

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 13804-2016

Date of decision:-31.01.2020

RANBIR SINGH SINCE DECEASED THROUGH HIS LRPetitioner

vs.

STATE OF HARYANA AND OTHERSRespondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sandeep Goyat, Advocate
for the applicant-petitioner.

Mr. Harish Nain, AAG, Haryana

RITU BAHRI, J.(Oral)

C.M. No. 1625-2020

Application is allowed as prayed for.

Accordingly, legal heir of the petitioner, as mentioned in para
No. 2 of the application is impleaded as party in the petition.

C.W.P No. 13804-2016

The present petition is for quashing of impugned order dated 25.04.2016 (P-10), vide which the services of the petitioner was not regularized w.e.f 01.10.2003. Further prayer of the petitioner 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 or from the date when the benefit has been granted to the number of similarly situated employees, who are juniors to the petitioners, with all consequential benefits.

Brief facts of the case are that 09/04/1994, the petitioner was appointed as Chowkidar on daily wage basis by the respondent-department.

In December, 2001 the services of the petitioner was terminated and he raised industrial disputes and award dated 23.01.2008 (P-1) was passed in

his favour and was granted continuity of services along with other consequential benefits including 50% backwages. The petitioner was then taken back in to service and is working in the office of respondent No. 4.

The award was challenged by the department by filing CWP No. 12131-2008. The writ petition was allowed and award was set aside, vide order dated 15.01.2009. The petitioner then approached Hon'ble the Supreme Court by filing SLP (C) No. 31066-2009 and challenged order dated 15.01.2009. The SLP was converted into Civil Appeal No. 10005-2014 and the appeal was partly allowed on 31.10.2014 and the respondents were directed not to disturb the petitioner except on disciplinary grounds and the respondents were further directed to pay a sum of Rs.1,00,000/- to the appellant as full and final settlement towards back wages.

The grievance of the petitioners before this Court is now that his services had to be regularized in view of policy dated 01.10.2003, as the petitioner was in service w.e.f 04/1994.

Learned counsel for the petitioners 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, as before Hon'ble the Supreme Court, his appeal was allowed and the respondents were directed not to disturb the petitioner except on disciplinary grounds.

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 petitioner 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. Further it has been argued that Hon'ble the Supreme Court has only partly allowed the appeal and the petitioner has been allowed to work only and he has not been given continuity of service.

Heard learned counsel for the parties.

In the present case, the Labour Court award was passed in favour of the petitioner and thereafter, the civil writ petition filed by the respondent-department against the award was allowed. Petitioner filed SLP before Hon'ble the Apex Court, which was partly allowed and the respondents were directed to allow the petitioner to work. For all intents and purposes, the petitioner has been given continuity of service.

Reference at this stage can be made to judgments of this Court in a case of *Umrao Singh and another vs. State of Haryana and another*, passed in CWP No. 18246-2012, decided on 23.02.2015 and *Lekh Raj vs. State of Haryana and others*, passed in CWP No. 11224-2015, decided on 19.10.2015 wherein it has been held that once the award of the Tribunal granted continuity of service to the petitioner, it would imply that he would be in service, as if the factum of termination had not been intervened. The petitioner would continue to be in service without interruption and if that be so, then in terms of the policy of 2003, he would be entitled for regularization as he had completed 03 years service.

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 nonregularization 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.”

Reference at this stage can 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 to take 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 Cahandra 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.

The case of the petitioner is covered by judgment of this Court in a case of ***Veermati vs. State of Haryana and another, passed in CWP No. 16044-2015, decided on 11.04.2016*** wherein petitioner who was appointed as Beldar on 22.10.1998 was denied regularization as per 01.10.2003 policy, in view of condition No. 8 of notification dated 10.02.2004 whereby it was required that only those Group C and D employees are eligible for regularization who had been engaged before 31.01.1996. This Court allowed the writ petition and observed as under:-

*“This condition No.8 of the Notification dated 10.02.2004 (Annexure P-2) has come up for consideration before the Division Bench of this Court in case **CWP No.9708 of 2004** titled **Ajit Singh Vs. State of Haryana and others, decided on 04.02.2015** whereby it was held that condition No.8 of the Notification dated 10.02.2004 (Annexure P-2) was held to be unreasonable and arbitrary on the ground that a daily wager, who has three years of service from 30.01.1996 could be entitled for regularization whereas the services of the person like the petitioner, who having over five years of service could not be regularized. The impugned notification could not apply retrospectively to take away the vested rights of the petitioner, whose services had already been regularized prior to the amendment.*

In the present case, the petitioner had been appointed on 22.10.1998 as Beldar on daily wages and has a right to be considered for regularization as per policy dated 01.10.2003, without insisting on the condition No.8 of the notification dated 10.02.2004 (Annexure P-2), which has been quashed, by the Division Bench of this Court.”

In the present case, it is not in dispute that on 09.04.1994 petitioner was appointed as Chowkidar on daily wager basis by the respondent-department and his services were terminated. He then raised

industrial disputes and award dated 23.01.2008 (P-1) was passed in his favour and he was granted continuity of services along with other consequential benefits. Even though the writ petition filed by the respondent-department was allowed but Hon'ble the Supreme Court vide order dated 31.10.2014 had directed the respondents to allow the petitioner to work and further the respondents were directed to pay sum of Rs.1,00,000/- towards back wages. Thus, for all intents and purposes, the petitioner was working since 09.04.1994 as he was granted continuity of service and his case for regularization is covered under policy dated 01.10.2003. Further the respondents in reply had admitted that services of junior to the petitioner had been regularized

Applying the ratio of the above mentioned judgments, the writ petition is allowed and order dated 25.04.2016 (P-10) is set aside. Respondents are directed to regularize the services of the petitioner as per policy dated 01.10.2003 or from the date when the benefit has been granted to the number of similarly situated employees. The petitioner is entitled to all consequential benefits. This exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

31.01.2020

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No