

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 20112 of 2015
Date of decision: 12.02.2020

Surinder Kumar

.....Petitioner

V/s.

Union of India and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Mukand Gupta, Advocate,
for the petitioner.

None for respondent No.1.

Mr. Vikas Suri, Advocate,
for respondent Nos. 2 to 4.

Sanjay Kumar, J.(Oral)

The petitioner, a Driver in the service of the Bhakra Beas Management Board (hereinafter, 'the Board'), seeks regularization of his services with retrospective effect from the year 1992 on the ground that those who were juniors to him had been granted such benefit. In the alternative, he seeks regularization with effect from 04.09.1999, instead of 29.08.2014, in the light of the Board's Regularization Policy dated 11.05.2012 (Annexure P-5).

The petitioner entered the service of the Board on 04.09.1989 but the appointment order dated 30.09.1989 (Annexure P-1) issued in his favour reflects that he was offered the post of Driver for a short period of 89 days.

The petitioner was continued in service thereafter for short spells. As per the Board, he worked for 222 days between 04.09.1989 and 22.04.1990. He then worked as a Tipper Driver for short spells, aggregating to 192 days, between the dates 20.09.1990 and 31.03.1991. He then worked as a Tipper Driver on daily wages for a total of 1014 days between June, 1991, and March, 1994.

At that stage, the petitioner seems to have filed CWP No.3956 of 1994 before this Court seeking regularization of his services and pursuant to the interim orders granted therein, he continued to work as a Tipper Driver in the service of the Board from April, 1994 to August, 2014. By virtue of the final order passed in the said writ petition on 15.05.2014, the Board considered his case for regularization and by order dated 26.08.2014, the petitioner's services were regularized as a Driver with immediate effect. In consequence, the Offer of Appointment letter dated 09.08.2014 was issued to him.

It is in this factual milieu that the petitioner seeks retrospective regularization of his service.

The petitioner cited the instances of twelve individuals, alleging that they were his juniors in service and that they were regularized in service with retrospective effect, thereby discriminating against him. However, the Board filed its written statement clarifying that these persons had been regularly appointed after due process of selection and that, though the petitioner also had an opportunity to participate in the very same selection, he did not choose to do so. It is therefore manifest that the petitioner cannot assume parity with the cases of these twelve named individuals. Even going by the Board's Regularization Policy (Annexure P-5), it is clear that the

same was framed pursuant to the decision of the Supreme Court in **'Secretary State of Karnataka V/s Uma Devi and others' [2006 (4) SCC 1]**.

The said decision specifically excluded from the ambit of the one-time measure of regularization of services directed to be undertaken, all such persons who continued in service for 10 years under the protection of Court orders. However, in its wisdom, the Board did not choose to include this exclusionary clause in its policy. By virtue thereof, the petitioner was granted the benefit of regularization, notwithstanding the fact that he continued in the service of the Board from 1994 only due to Court orders.

This being the situation, this Court finds no grounds to interfere with the action of the Board in not regularizing the petitioner's services with retrospective effect.

It may however be noted that the appointment letter dated 09.08.2014 (Annexure P-8) also contained a clause to the effect that the past service rendered by the petitioner in the Board in any capacity, including daily rates basis/work-charged/specified period basis, would not be counted for any purpose whatsoever, including pensionary benefits. This clause seems to have been included in ignorance of the fact that the Board had suffered the judgment dated 31.08. 2010 in CWP No.2371 of 2010, titled **'Harbans Lal V/s State of Punjab and others'**, wherein it was held that the entire daily wage service of the petitioner therein should be counted as qualifying service for the purpose of pension. The written statement filed by the Board also clarifies that this decision was implemented across the Board, *vide* the order passed on 18.04.2016, and was applied to all such similar cases.

In the light of the aforestated policy decision, it would not be open to the Board to now seek to exclude the earlier service rendered by the petitioner since 1989, while reckoning his pensionary benefits.

Clarifying this aspect, the writ petition is disposed of

No order as to costs.

(SANJAY KUMAR)
JUDGE

12.02.2020

rakesh

whether speaking/non speaking	:	Yes/no
whether reportable/non reportable	:	Yes/no