

**CWP No. 24624 of 2016 and
CWP No. 24914 of 2016**

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 24624 of 2016

Date of decision : January 31, 2020

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Khiali Ram

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CWP No. 24914 of 2016

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Narata Ram

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Harish Nain, AAG, Haryana.

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RITU BAHRI, J.

By way of this common judgment, two writ petitions bearing
CWP No. 24624 of 2016 titled, '*Khiali Ram Versus State of Haryana
and others*' and **CWP No. 24914 of 2016** titled, '*Narata Ram Versus
State of Haryana and others*' shall be decided as common question of
law arises for consideration in both these petitions. For the sake of
brevity and convenience, facts are extracted from **CWP No. 24624 of**

2016 titled, `Khiali Ram Versus State of Haryana and others'.

By way of the present petition, the petitioner has prayed for quashing of the impugned order dated 31.5.2016 (Annexure P-8), whereby the claim of the petitioner for regularization of his service has been rejected. The petitioner is seeking regularization of the services from the date the services of his juniors had been regularized along with all consequential service benefits in view of the instructions issued by the respondent-State.

The petitioner-Khiali Ram was appointed on daily wages in January 1986 as daily wager in the respondent-Department. His services were terminated on 26/07/1998 without complying with the provisions of Section 25 (F) of the Industrial Disputes Act, 1947. Vide labour Court award dated 16/07/2004 (Annexure P-1), he was reinstated with continuity of service but without back wages. The petitioner sent the legal notice on 28/10/2015 stating therein that he has been working for the last 29 years in the forest department and services of the juniors of the petitioner have already been regularized as per the information received by the letter dated 02/12/2012 (Annexure P-11). The petitioner filed CWP No. 27022 of 2015 before this Court, which was decided on 23/12/2015 whereby respondents were directed to consider and decide the legal notice sent by the petitioner by passing a speaking order. Respondent No. 2 rejected the claim of the petitioner vide order dated 31/05/2016 (Annexure P-8) on the ground that the case of the petitioner is not covered by the Haryana Government Policies of Regularization 1993, 1996, 2003, 29/07/2011. Hence the present writ petition has been filed.

Upon notice, written statement has been filed by Divisional

Forest Officer , Morni Pinjore Forest Division Pinjore (PANCHKULA)
on behalf of respondent No. 1 to 3, wherein a stand has been taken that
the petitioner was not appointed against the sanctioned post and was
appointed on daily wage basis. The constitutional scheme which
mandated issuance of the advertisement calling for applications and on
consideration of the candidature of the applicant for appointment on
public post has not been complied with in case of appointment of the
petitioner. The statutory rules governing the service has not been
followed in the case of the petitioner, thus, he becomes disentitled from
his claim of regularization. It has been further stated therein that all the
policies issued by the State of Haryana for regularization of the services
of the daily wage employees have been withdrawn by the Government of
Haryana after the judgment passed by Hon'ble the Supreme Court in the
case of *Secretary, State of Karnataka and others vs. Uma Devi and
others (2006) 4 SCC 1* it has been opined that any appointment made in
contravention of any recruitment rules framed in terms of the proviso
appended to Article 309 of the Constitution of India would be wholly
illegal and without jurisdiction. A further reference has been made to a
Division Bench Judgement in the case of *Yogesh Tyagi and another
versus State of Haryana and others*, whereby the regularization policy of
the State government dated 18/06/2014 has been set aside following the
judgment passed in *Umadevi's case (supra)*. Reference has also been
made to a case, wherein this court directed the Forest Department to
regularize its employees. The state approached Hon'ble Supreme Court
of India by way of SLP (Civil) No.9965-74 of 2016 titled, '*State of
Haryana vs. Khajjan Singh and others*' and the Hon'ble Supreme Court

vide its interim order dated 08/04/2016 while issuing notice on special leave petition and on application for interim relief stayed the contempt proceedings before this court. The details of number of working days, whereby the petitioner has worked since 1986 from time to time has been given vide Annexure R-1/1. In paragraph 4 (parawise reply) of the writ petition, it has been stated that persons junior to him namely Madan, Teja Ram, Hukam Singh, Balbir and Dhani Ram are not at par with the petitioner.

The short question for consideration in the present case is what would be the effect of the labour court award dated 16/07/2004 (Annexure P-1). As per the labour court award (Annexure P-1), he has been reinstated with continuity of service. As per this award, the petitioner had rendered 246 days in the 12 preceding months that is January 1995 to December 1995 and his services were terminated without complying with the provisions of section 25 of the industrial disputes act. Vide the Labour Court award, the petitioner was ordered to be reinstated with continuity of service with effect from 12/12/1995 till 16/07/2004. For all intents and purposes the petitioner has to be considered on duty from 12/12/1995 till 16/07/2004.

