

CWP No.36352 of 2018

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

**CWP No.36352 of 2018
Date of decision:01.10.2019**

Om Parkash

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Parkash Chahar, Advocate
for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

AMIT RAWAL J. (Oral)

Prayer in present writ petition is for issuance of a writ in the nature of mandamus directing the respondents to regularize the services of petitioner w.e.f. 01.02.1996 in view of policy dated 10.02.2004 (Annexure P-6).

Petitioner as per the averments in writ petition, was appointed on the post of Beldar on 01.03.1992 on daily wages basis. His services were terminated on 28.02.1995. Government raised industrial dispute bearing Reference No.301 of 1996 dated 28.05.1996. Labour Court, vide award dated 22.05.2001 (Annexure P-1) reinstated petitioner on the previous post with continuity of service alongwith 60% back wages w.e.f. 01.03.1995, the date of removal from the service onwards. Petitioner, accordingly, on 04.06.2005 was reinstated. The aforementioned award was challenged by the respondents-State before this Court vide CWP No.3696 of 2002. Vide order dated 09.11.2016 (Annexure P-2), same was not pressed. The

intermittent period of work reads as under:

01.03.1992 to 30.10.1992

02.05.1993 to 30.10.1993

01.12.1993 to 20.01.1994

03.05.1994 to 05.06.1994

14.06.1994 to 07.07.1994

01.09.1994 to 28.02.1995

From the perusal of aforementioned, it reveals that case of petitioner falls within the policy of regularisation.

Mr. Sandeep Parkash Chahar, learned counsel appearing on behalf of the petitioner submits that case of petitioner is covered as per regularization policy and expression “substantive post” has already been deleted vide policy dated 10.02.2004 (Annexure P-6), thus, stand of respondents in not regularizing the petitioner by relying upon the aforementioned policy is neither here nor there and wholly fallacious.

Per contra, Mr. Gaurav Jindal, learned Additional Advocate General, Haryana appearing on behalf of the respondents-State submits that the expression “substantive post” means that until and unless the petitioner was working on the aforementioned post, only then his case for regularization can be considered. Moreover, the subsequent regularization policy is under challenge. There is no fallacy in view of the decision rendered by the Hon'ble Supreme Court in **Secretary, State of Karnataka Vs. Uma Devi 2006(4) SCC 1**. In fact, petitioner has not rendered period of three years' continuous service and thus, in such circumstances, case of the

petitioner for regularization was not considered.

I have heard learned counsel for the parties, appraised paper book and of view that there is force and merit in the submissions of Mr. Chahar, for, award dated 22.05.2001 reinstating the petitioner on his previous post with continuity of service and 60% back wages leaves no manner of doubt that petitioner had been in continuous service. Even 30 days in a month has also been considered 30 days in a year. For the sake of brevity, paragraph 3 of notification dated 01.10.2003 and relevant portion of notification dated 10.02.2004 (Annexure P-6) read as under:-

“3. Daily Wages Employees (Group D)

Only such daily wages employees who have completed three years services on Group D post(s) on 30th September, 2003 and were in service on 30th September, 2003 shall be regularized against their respective Group-D posts provided they fulfill the requisite qualification and were originally appointed against vacant posts. Provided further that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wages employee(s) has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days.”

Relevant portion of notification dated 10.02.2004 (Annexure P-6)

“a) for the words “fulfill the requisite qualification and were originally appointed against the vacant posts”, the words, figures and sign “fulfill the requisite qualification on the date of engagement or on 30.09.2003” shall be substituted;

b) for the figures and word “30 days”, the figures and words “30 days, in a year shall be substituted.”

Thus, stand of the respondents in not considering case of petitioner by relying upon un-amended policy which was in vogue at the relevant point of time is not acceptable and hereby rejected.

Accordingly, writ petition is allowed with a direction to the respondents to regularize the services of petitioner alongwith all consequential benefits, if permissible in law, from the date when he became eligible as per the terms and conditions of policies dated 01.10.2003 and 10.02.2004.

Let the aforementioned exercise be undertaken within a period of three months from the date of receipt of certified copy of this order failing which liberty is granted to the petitioner to move an application under Article 215 of Constitution of India for initiation of contempt proceedings or imposition of costs on the officer who is responsible in not taking action.

October 01, 2019

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)**JUDGE**

Yes/No

Yes/No