

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 11622-2016

Date of decision:-31.01.2020

BALWAN SINGH

.....Petitioner

vs.

STATE OF HARYANA AND OTHERS

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rakesh Nagpal, Advocate
for the petitioners.

Mr. Randhir Singh, Advocate
for State of Haryana

RITU BAHRI, J.(Oral)

The present petition is for issuance of direction to the respondents to regularize the services of the petitioner as per policy dated 01.10.2003/10.02.2004 (P-2 and P-3) or from the date when the benefit has been granted to the number of similarly situated employees, who are juniors to the petitioner, with all consequential benefits.

Petitioner was appointed as Beldar on 16.01.1995 on daily wager basis by the respondent-department. His services were terminated on 30.10.1995 and he served demand notice and the same was referred to the Labour Court for adjudication. Thereafter the Labour Court passed the award on 26.07.2001 and it was held that termination of service of the petitioner is illegal and the petitioner was held entitled to reinstatement with continuity of service along with other consequential benefits. This award was not challenged by the respondent-department and thus attained finality.

Till date, his case for regularization has not been considered and he is

squarely covered by the policy dated 01.10.2003/10.02.2004 as he had completed three years of service which is the mandatory condition for regularization. Petitioner also gave legal notice dated 10.01.2016 but no action has been taken till date despite the fact that the service of junior to the petitioner has been regularized, as per order dated 11.09.2015 (P6)

The grievance of the petitioner before this Court is now that the case of petitioner for regularization was duly covered in view of policy dated 01.10.2003//10.02.2004 (P-2 and P-3) but the same has not been considered till date despite the fact that he was appointed in the year 1995 and further the services of junior to the petitioner had been regularized, vide Annexure P-6. The petitioner gave legal notice for regularization of his service but the same has not been considered till date

Learned counsel for the petitioner submits that the petitioner had been given continuity of service vide labour Court award and his services ought to have been regularized, as per policy dated 01.10.2003/10.02.2004 (P-2 and P-3).

Learned State counsel on the other hand while referring to written statement has argued that the petitioner is not entitled for regularization, as per policy dated 01.10.2003. Further it has been argued that there are no sanctioned posts on which the services of the petitioners can now be regularized. Learned State counsel has further argued that petitioner had not actually worked for 03 years continuously prior to the date of issuance of notification dated 01.10.2003 and his services can only be regularized in view of notification dated 18.06.2014, which has been quashed by this Court. The earlier policies on which the petitioner is

relying has been withdrawn. It has further been argued that Phool Chand was senior to the petitioner as he was appointed on 01.05.1992 whereas the petitioner joined on 16.01.1995. The petitioner has not completed 240 days in a calendar year.

Heard learned counsel for the parties.

Reference at this stage can be made to judgment of Hon'ble the Supreme Court judgment in ***Malathi Das (Retd.) Now. P.B. Mahishy and others V/s. Suresh and others, 2014(2) CLR 168*** wherein it has been held that the parity has to be maintained while regularizing the services of Group D employees since similarly situated employees have been regularized. In paragraph 8, it has been observed as under:-

*“8. It is not in dispute that the original batch of employees who had filed writ petition Nos. 33541-571/1998 on the basis of which the writ petitions filed by the respondents herein (W.P. Nos. 39117-176/1999) were allowed by the order dated 15.12.1999 have been regularized. It is also not in dispute that out of the 445 employees who had filed writ petition Nos.39117-176/1999, by separate government orders, the service of 161, 64 and 55 employees have been regularized in three batches. The records placed before the Court would indicate that 7 other persons have been regularized during the pendency of the present appeal. In a situation where a Scheme had been framed on 29.12.2005 to give effect to the order of the High Court dated 15.12.1999 passed in the writ petitions filed by the respondents herein and many of the similarly situated persons have been regularized pursuant thereto the action of the appellants in not granting regularization to the present respondents cannot appear to be sound or justified. The fact that the regularization of 55 employees, similarly situated to the present respondents, was made on 18.04.2006 i.e. after the decision of this Court in ***Umadevi (supra)*** is also not in serious dispute*

*though Shri Bhat, learned senior counsel for the appellants, has tried to contend that the said regularizations were made prior to the decision in **Umadevi (supra)**. The date of the order of regularization of the 55 persons i.e. 18.4.2006 will leave no doubt or ambiguity in the matter. In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularization on the date of the decision in **Umadevi (supra)** is required to be dealt with in accordance with the conditions stipulated in para 53 of **Umadevi (supra)** inasmuch as the claims of the respondent employees can well be decided on principles of parity. Similarly placed employees having been regularized by the State and in case of some of them such regularization being after the decision in **Umadevi (supra)** we are of the view that the stand taken by the appellants in refusing regularization to the respondents cannot be countenanced. However, as the said stand of the appellants stem from their perception and understanding of the decision in **Umadevi (supra)** we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty bound to regularize the services of the respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order.*