Heard counsel for the parties. This writ petition deserves to be allowed. Reference can be made to a judgment of Hon'ble the Supreme Court of India in the case of '*Sandhya versus State of Maharashtra and others 2015(1) SCC (L&S) 361*', wherein the services of the appellant were terminated by the respondents vide order dated 20/04/1998. The applicant challenged his order of termination before the Maharashtra Administrative Tribunal, Mumbai bench Aurangabad. The

tribunal set aside his order of termination with the direction to the respondents to take action for regularization of his services. It was intimated by respondent No. 3 that the service of the appellant cannot be regularised because of non-fulfilment of condition in government resolution dated 10/03/2005. The High Court also rejected the writ petition on the ground that the appellant did not fulfill the requirement as laid down under Government Resolution dated 10.3.2005. Hon'ble the Supreme Court held that the High Court was not correct in holding that the appellant was not in service on 10/03/2005 and wrongly rejected a claim for regularization. The respondents were directed to comply with the order and directions passed by the Tribunal and regularize the services of the appellant with retrospective effect within two months from the date of receipt of copy of this judgment.

Thereafter, Hon'ble the Supreme Court in the case of ***Ramesh Chandra Singh versus Khadi and Village Industry Commission 2018 (1) SCT 1***, was examining a case, wherein the workman who rendered service as machine operator was removed from service. The labour Court found that the workman had completed service of 23 years and the service ought to have been regularized. He was retrenched from service in the year 1986 but reinstated in the year 1996 with continuity of service and all consequential benefits. As on 01/04/2001 more than 5 years had been rendered by him after reinstatement on 29/03/1996. The industrial Court issued direction to regularize his service from 01/04/2001. However the High Court held that the appellant was not entitled to regularization as mere completion of 5 years service was not enough for the purpose of regularization of

services. Consequently, the award of industrial court was set aside by the High Court. Aggrieved, the appeal was preferred by the workman. Hon'ble the Supreme Court held that the High Court erred in observing that only 5 year service has been rendered by the appellant. As a matter of fact between 1981 and 1986 he has rendered the service as machine operator and, thereafter, he was illegally removed from service. Ultimately removal of the appellant was held to be illegal, and continuity in service and all benefits had been granted to him. Infact he was deemed to be in service even during interregnum period of 1986 to 1996 and in the eyes of law there was no break in his services. The award passed by the Industrial Court was restored and the judgment passed by the High Court was set aside. The ratio established by this judgment passed by Hon'ble the Supreme Court is that once the Labour court award has attained finality, then benefit of continuity of services has to be given to the workman.

The ratio of the above said judgment is applicable to the facts of the present case, for all intents and purposes. As per labour Court award dated 16/07/2004 (Annexure P-1), the petitioner had been reinstated with continuity of service from December 1995 and hence, from 12/12/1995 till 16/07/2004, he has to be taken to be deemed to be in service without any break. Hence, the case of the petitioner cannot be rejected on the ground that as per the judgment in **Uma Devi's case (supra)**, his appointment was not in accordance with law. Keeping in view his continuity of service, his case has to be considered as per the policy of regularization prevalent at that time i.e the policy dated 1.10.2003 (Annexure P-5). The petitioner was in continuous service for

the last 3 years and had completed 240 days every year. The judgment in the case of **Yogesh Tyagi's case**, will not be applicable, as petitioner's service is covered by 2003 policy (Annexure P5). As per the 2003 policy for group D employees, the only condition required to be fulfilled is they should be in service as on 30/09/2003 and fulfilled requisite qualifications and had been appointed against the vacant post and they have completed 240 days in each year. In the facts of the present case, as per the award, the respondents themselves have admitted as per Ex. M-1 that the petitioner had rendered 246 days service in the 12 preceding months i.e January 1995 to December 1995. Petitioner was a daily wager and there was no educational qualification prescribed for the above said post on which he was working. Hence, he fulfills all the conditions of the regularization policy dated 1.10.2003 (annexure P5). Another ground for allowing the writ petition is that in paragraph 4 of the writ petition the petitioner has given names of some of the persons that is Madan son of Shri Narata Ram, Teja Ram son of Shri Gariboo, Hukam Singh son of Shri Ram Swaroop, Balbir Singh son of Kundan Singh and Dhani Ram son of Amar Nath who were junior to him and were regularized. In the written statement filed by the respondents, in reply to paragraph 4, it is stated that the cases of these employees were not at par with the petitioner, however, they have not denied that they were junior to the petitioner. Hon'ble Supreme Court in ***Hari Nandan Prasad and another vs. Employer I/r to Mangmt. of FCI and another 2014 (2) SCT 234*** has held that the state authorities have to maintain parity in the matter of regularization and if juniors have been regularized than the claim of the senior cannot be rejected.

In view of all that has been discussed above, writ petition is being allowed. Respondents are directed to regularize the services of the petitioner as per the policy dated 01/10/2003 or from the date when his juniors were regularized with all consequential benefits along with 6% interest.

This exercise be completed within a period of three months from the date of receipt of certified copy of this order and this Court be informed of the order passed.

January 31, 2020
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No