

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

**CWP No.6663 of 2018**

**Date of Decision: 28.01.2020**

**Sushil Kumar**

**.....Petitioner**

**Vs.**

**The State of Haryana and others**

**.....Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

**Present:-** Mr. Dharamveer Phour, Advocate,  
for the petitioner.

Mr. Randhir Singh, Advocate,  
for respondent-State of Haryana.

\*\*\*\*\*

**RITU BAHRI, J. (ORAL)**

Petitioner is seeking quashing of the order dated 28.02.2018 (Annexure P-10), whereby earlier order dated 08.02.2013 regularizing his services w.e.f. 03.05.2005, has been withdrawn and his services have been de-regularized.

A perusal of the impugned order dated 28.02.2018 (Annexure P-10) shows that petitioner-Sushil Kumar was initially appointed as PR Chowkidar on DC rate with the department in the month of June, 2000. However, due to non availability of work, his services were retrenched w.e.f. 06.08.2004. Thereafter, vide award dated 19.08.2012 passed by the Labour Court, he was reinstated with continuity of service and 25% back wages from the date of demand notice i.e. 03.05.2005. For all intents and purposes, his service was taken to be continuous from June, 2000 till 03.05.2005. Award of the Labour Court has attained finality after dismissal

of the writ petition vide order dated 29.01.2013. Even, LPA against the said order has been dismissed.

Thereafter, vide order date 08.02.2013, services of the petitioner were regularized w.e.f. 03.05.2005. However, after a gap of 05 years, vide order dated 28.02.2018 (Annexure P-10), earlier order of regularization dated 08.02.2013 has been set aside on the ground that the said order had been passed by misinterpreting the award dated 19.08.2012 passed by the Labour Court, whereby he was only reinstated and there was no direction to regularize his services.

Learned counsel for the petitioner has referred to the judgment passed by this Court in **Jagdish Chand vs. Haryana Tourism Corporation Ltd.**, (2006) 143 PLR 795 on the proposition that once, the Labour Court had directed reinstatement of the petitioner/employee with continuity of service, he was deemed to be on duty for all intents and purposes. Learned counsel contends that in the present case, petitioner has to be regularized as per Policy of 2003. However, he was regularized w.e.f. 03.05.2005. Another ground taken in the petition is that some of co-labourers namely Sh. Puran Chand, Sh. Dhand Bahadur, Sh. Gruang Bahadur, Sh. Lehna Singh and Sh. Nafe Singh have been regularized by the department without any direction given by the Court in that regard and all of them have been reinstated in service after passing of the award by the Labour Court. Their services have been regularized w.e.f. 1994.

Respondents are justifying the impugned order only on the ground that after passing of the award by the Labour Court and dismissal of the writ petition, the order regularizing the services of petitioner was passed

in a hasty manner and that is why, it has been withdrawn vide impugned order dated 28.02.2018 (Annexure P-10).

After hearing learned counsel for the parties, this petition deserves to be allowed. The respondents are not disputing the fact that the award dated 19.08.2012 passed by the Labour Court has attained finality. Hence, for all intents and purposes, petitioner has to be taken in service from June, 2000 to 03.05.2005 and his case has to be taken into consideration as per Regularization Policy of 2003. The case of petitioner is squarely covered by the judgment passed by Division Bench of this Court in **Jagdish Chand's** case (supra) (Annexure P-12), whereby after termination of services on 30.11.1988, Jagdish Chand (petitioner therein) was reinstated vide award dated 24.05.1993 passed by the Labour Court. He was held to be entitled for regularization w.e.f. 27.05.1993.

At this stage, reference can be made to a judgment passed by Hon'ble the Supreme Court in **Hari Nandan Prasad and another vs. Employer I/R to Management of FCI and another**, 2014 (2) SCT 234, wherein it has been held that wherever it is found that similarly situated workmen 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. It has been further held as under:-

“34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when 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/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularise 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. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen 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.** Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.”

By applying the ratio of aforesaid judgments to the facts of the present case, petitioner-Sushil Kumar has a right to be considered for regularization as per Policy of Regularization dated 01.10.2003.

Resultantly, this petition is allowed and respondents are directed to regularize the services of petitioner w.e.f. 01.10.2003 in terms of Regularization Policy dated 01.10.2003. Further direction is given to give him all consequential benefits along with interest at the rate of 6% per annum w.e.f. 01.10.2003. Petitioner is also held entitled to costs of Rs.1,00,000/-.

**(RITU BAHRI)**  
**JUDGE**

28.01.2020  
ajp

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |