

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

**CWP No.7619 of 2017
Date of decision: 05.03.2020**

Krishan Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Arora, Advocate,
for the petitioner.

Mr. Apoorv Garg, DAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of the reply dated 27.06.2016 (Annexure P-13), whereby his case for regularization has been rejected.

The petitioner was appointed as daily wage labourer on 01.01.1994 and he continuously worked upto 31.10.1994. Thereafter, his services were terminated. Vide award dated 02.04.1996 (Annexure P-1) passed by the Labour Court, Hisar, he was reinstated with continuity of service and full back wages. However, on 01.08.2002, services of the petitioner were again terminated. Against this order, he raised an industrial dispute under the Industrial Disputes Act on 04.08.2003. On 24.10.2003, the matter was settled between the workman (petitioner) and the management before the Labour Court and as per settlement (Annexure P-2), the petitioner was again taken in service by giving him the benefit of continuity of previous service. Accordingly, the petitioner joined on 03.11.2003. As per aforesaid award passed by the Labour Court, the

petitioner had been continuously working from 01.01.1994 till 24.10.2003. The petitioner is seeking regularization as per policy dated 01.10.2003 (Annexure P-3) keeping in view that the persons, junior to him, have been regularized vide order dated 27.10.2004 (Annexure P-4). Vide letter dated 11.02.2005 (Annexure P-6), petitioner's name was recommended by respondent No.3 to respondent No.2 for regularization as per policy dated 01.10.2003. Thereafter, the regularization policies, including policy dated 01.10.2003, were withdrawn vide notification dated 13.04.2007 (Annexure P-7). Subsequently, vide notification dated 18.06.2014 (Annexure P-8), another regularization policy was made, vide which, all those persons, who could not be regularized under the old policies due to administrative reasons, were to be regularized from the date they were eligible for regularization. As per this notification, other similarly situated persons, were regularized vide order dated 21.11.2014 (Annexure P-9 Colly.). Some of those employees were junior to the petitioner. But, petitioner's services have not been regularized till date. Hence, this petition.

Upon notice, written statement on behalf of the respondents has been filed. Along with the written statement, respondents have placed on record a list (Annexure R-1) to show that the petitioner remained absent during the year 2002-2003 and has not completed 240 days during that period. In this backdrop, he does not fulfil the conditions of regularization policy dated 01.10.2003. As per this policy, the workman should have worked for a minimum period of 240 days in each year and if, there is break in service, such break should not be condoned, if it is for extraordinary longer period. Thereafter, vide notification dated 20.07.2011, again a policy was formulated for regularization of services of Group-C and D employees

engaged on adhoc/contract/work charged/daily wage and part time. As per this policy, if the workman has completed 10 years as on 10.04.2006 and was still in service on that date, he could be regularized. It is stated that the petitioner does not fulfill the condition of regularization policy dated 20.07.2011 as he had not completed 10 years as on 10.04.2006. The respondents have referred to the letter dated 25.04.2007 (Annexure R-2), whereby they had given direction not to regularize the services of any of the employees keeping in view the judgment passed by Hon'ble the Supreme Court in **State of Karnataka Vs. Uma Devi**, 2006 (4) SCC 1.

Heard, learned counsel for the parties.

As per the award dated 02.04.1996 (Annexure-1), the petitioner was given benefit of continuity of service w.e.f. 01.01.1994 and he continued to work. However, after being reinstated, his services were again terminated on 01.08.2002. After a gap of one year, he raised an industrial dispute under the Industrial Dispute Act on 04.08.2003. On 24.10.2003, the matter was settled before the Labour Court and as per settlement dated 24.10.2003 (Annexure P-2), the petitioner was taken back on 03.11.2003 with continuity of service. Continuity of service means that the department had accepted that the termination order dated 01.08.2002 was not in accordance with law. Hence, the petitioner was to be given the benefit of continuity of service for the entire period, including the period from 01.08.2002 till 03.11.2003. However, as per details of working days (Annexure R-1), from 01.08.2002 till October, 2003, he has been shown not to have been working. Hence, he is wrongly shown not to have been working. Moreover, as per compromise/settlement dated 24.10.2003 (Annexure P-2), he was given the benefit of continuity of service by the

department itself. Hence, for all intents and purposes period from August, 2002 till November, 2003 should have been counted for giving him the benefit of regularization. If, this period is counted, the petitioner fulfills all the conditions of regularization policy dated 01.10.2003 (Annexure P-3). This aspect has been wrongly ignored by respondent-department while rejecting the case of petitioner.

In the present case, services of similarly situated employees have already been regularized as per the policy of 2003 in view of the letter dated 27.10.2004 (Annexure P-4). In this case, since award dated 02.04.1996 (Annexure P-1) and settlement dated 24.10.2003 (Annexure P-2) have 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 already been regularized as per letter dated 27.10.2004 (Annexure P-4). Policy of regularization dated 01.10.2003 (Annexure P-3) is fully applicable in the case of present petitioner.

In view of the above discussion, impugned reply/order dated 27.06.2016 (Annexure P-13) 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-3), 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.

05.03.2020
ajp

(RITU BAHRI)
JUDGE

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