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

**CWP-6881-2016 (O&M)
Date of decision: 17.01.2019**

Dharambir**...Petitioner**

Versus

Haryana Urban Development Authority and others**...Respondents****CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. Vishal Garg, Advocate
for the respondents.

Ritu Bahri, J. (Oral)

The petitioner was appointed as Beldar on daily wages on 02.04.1985. His services were terminated on 01.08.1987. He was reinstated to his services w.e.f. 01.02.1996 with all consequential benefits by Labour Department on 16.11.1992. The writ petition was filed by the Department on the Award passed by the Labour Department which was dismissed on 30.09.2013 (Annexure P-1). The petitioner was taken back into service on 13.7.2015. The petitioner's post is considered for regularization.

On 11.04.2016, notice of motion was issued and upon notice reply was filed by the respondents on 13.01.2017. In the reply filed by the Executive Engineer, HUDA Division, Sonapat, a stand was taken by not disputing the Labour Court Award but it was stated that he cannot be regularized as he was out of job when the policies were introduced and subsequently, these policies were withdrawn and the petitioner was never in service even at that time. The petitioner has worked upto 31.07.1987 and

thereafter, he has remained out of service as the cases remained pending before various legal Forum at various levels. The petitioner has placed reliance upon the judgments passed by this Court (Annexures P-5 and P-6) whereby the respondent-Department was directed to pass an appropriate order for regularization taking them to be in service on account of the fact that they have been granted continuity in service. On 02.05.2018, a direction was given by this Court to file a specific affidavit explaining as to how the petitioner could be denied the benefit as prayed for and the affidavit was also to specify if services of any person junior to the petitioner have been regularized.

In compliance of the above order, an affidavit, dated 17.12.2018, has been filed by Executive Engineer today in Court. In the said affidavit a stand has been taken that the petitioner was not in service and his case was pending before this Court and he did not work for a single day during the said period. Hence, his case was not fit for regularization and the other employees who were similarly situated, were working on ad hoc, work charge or TMR basis, they were eligible as per the regularization policy of 1996 and were given regularization on various dates. Such employees include the seniors as well as the juniors to the petitioner.

It seems that the affidavit has been filed by the Executive Engineer without going through the judgments passed by this Court on 30.04.2013 (Annexure P-5) and on 08.05.2015 (Annexure P-6). Once the Labour Court Award has attained finalty after the dismissal of the writ petition (Annexure P-1), the respondents cannot deny the benefit of regularization to the petitioner. This writ petition is being allowed and direction is being given to pass regularization order at par with the date

juniors of the petitioner were regularized. Keeping in view the judgments passed by this Court as Anneuxre P-5, Annexure P-6 and ***Malathi Das (Retd.) now P.B. Mahishy and others Versus Suresh and others; 2014 (13) SCC 249***, the stand taken by the respondents that the petitioner was not in service, is being rejected.

Keeping in view the affidavit has been filed by the respondents casually without going through the judgments passed by this Court, costs of ₹1,00,000/- is imposed on the respondents, which shall be deposited in the account of the petitioner within a period of three months from today.

17th January, 2019

shabha

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No