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

**CWP-14310-2019**
**Date of decision: 27.02.2020**

**Birbhan and others** **...Petitioner(s)**

**V/s.**

**State of Haryana and others** **...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI.**

Present: Mr. S.N.Pillania, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

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***RITU BAHRI, J. (Oral).***

By this petition, the petitioners are seeking direction to the respondents to consider their claim for regularization of their services w.e.f. 01.10.2003 instead of 21.11.2014.

The petitioners joined the services of the respondents department on daily wages against the post of Chowkidars at State Cattle Breeding Project, Sector-3, Hisar. The details of the petitioners of their appointment is mentioned in para 2 of the writ petition. They worked continuously with the respondents on daily wages. However the services of petitioners No. 2 to 4 were illegaly terminated by respondents. The petitioners challenged their termination before the Labour Court where written compromise/settlements (Annexure P-1 colly) were got executed and respondents had agreed to reinstate them on their services and the benefit of continuity of services were also granted.

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The petitioners are seeking direction to the respondents to consider them for regularization as per policy dated 01.10.2003 (Annexure P-2) keeping in view that once they were granted continuity of service as per written statement/compromise effected before the Labour Court they fulfill all the conditions of regularization policy dated 01.10.2003 (Annexure P-2). Learned counsel for the petitioners has referred to RTI information (Annexure P-3), whereby details of working days of petitioner No. 1 has been given. He has further referred to order dated 29.04.2005 (Annexure P-4) passed by the respondent-department whereby similarly situated employees have been regularized in view of policy dated 01.10.2003.

On notice of this petition, written statement on behalf of respondents No. 1 to 4 has been filed. In the preliminary submissions, it is stated that the petitioners did not challenge regularization order dated 21.11.2014 whereby their services have been regularized w.e.f. 01.07.2014. It is further stated in para 4 of the preliminary submissions, that the petitioners did not fulfill the conditions of regularization policy dated 01.10.2003 since there was break in service for more than 31 days in the case of petitioners No. 1 and 2 and petitioners No. 3 to 5 were engaged in service after 31.01.1996. In para 5 of the preliminary submissions, respondents are admitting that vide letter dated 21.12.2018, the Department/Board/Corporation will submit a case for creating posts for regularization of employees under 01.10.2003 policy. In reply to para 8 of the writ petition, the respondents are admitting order dated 29.04.2005 (Annexure P-4) whereby the services of the similarly situated employees were regularized as per policy dated 01.10.2003.

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Heard learned counsel for the parties.

The respondents are not disputing the order dated 29.04.2005 (Annexure P-4) whereby the services of the similarly situated employees were regularized as per policy dated 01.10.2003. They are further admitting that as per letter dated 21.12.2018, there is a proposal to create diminishing cadre for the employees to be regularized under the regularization policies of 2003-04. As per RTI Information (Annexure P-3), the petitioner No. 1 has completed 240 days in each calender year before 01.10.2003 and all the petitioners have completed 240 days in each calender year before 01.10.2003 since the benefit of continuity of service had been granted to them vide compromise/settlement (Annexure P-1 colly) before the Labour Court. This aspect has already been considered by this Court in ***CWP-11224-2015 titled Lekhu Raj V/s. State of Haryana and others*** that once the labourer has been given benefit of continuity of service by the Labour Court award, he is deemed to be in service from the date of termination till passing of award and then his case has to be considered as per the policy prevailing at that time.

Hence, all the petitioners fulfill all the conditions of regularization policy dated 01.10.2003 (Annexure P-2).

Even if the ground of seniority is not to be taken into account when services of some of the similary situated employees have been regularized, the Department is bound to maintain parity with respect to all the employees and this aspect has already been considered by Hon'ble the Supreme Court in ***Hari Nandan Prasad and another V/s. Employer I/R to Management of FCI and another,*** 2014(2) SCT 234. In para 34, the Supreme Court has observed as under:-

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> "34. On harmonious reading of the two judgments discussed in detail above, we are of the opinon that where there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision."

Keeping in view above observations, writ petition is allowed and direction is being given to the respondents to regularize services of the petitioners in terms of policy dated 01.10.2003 (Annexure P-2) with all consequential benefits alongwith 6% interest and pass appropriate order within three months from the date of receipt of certified copy of this order

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and this Court be informed of the order passed.

**(RITU BAHRI)**
**JUDGE**

**27.02.2020**
**Divyanshi**

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

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