

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 7014 of 2017

Date of decision : 03.02.2020

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Hari 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. S.K Daaria , Advocate for the petitioner.

Mr. Randhir Singh, Advocate appearing for the State of
Haryana.

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RITU BAHRI, J.

The petitioner joined the management on 01/07/1993. His services were terminated on 01/01/1996. Vide Labour Court award dated 05/01/2001 (Annexure R-1), the petitioner was reinstated with continuity in service but without the back wages. The petitioner was reinstated on 29/11/2004 which is evident from the judgment dated 22/11/2006 (Annexure R-2) passed by the District Judge, Narnaul, whereby the case of regularization of the petitioner has been rejected.

The judgment dated 22.11.2006 passed by the District Judge, Narnaul (Annexure R-2) whereby, the petitioner's case for regularization has been rejected cannot be made basis to reject his case for regularization in the present case.

Counsel for the petitioner has placed on record along with his replication, the orders Annexures P-5 to P-9 whereby employees who were

appointed after the year 1993 and were junior to the petitioner have been regularized as per policy of 01/10/2003. The respondents are not disputing these orders. A perusal of order Annexure P-5 shows while regularizing the services of Birander Singh, reference has been made to the Labour Court award dated 2.9.2003 whereby, it was ordered to give continuous benefit of previous service to the workman from 19.3.1999 to 02.09.2003 along with 50% back wages and it was also ordered to reinstate him in service. His case was considered as per the regularization policy of 1.10.2003. Similar orders were passed in favour of Bijander Singh (Annexure P-6), Smt. Yashwanti (Annexure P-7) and Smt. Ramesh (Annexure P-8) Dharambir (Annexure P-9). At this stage, reference can be made to a Supreme Court judgment in the case of *Hari Nandan Prasad and another vs. Employer I/R to Mangmt. Of FCI and another 2014(2) SCR 955*, wherein the Apex Court has categorically held that where there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/ad hoc/temporary worker for number of years. If there is no posts available, such direction would be impermissible. Giving of direction to regularize 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. Such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post. However, wherever it is found that similarly situated workman are regularized 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 regularization in such cases may be legally justified, otherwise,

non-regularization 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.

In the present case, award of the Labour Court has attained finality and keeping in view the judgment of Hon'ble the Supreme Court in ***Hari Nandan Prasad's case (supra)***, the petitioner has a right to be regularized at par with his juniors.

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. However, arrears to be paid to the petitioner be restricted to a period of 38 months prior to the date of filing of the petition.

03.02.2020
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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No