Reference at this stage can also be made to a judgment of Hon'ble the Supreme Court in a case of ***Hari Nandan Prasad and another vs. Employer I/r to Mangmt. of FCI and another, 2014 (2) SCT 234*** wherein Hon'ble the Supreme Court had considered a case of an employee whose services were not regularized when his junior's services had been regularized by the Employer. It was held that non-regularization of the left over workers itself would amount to invidious discrimination qua them in each cases and would be violative of Article 14 of the Constitution. In para

34, it has been observed as under:-

“34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization 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 regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize 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 Art.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 regularized 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 regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.”

The above said judgment has been followed by this Court in a

case of ***Ram Dhan vs. HSIDC and another, passed in CWP No. 24998-2016, decided on 28.02.2018*** and the operative part of the judgment reads as under:-

Law requires that workman's continuity of service has to be accounted for from 19.05.2005 i.e. the date of illegal termination. It would be deemed as if the order of termination was never passed and the petitioner continued and in this process would reap the benefit of any policy of regularization which fell on the way.

In this petition, the prayer is for regularization of services on the ground that those employees who were not terminated and with whom he worked shoulder-to-shoulder have admittedly been regularized by the Management. Learned counsel appearing for the Management concedes that a categorical statement has been made in the written statement filed to contest this petition, that the petitioner's colleagues have been regularized. Thus, when colleagues have been regularized, then the case of the petitioner comes within the scope and protection of Article 14 of the Constitution to prevent discrimination and restore equality. The relief sought in the petition deserves to be granted to the petitioner and his services ordered to be declared regular from the date when his first of the colleague was regularized. This is the guarantee of the equality clause in Article 14. For this right, Mr. Dahiya cites the Supreme Court judgment in Hari Nandan Prasad & another Vs. Employer I/R to Management of FCI & another, 2014 (2) SCT 234 and the decision of learned Single Judge in Khajjan Singh Vs. State of Haryana & others, (2015) 1 SCT 604, which ruling has been upheld in appeal etc.

Reference at this state can now be made to judgments of the Hon'ble Apex Court in ***Mineral Exploration Corporation Employees Union Vs. Mineral Exploration Corporation Limited & anr., 2006 (3)***

SCT 802, and this Hon'ble Court in the case of ***Sukhdev Kaur Vs. State of Punjab, 2002 (8) SLR 349 (P&H)*** and ***Des Raj Vs. State of Haryana & ors., 2003 (4) SCT 264***, whereby a consistent view has been taken that keeping the contingent workers for a long time, offering regular appointment periodically and abruptly stopping them taking on duty, amounted to unfair labour practices. An employer cannot be allowed to play with the future of the thousands of employees from all benefits available to regular employees. They must be regularised in service after a reasonable time. They cannot be deprived of the benefits of being a regular employee indefinitely.

Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Ramesh Chandra Singh vs. Khadi and Village Industry Commission, 2018 (1) SCT 1***. The operative part of the judgment reads as under:-

“In our opinion, there was a clear finding by the Industrial Court that the appellant had been in service for the last 23 years. He was appointed in the manufacturing establishment in July 1981. Obviously, he was initially engaged as machine operator but, he was illegally retrenched from service on 9th August, 1986. On 29th March, 1996 he was reinstated and continuity of service was granted. He was reinstated as a watchman and, since then, he had been continuing in service. Thus, by now he is in service for approximately 37 years.

The High Court has erred in observing that only a 5-year service has been rendered by the appellant. As a matter of fact, between 1981 and 1986, he has rendered the service as a machine operator and, thereafter, he was illegally removed from service. Ultimately, removal was held to be illegal, and continuity in service and all benefits had been granted to him. In fact, he is deemed to be in service even during interregnum period of 1986 to 1996, and in the eye of law there was no break in his services.

In the present case, the respondents in their written statement

16.01.1995 and the only ground for rejecting the claim of the petitioner was that earlier policies were withdrawn. This aspect has already been considered by the above mentioned judgments and the petitioner has been given continuity of service since 16.01.1995. Thus, his case is covered by the notification dated 01.10.2003.

Applying the ratio of the above mentioned judgment, the writ petition is allowed and respondents are directed to regularize the services of the petitioner, as per policy dated 01.10.2003/10.02.2004 (P-2 and P-3). The petitioner is entitled to consequential benefits.

31.01.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No