingly dismissed.

(B.S. Walia)
Judge

27.08.2019
rajesh.k.khurana

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