

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

103**CWP No.23094 of 2015****Date of Decision : 08.07.2019**

Bhanu Dutt and another.

....Petitioners

v/s

The State of Haryana and another.

....Respondents

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

Present: Ms. Maninder Kaur, Advocate for the petitioners.
Mr. Harish Rathee, Senior DAG, Haryana.

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

[1] Prayer in the writ petition under Articles 226 & 227 of the Constitution of India is for the issuance of a writ, direction or order for quashing order Annexure P-9 dated 14.10.2015, vide which services of the petitioners, which were regularized vide order dated 07.07.2006, was withdrawn, services of the petitioners de-regularized and they were ordered to work on daily wage basis. Prayer is also for the issuance of any other appropriate writ, order or direction which this Court may deem fit and proper in the facts and circumstances of the case.

[2] Brief facts of the case, leading to the filing of the writ petition are that the petitioners were initially appointed as *Mazdoor* (Class IV post) on daily wages basis in the Department of Printing & Stationery, Haryana on 01.07.1997 and 01.05.1997 respectively. However, their services were terminated on 01.11.1999.

[3] Aggrieved against termination of their services, the petitioners approached the Labour Court, Union Territory, Chandigarh (hereinafter

referred to as the Labour Court), which passed an Award in their favour on 22.12.2004 holding that their services had been illegally terminated and they were entitled for reinstatement with continuity of service and 50% back wages with effect from the date of demand notice.

[4] Pursuant to the award by the Labour Court, dated 22.12.2004 (Annexure P-1), the Controller, Department of Printing & Stationery, Haryana, i.e. respondent No.2, issued letter dated 19.08.2005, allowing the petitioners to join duty.

[5] During the pendency of the reference before the Labour Court, the State of Haryana issued notification dated 01.10.2003, deciding to regularize services of all employees working on *ad hoc*/contract/daily wages w.e.f. 01.10.2003 in case they had completed three years of service as on 30.09.2003. Subsequently, another notification dated 10.02.2004 (Annexure P-4) was issued by the State of Haryana, making certain amendments in the original notification dated 01.10.2003 (Annexure P-3) stipulating therein that in the case of daily wage Group C and D employees, only those daily wage employees would be regularized who had been engaged prior to 31.01.1996 provided they fulfilled other conditions.

[6] That pursuant to reinstatement of the petitioners, respondent No. 2 vide order Annexure P-5 dated 07.07.2006, ordered the regularization of services of the petitioners as Class IV employees in the regular pay scale of Rs.2550-3200 on account of their having completed three years service up to 30.09.2003. However, the petitioners served notice Annexure P-6 dated 13.01.2013 through counsel, praying therein that in terms of notification, their services be regularized w.e.f. 01.10.2003 in terms of notification dated

the petitioners w.e.f. 01.10.2003, a show cause notice (Annexure P-7) dated 18.11.2014 was served upon the petitioners, stating therein that their services had been wrongly regularized on the post of *Mazdoor* and as to why their services be not de-regularized.

[7] Petitioners submitted reply to the show cause notice that their services had been correctly regularized in terms of notification (Annexure P-3) dated 01.10.2003, as they had completed three years of service as on 30.09.2003, besides fulfilled all other conditions. However, respondent No.2 passed order (Annexure P-9) dated 14.10.2015, withdrawing the orders of regularization (Annexure P-5) dated 07.07.2006, de-regularized the services of the petitioners and further ordering that they would be treated as having been working on daily wage basis. It is order Annexure P-9, which has been challenged by the petitioners *inter alia* on the ground that Heads of all other Departments in the State of Haryana had regularized services of those Class-IV employees, who had completed three years of service on 30.09.2003 even though they had been engaged after 31.01.1996 and it was only the petitioners, who were being discriminating by applying the condition mentioned in the Notification (Annexure P-4) dated 10.02.2004. Reference has also been placed upon a Division Bench Judgment of this Court in CWP No.9708 of 2004 titled as 'Ajit Singh versus State of Haryana and others', decided on 04.02.2015, which has been followed by a Single Bench of this Court in CWP No.17022 of 2004 in case titled as 'Joginder versus State of Haryana and Others', decided on 03.09.2015 as per which, the cut-off date as stipulated in instructions (Annexure P-4) dated 10.02.2004 has been struck down on the ground of the same being unreasonable and arbitrary, as also on the ground that the

10.02.2004 could not apply retrospectively to take away vested rights of the petitioners therein, whose services had already been regularized through order dated 15.12.2003, i.e. prior to the amendment.

