

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

Date of decision 28.01.2020

1. CWP No.24241 of 2016 (O&M)

Nasib Singh

...Petitioner

Vs.

State of Haryana and others

...Respondents

2. CWP No.24242 of 2016 (O&M)

Kara

...Petitioner

Vs.

State of Haryana and others

...Respondents

3. CWP No.24243 of 2016 (O&M)

Kalyan Singh

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rakesh Nagpal, Advocate,
for the petitioner(s).

Mr. Harish Nain, AAG, Haryana.

Ritu Bahri, J.

This order shall dispose of CWP No.24241 of 2016, CWP No.24242 of 2016 and 24243 of 2016 together as common questions of law and facts are involved in all the petitions. For reference, facts are being taken up from CWP No.24241 of 2016.

Petitioner (in CWP No.24241 of 2016) is seeking quashing of

regularization of his services has been rejected.

Initially, the petitioner-Nasib Singh was appointed on daily wage basis in the respondent-department in January, 1983. His services were terminated on 14.07.2004. Thereafter, he approached the Labour Court. Vide award dated 15.01.2009, Labour Court rejected the claim of petitioner. Aggrieved by the said award, petitioner filed CWP No.4881 of 2010 before this Court, which was allowed vide order dated 25.04.2011 (Annexure P-1) and the petitioner was ordered to be reinstated with continuity of service and 40% back wages. However, petitioner had to file COCP No.1092 of 2012. Thereafter, he was reinstated on 14.05.2012. However, claim of the petitioner for regularization was rejected, whereas persons, junior to him, were regularized. Thereafter, petitioner filed CWP No.23600 of 2015, which was disposed of vide order dated 04.01.2016 (Annexure P-7) with a direction to the respondents to decide the legal notice dated 08.07.2015 (Annexure P-2) of the petitioner. Pursuant to the direction given by this Court, vide aforesaid order, impugned order dated 17.08.2016 (Annexure P-8) rejecting the claim of petitioner for regularization, has been passed.

A perusal of the order dated 17.08.2016 (Annexure P-8) shows that petitioner-Nasib Singh was claiming regularization at par with his juniors namely Balbir, Hukam and others, who have already been regularized. Petitioner was given notice of personal hearing and was asked to show any other record, which could suggest that he had been appointed in the year 1980 in the office of Forest Division Officer, Pinjore. But, he stated that he was not having any such record in his possession. As per record of the Divisional Forest Officer, Pinjore, he had worked since 1988. Detail of

his working days, as recorded in the impugned order, is reproduced as under:-

Sr. No.	Year	Working days
1	1988	101
2	1989	146
3	1990	242
4	1996	109
5	1998	37

It was observed that as per above said details, petitioner-Nasib Singh did not fulfill the eligibility condition of the Policies of Regularization for the years 1993, 1996, 2003, 2006 and 2011. Accordingly, his claim was rejected.

As per judgment dated 25.04.2011 (Annexure P-1) passed by this Court in CWP No.4881 of 2010 (**Nasib Singh vs. The Presiding Officer, Labour Court, Ambala and others**), petitioner-Nasib Singh was reinstated with continuity of service and 40% back wages. He had been working with the department since 1983 till 2004. This fact was never controverted before the Labour Court by the department. Once, the petitioner had been granted continuity of service w.e.f. 2004 till reinstatement, he was deemed to be in service from 1983 till 2011. Moreover, before the Labour Court, the respondent-department did not choose to file any reply and therefore, defence of the respondents was struck off. Keeping in view the material placed on record by the petitioner, a finding was given that he had worked for 240 days prior to the date of termination. Finding given by the Labour Court was that he had completed 240 days prior to the date of termination, but the reference had only been declined on the ground that he was a daily wager and his appointment was not in accordance with the established norms of the public appointment.

Respondent Nos. 2 and 3 did not challenge the finding given by the Labour Court. Hence, the same has attained finality.

While rejecting the claim of petitioner, vide impugned order dated 17.08.2016 (Annexure P-8), the stand taken by the respondents is that the petitioner has not worked for 240 days. Learned State counsel, on the basis of written statement filed by respondent Nos.1 to 3, has argued that the petitioner, as per record, has worked since 1988. He was never appointed against any sanctioned vacant post. After the decision given by Hon'ble the Supreme Court in **Secretary, State of Karnataka and others vs. Uma Devi and others**, 2006 (4) SCC 1, all the policies of regularization have been withdrawn by the Government. He further argued that as per judgment passed in **State of Karnataka and others vs. G.V. Chandrashekar**, 2009 (2) SCT 101, if, the initial recruitment is wholly illegal and contrary to the constitutional scheme, claim of regularization cannot be accepted. Further, reference has been made to the judgment passed by this Court in **Yogesh Tyagi and another vs. State of Haryana and others**, CWP No.17206 of 2014 (decided on 31.05.2018).

Heard, counsel for the parties.

As per details given in the written statement, petitioner-Nasib Singh had worked till 1998. However, as per judgment dated 25.04.2011 passed by this Court in CWP No.4881 of 2010, petitioner was terminated in the year 2004 and before the Labour Court, respondent Nos.2 and 3 did not file any reply. Hence, a finding was given that the petitioner had worked 240 days prior to the date of his termination. No reply was filed to controvert that the petitioner had been working from 1983 to 14.07.2004.

Even, the details given in the written statement do not show the correct

working days of the petitioner after 1998 till July, 2004. Since, the petitioner has been reinstated with continuity of service and the department has not led any evidence to show his total working days after 1998, he is held to be continuously working after 1998. His case has, now, to be considered under the Regularization Policy dated 01.10.2003.

Once, the petitioner has been reinstated with continuity of service, for all intents and purposes, his case is covered by the Policy dated 01.10.2003. Even, the plea raised by the respondents that his appointment was not made against regularly sanctioned post, cannot be accepted. The petitioner had been working with the department since 1983 to 2004 and thereafter, vide judgment dated 25.04.2011 passed in CWP No.4881 of 2010 (Annexure P-1), he has been reinstated with continuity of service. Therefore, the petitioner has a right to be regularized as per Regularization Policy dated 01.10.2003.

In view of the above discussion, all these petitions i.e. CWP Nos.24241, 24242 and 24243 of 2016 are allowed and the respondents are directed to regularize the services of the petitioner(s) at par with their juniors, who have been regularized w.e.f. 01.10.2003 keeping in view the Policy of Regularization dated 01.10.2003 (Annexure P-5) with all consequential benefits along with interest at the rate of 6% per annum. This exercise be completed within a period of two months from the date of receipt of certified copy of this order.

28.01.2020
ajp

(RITU BAHRI)
JUDGE

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