

(105) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.2111 of 2017
Date of decision: 02.05.2019

Mahabir Singh Petitioner

Versus

State of Haryana and others Respondents

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

Present: Mr. Anil Ghanghas, Advocate for the petitioner.
Mr. Harish Rathee, Sr. DAG, Haryana

B.S. Walia, J.,

[1] Prayer in the writ petition is for modification of date of regularization of the petitioner from 30.09.1988 to date of appointment, for placing the petitioner at the appropriate place in the seniority, for considering him for grant of promotion to the post of Yardmaster as also all consequential benefits on change of date of regularization e.g. ACP, pay fixation, pay revision etc. along with arrears etc.

[2] Learned counsel contends that the petitioner was appointed as driver on ad hoc basis through the Employment Exchange in the respondent-Department on 03.09.1985 while one Babu Lal was also appointed as driver on adhoc basis Employment Exchange vide letter of appointment, Annexure P-1 on 27.03.1986, that as per policy of regularization dated 19.02.1979, employees who had completed 240 days of regular services were entitled to be regularized, that although the petitioner had completed 240 days of regular services on 03.05.1986, his services were not regularized on completion of 240 days of service whereas services of Babu Lal who was

21.11.1986 vide order dated 22.10.1996. Besides, service of 21 drivers appointed through Employment Exchange on ad hoc basis for three months in May and June, 1987 were regularized vide order, Annexure P-2 dated 08.04.1988 on completion of 240 days service from date of initial appointment. Subsequently, vide order Annexure P-3 dated 09.03.2016, 27 drivers were promoted to the post of Yard Master subject to the condition that in case anyone was found senior to those promoted, the junior most promotee would be reverted without assigning any reason.

[3] Learned counsel further contended that on learning that his junior Babu Lal had been included in the promotion list by ignoring him, the petitioner submitted representation Annexure P-4 dated 10/11.03.2016 which was forwarded by respondent No.3 to respondent No.2 for necessary action. However, respondent No.2 vide order, Annexure P-5 rejected the same by observing that services of the petitioner were regularized on 24.01.2009 w.e.f. 30.09.1988 while employees promoted were those whose services had been regularized uptill 31.12.1986. Learned counsel contends that the petitioners plea for promoting him by considering him senior as prayed for vide representation Annexure P-4 dated 10/11.03.2016 was not dealt with, therefore, the petitioner served legal notice, Annexure P-6 dated 10.09.2016. However, on receiving no response to the legal notice, the petitioner invoked the jurisdiction of the High Court with the grievance that persons appointed after him had been regularized prior to him and had also been considered for promotion, whereas his services had been wrongly regularized w.e.f. 30.09.1988 although the same ought to have been regularized w.e.f. the date of his initial appointment as was done in the case of his juniors covered by order Annexure P-2 or at least from the date of regularization of his juniors/on completion of 240 days of service.

[4] Learned Sr. Deputy Advocate General on the other hand contended that the claim of the petitioner for regularization w.e.f. the date of completion of 240 days from date of joining i.e. 03.09.1985 was highly belated and not liable to be entertained in view of the decision in LPA No.1662 of 2015 in case titled as Sukhbir Singh and others vs State of Haryana and others dated 31.08.2016. Learned Sr. DAG further contended that the Transport Department had issued instructions No.1682-92/A3/HAR dated 19.02.1979 providing for regularization of services of Conductors, Drivers and Workshop Staff upto the post of Mechanic (Class-III) etc. w.e.f. from the date, said category of employees who had been appointed through the Employment Exchange and who were in service had completed 240 days of continuous service in the Haryana Roadways but said instructions were superseded by notifications issued under Article 309 of the Constitution of India qua regularization of services of ad hoc employees who had completed minimum specified period of service subject to fulfillment of other conditions stipulated therein. Accordingly, claim of employees who had joined after 19.02.1979 was to be considered as per notification applicable at the relevant time. Reference is made to notification dated 19.01.1984 providing for regularization of service of Class III ad hoc employees (not daily wagers) who had completed two years of service as on 15.09.1982 besides the below mentioned notifications :

1.	50/22/84-5GSI dated 16.02.1987 6/4/90-5GSI dated 28.04.1997	On completion of 2 years continuous service as on 01.11.1986/30.09.1988.
2.	G.S.R.3/Consl./Art. 309/91 dated 28.02.1991	On completion of 2 years continuous service as on 31.12.1990
3.	G.S.R.3/Consl./Art. 309/93 dated 01.06.1993	On completion of 2 years continuous service as on 31.03.1993.
4.	6/38/95-2 GSI dated 07.03.1996	On completion of 2 years continuous service as on 31.01.1996.

In the light of the above, Learned Sr. DAG contends that the writ petition is misconceived especially in view of the decision in Civil Appeal No.2273 of 2011 in case titled as Chaman Lal v. State of Punjab and others decided by Hon'ble the Supreme Court on 16.05.2014 as per which benefit wrongly conferred cannot be made a ground for grant of similar relief.