[8] Learned Senior Deputy Advocate General, Haryana, has sought to distinguish the claim of the petitioners on the ground that in the instant case, the services of the petitioners were regularized in 2006, therefore, they were not entitled to the benefit of the decision in 'Ajit Singh's case (*supra*).

[9] I have considered the submissions of learned counsel for the parties.

[10] Learned Senior Deputy Advocate General, Haryana, has not been able to justify the rationale and object in fixation of the cut-off date, requiring the appointment of a person, prior to 31.01.1996 in order to render him eligible to be regularized even though he had completed three years of service on 30.09.2003. Besides, the petitioners would have been in service as on 01.10.2003 but for termination of their services on 01.11.1999 which was set aside by the Labour Court on 22.12.2004. Accordingly, I have no hesitation in following the decision of Hon'ble the Division Bench in 'Ajit Singh's case (*supra*), wherein the introduction of the date 31.01.1996 through the impugned amendment dated 10.02.2004 was held to be unreasonable and arbitrary as permitting such cut-off date to be followed would result in consequences of a daily wager who had put in three years of service from 30.01.1996 would be entitled to regularization in service, whereas a person, who had put in over six years of service from May/July 1997 till 30.09.2003 would not be eligible for regularization. Besides no doubt, services of the petitioners were regularized vide order (Annexure P-5) dated 07.07.2006 and were not regularized w.e.f.

due to the fact that services of the petitioners as has been noticed above, had been terminated on 01.11.1999 and it was only vide Annexure P-1 dated 22.12.2004 that the Labour Court rendered the Award, holding the petitioners entitled to reinstatement with 50% back wages with effect from the date of demand notice. The cause of action entitling the petitioners to be regularized accrued in their favour, on 01.10.2003 and it was only on account of their illegal termination that the orders could not be passed regularizing them from the earlier date. However, once the termination dated 01.11.1999 was set aside vide Award dated 22.12.2004, the petitioners like all other similarly situated persons, who had completed three years of service as on 30.09.2003 were entitled to be regularized w.e.f. 01.10.2003, especially in view of their having been reinstated with continuity of service. Relevant extract of the decision of Hon'ble the Division Bench of this Court in 'Ajit Singh's case (supra) is reproduced as under:-

“The services of the petitioner were de-regularized on the introduction of a cut-off date through notification dated 10.02.2004. When we posed a question to the learned counsel appearing on behalf of the State so as to what was the rationale and object behind fixation of such cut-off date, he candidly submitted that no reason was forthcoming from the record. On such admission, we have no hesitation to hold that the fixation of such a date is arbitrary and thus, violative of Article 14 of the Constitution of India.

Vide notification dated 01.10.2003, services of all daily wagers, who had put in three years of service as on 30.09.2003, were entitled to be regularized. Through the impugned notification dated 10.02.2004, the amendment sought to be introduced to the earlier notification dated 01.10.2003, was that services of only those daily wagers would be regularized, who have been engaged before 31.01.1996. We find the introduction of date 31.01.1996 through the impugned amendment dated 10.02.2004 to be unreasonable and arbitrary because if such an amendment is to be allowed, then the result is that a daily wager, who

puts in three years of service from 30.01.1996, would be entitled to regularization of his service, whereas the services of the person like the petitioner, who would have put in over five years of service i.e. from August 1998 till 30.09.2003, would not be regularized.

Even otherwise, the impugned amendment through notification dated 10.02.2004, could not apply retrospectively to take away the vested rights of the petitioner, whose services had already been regularized through order dated 15.12.2003 prior to the amendment. If at all the impugned amendment was to apply, the same could be applied to cases of regularization of service after the date of the amendment i.e. 10.02.2004.

In view of the above, the impugned order dated 08.06.2004 (Annexure P-11) is quashed.”

In view of the above, impugned Order (Annexure P-9) dated 14.10.2015 is *quashed*. The petitioners are held entitled to all consequential benefits by treating them to be regularized w.e.f. 01.10.2003.

[11] Writ petition ***allowed*** in the aforementioned terms.

(B.S. Walia)
Judge

July 08, 2019
‘Rajneesh’

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