

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1181-2017

Date of decision: 05.02.2020

Ramesh Kumar @ Ramesh Chander

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Surinder Gaur, Advocate
for the petitioner.

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

RITU BAHRI, J. (Oral).

By this petition, the petitioner is seeking direction to the respondents to modify the regularization order dated 12.09.2014 (Annexure P-6) vide which the petitioner has been regularized w.e.f. 01.07.2014. However, the petitioner is entitled for regularization of his services under policy dated 01.10.2003 (Annexure P-2).

The petitioner joined on 01.01.1994 as Beldar. Thereafter he was terminated on 01.10.1994. He served demand notice dated 26.10.1995 to the respondent No. 3 and vide Labour Court award dated 06.10.2005 (Annexure P-1), he was reinstated with continuity of service and no backwages. This award was never challenged by the Department and the award has attained finality. The services of the petitioner were regularized w.e.f. 01.07.2014 vide order dated 12.09.2014 (Annexure P-6).

The petitioner is seeking direction to the respondents to consider him for regularization as per policy dated 01.10.2003 (Annexure P-

2) keeping in view that once he was granted continuity of service as per Labour Court award dated 06.10.2005 (Annexure P-1) he fulfills all the conditions of regularization policy dated 01.10.2003 (Annexure P-2). He has referred to order passed by this Court in ***CWP-7660-2015 titled Suresh V/s. State of Haryana and others*** (Annexure P-7) 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 3 has been filed. The respondents are not disputing about the order passed in ***CWP-7660-2015*** (Annexure P-7) and pursuant to the direction given by this Court in ***CWP-7660-2015***, in contempt proceedings this order has been complied with and the employees have been regularized. It is not the case of the respondents that any appeal has been filed against the judgment of ***CWP-7660-2015*** (Annexure P-7).

The stand taken in the written statement is that he has rightly been regularized as per policy dated 18.06.2014 as he was not in service before passing of award dated 06.10.2005. 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.

For all intents and purposes, as per award dated 06.10.2005 (Annexure P-1), petitioner was given continuity of service w.e.f. 01.10.1994. Hence, he fulfills all the conditions of regularization policy dated 01.10.2003 (Annexure P-2).

Further 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:-

“34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion 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 petitioner 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 and this Court be informed of the order passed.

(RITU BAHRI)
JUDGE

05.02.2020
Divyanshi

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