[5] Learned Sr. DAG has also referred to Rule 9 (1) (c) of the Haryana Transport Department (Group-C) Haryana Roadways Service Rules, 1995 as amended upto 2011 to contend that the post of Yard Master is a promotional post from the post of Heavy Transport Vehicle Driver possessing seven years experience as also qualification of Middle pass with Hindi. Learned Sr. DAG contended that inter se seniority of Heavy Transport Vehicle Driver based on regular entry into service is the criteria for promotion to the next higher post and that in view of the petitioner having been regularized as Driver w.e.f. 30.09.1988, his claim for promotion to the post of Yard Master was bereft of merit as no right of the petitioner had been infringed, since only drivers regularized upto 31.06.1987 had been promoted while the services of the petitioner were regularized w.e.f. 30.09.1988.

[6] I have considered the submissions of learned counsel for the parties and am of the view that for the reasons mentioned hereunder, the claim is bereft of merit. Admittedly, Babu Lal, appointed as driver later than the petitioner was regularized w.e.f. 21.11.1986 vide order dated 22.10.1996. Thus right to seek redress of grievance, if any, arose in the year 1996 and ought to have been agitated by the petitioner within a reasonable period of time thereafter. However, the same was not done. Apart from the aforementioned aspect of the matter, perusal of the written statement reveals

superseded by subsequent instructions i.e. No.50/22/84-5GSI dated 16.02.1987 and 6/4/90-5GSI dated 28.04.1997 and the same provide for regularization of service of employees on completion of two years continuous services as on 01.11.1986/30.09.1988. Thus, in terms of Instruction No.6/4/90-5GSI dated 28.04.1997, the petitioner who was appointed on 03.09.1985 on ad hoc basis and completed 2 years of service on 30.09.1988 was regularized vide order dated 24.01.2009 w.e.f. 30.09.1988. Babu Lal who had been appointed on 27.03.1986 no doubt was regularized vide order dated 22.10.1996 w.e.f. 21.11.1986 but apparently he was not entitled to be regularized in terms of Instructions dated 19.02.1979 in view of supersession of said instructions vide instructions No.50/22/84-5GSI dated 16.02.1987 which provided for regularization on completion of two years of continuous services as on 01.11.1986. Thus, the petitioner cannot insist upon relief erroneously granted to his junior. Besides, the claim of the petitioner is highly belated since cause of action if any to invoke the jurisdiction of a Court of law arose on 22.10.1996 on regularization of services of Babu Lal w.e.f. 21.11.1986 or with effect from date of order of Annexure P-2 dated 08.4.1998 regularizing service of employees mentioned therein on completion of 240 days of continuous services i.e. 15.05.1987 and other dates in May, 1987. Order Annexure P-3 dated 09.03.2016 is merely consequential to the regularization of concerned employees w.e.f. the date prior to the date of regularization of the petitioner.

[7] In somewhat similar circumstances, in LPA No.1662 of 2015, the claim put-forth by the appellants therein by way of writ petition filed in the year 2015 was rejected on ground of inordinate delay and laches. Appellants therein had joined the Transport Department as Ticket Verifiers

against which they raised industrial dispute which was answered in their favour. Resultantly, they were reinstated on different dates in the year 1987-88. Their services were regularized w.e.f. 01.04.1993 under a Government Policy. They continued to serve on regular basis and later filed a writ petition claiming that they were entitled to seek regularization on completion of 240 days service as per old Government policy dated 19.02.1979. The writ petition was disposed of with a direction to the Authority to examine and decide their claim. The competent authority rejected the claim vide order dated 11.12.2004. The appellants then filed another writ petition in the year 2015 which was dismissed by the learned Single Judge on the ground of delay and laches. In appeal, the order of the learned Single Judge was upheld. Relevant extract of the decision of the Division Bench in LPA No.1662 of 2015 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 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.”*

[8] No doubt, in Sukhbir Singh's case (Supra) the Division Bench denied relief not only on account of delay of over 12 years in agitating the dispute but also on the ground that in the connected case on which reliance was placed, the petitioners had approached the Court in the year 1998 while the appellants in Sukhbir Singh's case had remained fence sitters. In the instant case, the petitioner did not challenge regularization of his junior Babu Lal ordered on 22.10.1996 w.e.f. 21.11.1986 or for that matter of drivers appointed after him and who were regularized vide order dated 08.04.1988 w.e.f. May/June 1987 vide order Annexure P-2. The petitioner slept over his rights and it is only when order Annexure P-3 dated 09.03.2016 was passed promoting 27 drivers to the post of Yard Master that the petitioner woke-up. Order, Annexure P-3 is merely consequential to the

orders of the drivers named therein having been regularized on a date much prior to the date of the passing of order Annexure P-3.

[9] Apart from the fact that the challenge is hit by delay and laches, the petitioner even otherwise is not entitled to the benefit of Instructions dated 19.02.1979 since the said instructions were applicable in respect of a particular category of employees who were in service as on 19.02.1979 and were to be regularized from the date said employees completed 240 days continuous service. The petitioner was not in service on 19.02.1979 and his case was instead covered under Instructions No.6/4/90-5GSI dated 28.04.1997 as he completed 2 years of continuous service on 30.09.1988, consequently, his case was considered and he was regularized w.e.f. 30.09.1988.

[10] In the light of the position as noted above, no case is made out for granting the relief prayed for. The writ petition is bereft of merit. Accordingly, the same is dismissed.

(B.S. WALIA)
JUDGE

02.05.2019
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| 1. Whether speaking/reasoned | : | Yes/No. |
| 2. Whether reportable | : | Yes/No. |