

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

**CWP No.27155 of 2015
Date of decision: 04.03.2020**

Suresh Kumar

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of the order dated 22.07.2014 (Annexure P-1), whereby his claim for regularization has been rejected.

The petitioner was working as daily wage labourer with the Forest Department, Haryana since 1999. His services were terminated on 29.04.2000. Vide award dated 14.03.2003 (Annexure P-2) passed by the Labour Court, Panipat, he was reinstated with continuity of service and full back wages from the demand notice dated 29.04.2000. This award was challenged by respondent-department by filing CWP No.1009 of 2004, which was dismissed vide order dated 23.02.2004 (Annexure P-3) passed by a Division Bench of this Court. The said award was upheld upto the Hon'ble Supreme Court and has attained finality. Thereafter, the petitioner is continuing to work as daily wager. The case of petitioner along with other employees, for regularization was recommended as per letter dated 4587 dated 10.02.2011 (Annexure P-4). The petitioner has placed on record copy

10.02.2011 (Annexure P-4), name of the petitioner was further recommended for regularization vide letter dated 30.08.2011 (Annexure P-7). The Forest Conservator, Central Division, Rohtak, vide letter dated 03.11.2011 (Annexure P-8), observed that petitioner was among four persons, entitled to be regularized. Petitioner has further placed on record letters dated 30.03.2012 and 25.04.2012 (Annexures P-9 and P-10), whereby office of Forest Conservator, Central Division, Rohtak, observed that there was no legal impediment in regularizing the services of petitioner. As per orders dated 26.03.2013, 06.07.2012 & 08.01.2010 (Annexure P-11 Colly.), services of similarly situated employees have been regularized. When no action was taken, petitioner filed CWP No.4492 of 2014 before this Court, which was disposed of vide order dated 11.03.2014 (Annexure P-12) by giving direction to the respondents to pass a speaking order. Pursuant to the direction given by this Court, impugned order dated 22.07.2014 (Annexure P-1) has been passed, whereby case of the petitioner has been rejected on the ground that the criteria laid down as per Policy dated 29.07.2011 was not fulfilled.

Upon notice, written statement on behalf of the respondents has been filed, stating therein that petitioner's services cannot be regularized as there is no sanctioned post. Reference has been made to the policies of dated 27.05.1993, 07.03.1996 and 01.10.2003 regarding regularization of daily wagers, Group-D employees. All these policies have been withdrawn vide notifications dated 13.04.2007 and 29.07.2011.

Heard.

At the outset, reference can be made to the orders dated 26.03.2013, 06.07.2012 and 08.01.2010 (Annexure P-11 Colly.), whereby

services of similarly situated employees have been regularized as per regularization policy dated 01.02.1996. These orders (Annexure P-11) have not been denied by the respondents in their written statement. Hence, respondents cannot turn around now and say that those regularization policies were withdrawn by the State Government vide notifications dated 13.04.2007 and 29.07.2011 and in the absence of any sanctioned post, petitioner cannot be regularized.

After dismissal of CWP No.1009 of 2004 on 23.02.2004 (Annexure P-3), case of petitioner had been recommended for regularization. This recommendation was made vide letter dated 30.08.2011 (Annexure P-7) keeping in view the earlier letter dated 10.02.2011 (Annexure P-4). In the facts of the present case, services of the petitioner were terminated on 29.04.2000 and as per award dated 14.03.2003 (Annexure P-2), he was ordered to be reinstated with continuity of service and full back wages. This award has attained finality. Hence, for all intents and purposes, the petitioner is deemed to be in service from 1999 onwards. Policy dated 01.10.2003 (Annexure P-5) is applicable in the case of present petitioner. As per this policy, petitioner has to complete three years of service on Group-D post as has to be in service as on 30.09.2003. Services of the petitioner were terminated on 29.04.2000 and after reinstatement, he had completed three years as on 30.09.2003. Hence, condition of three years cannot be made a ground to deny regularization. He is fully eligible to be regularized as per policy dated 01.10.2003 (Annexure P-5).

While rejecting the case of petitioner, one of the ground was that his name has not been sponsored through employment exchange and the second ground was that he had not completed 10 years as on 10.04.2006 as

per policy dated 29.07.2011. It is further stated that this policy has been withdrawn on 25.04.2012 in view of the judgment passed in Secretary, State of Karnataka and others vs. Umadevi and others, 2006 (4) SCC 1, therefore, the case of petitioner is not covered by the policy dated 29.07.2011.

In the present case, as per orders dated 26.03.2013, 06.07.2012 and 08.01.2010 (Annexure P-11 Colly.), the department has regularized the service of similarly situated employees as per the policy of 1996. In this case, since award dated 14.03.2003 (Annexure P-2) has attained finality, benefit of continuity has to be given to the petitioner and he has to be treated at par with other employees, who have been regularized vide orders (Annexure P-11). Policy of regularization dated 01.10.2003 (Annexure P-5) is fully applicable in the case of present petitioner.

In view of the above discussion, impugned order dated 22.07.2014 (Annexure P-1) is set aside and the respondents are directed to consider the case of petitioner afresh and pass appropriate order regularizing his (petitioner's) services as per policy dated 01.10.2003 (Annexure P-5), within a period of three months from the date of receipt of certified copy of this order. The consequential benefits be also released to the petitioner within the time stipulated above.

Allowed accordingly.

04.03.2020
ajp

(RITU BAHRI)
JUDGE

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