

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 14770-2016

Date of decision:-31.01.2020

SURESH

.....Petitioner

vs.

STATE OF HARYANA AND OTHERS

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Harish Nain, AAG, Haryana

RITU BAHRI, J.(Oral)

The present petition is for quashing of impugned order dated 14.11.2014 (P-7) qua petitioner, vide which the service of the petitioner was regularized w.e.f 01.07.2014 instead of 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 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 on 01.12.1990, petitioner was appointed as Beldar on daily wage basis by the respondent-department. Vide order dated 01.04.1999, the service of the petitioner was terminated and he raised industrial dispute and award dated 31.01.2008 (P-1) was passed in his favour and was granted continuity of services along with other

consequential benefits. The petitioner then made a number of

representation for regularizing his services, but no action has been taken. The services of the petitioner has been regularized, vide order dated 14.11.2014 (P-7) w.e.f 01.07.2014 relying upon policy dated 18.06.2014 (P-5). The award had attained finality as the department did not file any appeal against the award.

The grievance of the petitioner before this Court is now that his services have to be regularized in view of policy dated 07.03.1996/01.10.2003

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 07.03.1996/01.10.2003 .

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 07.03.1996/01.10.2003 . 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 and his services had rightly been regularized in view of notification dated 18.06.2014.

Heard learned counsel for the parties.

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 *Lekhu 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 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 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.”

Reference at this state 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 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, it is not in dispute that on 01.12.1990, petitioner was appointed as Beldar on daily wage basis by the respondent-department and his services were terminated, vide order dated 01.04.1999. He then raised industrial dispute and award dated 30.01.2008 (P-1) was passed in his favour and was granted continuity of services along with other consequential benefits. Thus, for all intents and purposes, the petitioner was working since 01.12.1990 as he was granted continuity of service and his case for regularization is covered from the date the service of similarly situated or junior has been regularized.

Applying the ratio of the above mentioned judgments, the writ petition is allowed and impugned order dated 14.11.2014 (P-7) is set

aside. Respondents are directed to regularize the services of the petitioner at

par with similarly situated employees, who are juniors to the petitioners or as per policy dated 07.03.1996/01.10.2003. The petitioner is entitled to all consequential benefits.

31.01.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No