

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

**CWP No. 7447-2018
Date of decision : 29.01.2020**

Sanjay Kumar

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ram Niwas Sharma, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana

RITU BAHRI, J.

Petitioner is seeking quashing of orders dated 16.03.2018 (P-15 colly) passed by Chief Engineer, Irrigation & Water Resources Department, Haryana and endorsement made by Executive Engineer Panipat wherein services of the petitioner has been terminated on the ground that list of 455 newly selected clerks has been received. Further prayer of the petitioner is for quashing of order dated 17.03.2017 (P-9).

Brief facts of the case are that petitioner was employed as Typist on daily wage basis on 11.09.1997. Thereafter his serves were brought to an end on 01.06.2004. However, pursuant to an award dated 21.03.2012 (Annexure P-1), rendered by the Labour Court, he was reinstated with continuity of service and 50% back wages w.e.f 28.06.2004. The said award has attained finality, as CWP No. 8779/2012 challenging the award was dismissed on 23.08.2013. The LPA against the decision of the learned Single Judge, was also dismissed. As a result, the petitioner was

reinstated in service on 17.10.2014. Subsequently, he approached this Court vide CWP No.16100 of 2016 for regularization of his services, which was disposed of, vide order dated 10.08.2016, requiring the respondents to consider his claim. And, vide letter dated 17.03.2017 (Annexure P9), he has since been conveyed that even though all the left over cases of Group C & D employees were to be considered for regularization under the new Policy of the year 2014, and the petitioner being eligible was entitled to be considered for regularization of his services. But as this Court has stayed the operation of the regularization policy in CWP No.17206 of 2014 and other connected matters, the Government vide letter dated 15.09.2016 has issued instructions not to regularize the services of the employees under the 2014 Policy, at this stage. And, now vide order dated 16.03.2018 (Annexure P15), services of the petitioner have rather been terminated after he had rendered over 20 years of service.

On notice of the petition, a written statement was filed on behalf of respondent Nos. 1 to 4 relying upon judgment dated 31.05.2018 passed in CWP No. 17206-2014 whereby the Court has struck down the regularisation policies framed by the Government providing regularization of services of ad hoc/contract/daily wages employees. It has been stated that the petitioner was engaged as workman on daily wages (on muster roll) against particular work and not against any vacant post on 11.07.1997. His services came to an end on 31.05.2004. The only stand taken by the respondent that the petitioner was not working against any sanctioned post and since regularization policy was withdrawn, the services of the petitioner could not be regularized.

Learned State counsel submits that the services of petitioner

cannot be considered for regularization as all the regularization policies are put on hold by the Government.

Heard learned counsel for the parties.

The question for consideration before this Court would be that once the petitioner has been reinstated in service and the LPA filed by the respondent-department has been dismissed, thereafter, whether the petitioner is entitled for regularization of his service, as the petitioner has been working in the department since 1997.

The writ petition deserves to be allowed in view of decision passed by this Court in the case of **State of Haryana and others vs. Mohammad Farookh and another, passed in LPA No. 836-2013, decided on 30.04.2013** wherein this Court was considering a case of regularization where reinstatement had been ordered by way of labour Court Award. The termination of workmen was held to be violative of Section 25-F of the Industrial Disputes Act, 1947 as they were held to have worked for more than 240 days in the 12 proceeding months prior to their wrongful retrenchment. The case for regularization was denied as they were not covered under the policy circular dated 1.10.2003 issued by the State Government for regularization of services of daily wages/contractual employees as the policy stipulated certain conditions including that the eligible employees should be in service as on 30.9.2003. The Division Bench observed that this policy of regularization dated 1.10.2003 had been withdrawn by the State Government on 9.5.2007 after the decision of Hon'ble the Supreme Court in ***Uma Devi's case (supra)*** but keeping in view that before withdrawal of the policy, hundreds of daily wages/contractual

employees were made regular under the said policy, the respondents were also in service before withdrawal of the above stated policy and in view of the Labour Court's award which had attained finality, they were deemed to be in service on 30.9.2003. Hence they were held entitled for regularization as per the policy circular dated 1.10.2003. The Letters Patent Appeal No. 836 of 2013 filed by the State of Haryana was dismissed.

