

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

113

**CWP No.34108 of 2019
Decided on : 22.11.2019**

Satpal

... Petitioner

Versus

The Chandigarh Administration, U.T. Chandigarh and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Gaurav Sharma, Advocate
for the petitioner.

G.S. Sandhawalia, J. (Oral)

The petitioner in the present writ petition filed under Articles 226/227 of the Constitution of India seeks directions to the respondents to count the daily wage service as qualifying service for the purposes of pension and for regularization and subsequent pensionary benefits from the date of joining.

It is the case of the petitioner that he was working as a daily wage w.e.f. 11.05.1992 with the respondents and was assigned duties of a Driver. FIR dated 26.07.2005 under Sections 279 and 304-A was lodged against him and he was convicted on 08.07.2010 (Annexure P-2). The appeal was allowed on 26.02.2013 only to the extent of quantum of sentence. He was taken into custody at that point of time. His criminal revision was dismissed on 13.03.2013 (Annexure P-3).

A perusal of the paper-book as such would go on to show that his claim for reinstatement was rejected on 18.12.2015 and resultantly he filed **CWP No.18527 of 2015**, which was dismissed on 12.07.2019

(Annexure P-4), after response have been received from the respondents.

The said order reads as under:-

“Admittedly, the petitioner was working as a 'Driver' on daily wage basis at the time of accident when he was driving the truck at the Garbage Dumping Yard wherein ragged picker lost her life and pursuant thereto, he was tried under Section 279 read with 304 A of Indian Penal Code and convicted for 09 months by the competent Criminal Court.

Having undergone the conviction, the petitioner approached the respondents for seeking reinstatement as a 'Driver' on daily wages as he had served uninterrupted for 11 years prior to the unfortunate accident.

In the return filed by the respondents, the claim of the petitioner has been opposed primarily on the ground that petitioner was a 'daily wager' and being not a regular employee of the Corporation has no vested right to claim reinstatement in service.

It has been further stated that notwithstanding that he was a 'daily wager' his claim on reinstatement was considered and rejected, in accordance with law vide order dated 18.12.2015 (Annexure R-2/1) which in turn relied upon Circular/Instructions dated 05.08.1998 issued by Department of Personnel and Administrative Reforms, Government of Punjab.

Having heard learned counsel for the parties and perusing the rival pleadings, I am of the view that petitioner being a daily wager does not have a vested right to seek reinstatement after having been convicted by the competent criminal Court. In any case, being a 'daily wager' the remedy available to the petitioner is to seek his redressal by approaching under the Industrial Disputes Act and not under Article 226 of the Constitution of India by invoking extraordinary writ jurisdiction of this Court.

I am not inclined to interfere and writ petition is,
accordingly, dismissed.

No order as to costs.”

Once the petitioner has chosen not to claim his regularization in the earlier round of litigation, he cannot as such approach this Court for relief, merely on the ground that a legal notice has been served on 03.10.2019 (Annexure P-5). The provisions of Order 2 Rule 2 of CPC would come into play. Thus, the remedy of the petitioner as such claiming regularization before this Court does not lie, as he has already been asked to approach the Labour Court under the Industrial Disputes Act for other reliefs and therefore, the same forum would decide the whole issue in one go.

Accordingly, there is no merit in the present writ petition and the same is dismissed in limine.

NOVEMBER 22, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No