

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13885-2016 (O&M)

Date of decision: 22.01.2020

Om Parkash

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. S.K.Daaria, Advocate
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

RITU BAHRI, J.

By this petition, the petitioner is seeking direction to the respondents to regularize his services under 1996 and 2003 policy alongwith all consequential benefits @ 12% interest.

The petitioner was appointed as Beldar-cum-Mali on 01.07.1982. After serving for 12 years, his services were terminated on 01.01.1994 without following the provisions of Industrial Disputes Act 1947. He was reinstated with continuity of service alongwith 25% back wages vide labour Court award. The writ petition was filed by the respondents against the labour Court award which was dismissed by the High Court and thereafter in SLP(Civil) No. 9902/2000, only the back wages were stayed and there was no stay in the continuity of service as per order dated 12.02.2001 (Annexure P-9).

Thereafter, the petitioner filed CWP No. 8229 of 2011 for regularization of his services which was disposed of on 10.05.2011

with direction to decide the legal notice. The case of the petitioner was rejected by respondent No. 3 vide order dated 20.01.2012 (Annexure P-5).

The petitioner is seeking regularization on the ground that persons junior to him namely Ram Singh, Maya Rani, Krishna, Jagdish and Tara Chand have already been regularized by the department. He is seeking regularization as per policies dated 07.03.1996 (Annexure P-1), 18.03.1998 (Annexure P-2), 01.10.2003 (Annexure P-3) and notification dated 18.06.2014 (Annexure P-6).

By way of CM No. 9706 of 2016, the petitioner has placed on record order dated 24.11.2015 (Annexure P-13) and order dated 03.06.2016 (Annexure P-14) and by way of second CM No. 9156 of 2018, he has placed on record letter dated 23.01.2013 (Annexure P-15), 28.10.2011 (Annexure P-16) and letter dated 14.02.2011 (Annexure P-17).

Learned counsel for the petitioner contends that as per RTI Information dated 23-1-5/2013 (Annexure P-15) Ram Singh, Krishna, Maya Rani, Jagdish, Jile Singh, Tara Chand and Omparkash have been regularized who were junior to the petitioner and this information was given by Forest Department, Govt. of Haryana. Despite that the case of the petitioner for regularization has not been considered. Further as per information received under RTI dated 28.10.2011 (Annexure P-16), the date of joining of the petitioner is July, 1986 whereas the date of joining of Mahender is February, 1987 and date of joining of Hawa Singh is April, 1986. As per the information received under RTI dated 14.02.2011 (Annexure P-17), following information was provided:-

S.No.	Name	D.O.J.	D.O. Regularization	Post
1.	Ram Singh S/o Hajari Lal	4/88	Sep-2003	As labourer
2.	Krishan S/o Shivlal	6/88	Sep-2003	As labourer
3.	Smt. Maya W/o Palaram	4/88	Sep-2003	As labourer
4.	Jagdish S/o Chiranji Lal	2/87	Sep-2003	As labourer
5.	Jile Singh S/o Shish Ram	4/82	Sep-2003	As labourer
6.	Tara Chand S/o Rati Ram	10/88	Sep-2003	As labourer
7.	Om Parkash S/o Ram Singh	1/92	Sep-2003	As labourer

All the employees except Jile Singh, as per above said letter were appointed after the petitioner and they have been regularized. The petitioner has a right to be regularized.

Learned counsel for the respondents has argued that the regularization policy dated 07.03.1996 (Annexure P-1) was amended vide notification dated 10.02.2004 and 13.04.2007 and finally notification dated 18.06.2014 whereby Group C and D employees can be regularized by the competent authority as per eligibility of policy either 1993, 1996 or 2003 as a one time measure. Since the petitioner does not fulfill the terms and conditions of the regularization policies, his case has been rejected. He has referred to judgment of Supreme Court passed in *Secretary, State of Karnataka V/s. Uma Devi 2006 (4) SCC 1* on the proposition that backdoor entry cannot be made substitute for making appointment. The post must be created and sanctioned before filling it up.

However, the respondents are not disputing the information given under RTI (Annexures P-15, P-16 and P-17). Once the persons junior to the petitioner have been regularized as is evident from the chart given in

Annexure P-17, the case of the petitioner has to be considered. The issue of parity in regularization has been considered by Supreme Court in ***Hari Nandan Prasad and another V/s. Employer I/R to Management of FCI and another***, 2014(2) S.C.T.234 where the Supreme Court was examining the case of the persons whose services had not been regularized but persons junior to them had been regularized. A direction was given to the department to regularize their service as it amounts discrimination under Article 14 of the Constitution of India.

Keeping in view of ***Hari Nandan's case (supra)***, this writ petition is allowed and direction is given to the respondents to regularize the services of the petitioner w.e.f. 01.10.2003. This exercise be completed within a period of three months from the date of receipt of certified copy of this order.

Pending applications stand allowed.

(RITU BAHRI)
JUDGE

22.01.2020

Divyanshi

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No