This Court thereafter, while relying upon the above judgment, allowed CWP No. 22743-2013, decided on 16.02.2016 wherein the petitioners were seeking regularization of their service, in view of policy dated 01.10.2003 on the ground that they were in service on 30.09.2003, as the award was passed in their favour.

Reference at this stage can further be made to judgment of this Court in a case of Umrao Singh and another vs. State of Haryana and another, passed in CWP No. 18246-2012, decided on 23.02.2015, wherein petitioners were appointed as School Lecturers in the year 1997 and were relieved in the year 1997 itself. Thereafter, petitioner No. 1 and 2 were offered fresh appointment as Lecturer vide order dated 26.10.2005 but they were not considered for regularization in view of policy dated 01.10.2003. This Court allowed the writ petition and observed as under:-

“There is no dispute with regard to the fact that under the regularization policy dated 1.10.2003 an employee was vested with a right to be considered for regularization upon completing 3 years continuous service as on 30.9.2003 and was to be in service as on 1.10.2003. Both the petitioners having firstly been reappointed as Lecturers vide orders carrying even date i.e. 26.10.2005 at Annexures P-2 and P-3 and subsequently having been granted the benefit of continuity in service vide order dated 19.5.2006, passed by the Commissioner and Director General,

School Education, Haryana at Annexure P-4 would be deemed to be in service w.e.f. their initial appointment relating back to the year 1997. The objection raised on behalf of the State as regards the petitioners not having completed 3 years continuous service as on 30.9.2003 and not being in service on 1.10.2003, is wholly untenable. Such a stand, if, accepted would amount to negating the relief granted by the respondent authorities themselves by virtue of the order dated 19.5.2006 at Annexure P-4, whereby the benefit of continuity in service stood granted.

*Even the objection with regard to the regularization policy dated 1.10.2003 having already been withdrawn is wholly fallacious. The petitioners having been granted the benefit of continuity in service vide order dated 19.5.2006 at Annexure P-4, their rights, as such, stood crystalized much prior to the subsequent notification dated 13.4.2007, whereby the regularization policy dated 1.10.2003 had been withdrawn. By a deeming fiction they would be considered to be in service in the year 2003. Such notification dated 13.4.2007 could only have prospective operation and cannot take away the vested right of the petitioners which relates back to the year 2003 itself. In taking such view I would draw support from a judgement dated 28.5.2014 rendered by a Coordinate Bench of this Court in **CWP No.10017 of 2011** titled as **Khajan Singh and others Vs. State of Haryana & others.***

In the present case as well, firstly the petitioner was appointed on daily wage basis on 11.09.1997 and after his termination on 01.06.2004, he raised Industrial dispute before the Labour Court and the Labour Court vide award dated 21.03.2012 (Annexure P1) reinstated him into service with 50% back wages. Against the award, the writ petition as well as LPA filed by the the respondent-department was dismissed. The right of regularization of the services of the petitioner had accrued much prior to issuance of

notification dated 18.06.2014.

The ratio of LPA No.836 of 2013 is directly applicable to the facts of the present case. After reinstatement of the petitioner in service, for all intents and purposes, his case was fully covered as per policy dated 01.10.2003 (P-6). Having regard to the aforesaid, the issue involved in this petition is squarely covered by judgment in ***Mohammad Farookh's case (supra)*** bearing LPA No.836 of 2013, therefore the present writ petition is allowed along with consequential benefits. The services of the petitioner is ordered to be regularized w.e.f 01.10.2003. The petitioner is entitled to arrears @ 6 per cent per annum from March, 2017. This exercise shall be completed within a period of four months and this Court be informed of the order passed.

(RITU BAHRI)
JUDGE

29.01.2020

G Arora

Whether speaking/reasoned
Whether reportable

Yes
No