

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

1. CWP No. 26455-2017

Madan Lal

...Petitioner

versus

State of Haryana and others

...Respondents

2. CWP No. 921-2018

Uggarsain

...Petitioner

versus

State of Haryana and others

...Respondents

Date of decision : 22.01.2020

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Dharamveer Phour, Advocate
for the petitioner (s).

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

RITU BAHRI, J.

This order shall dispose of the above two petitions as common question of facts are involved in the above petitions wherein petitioners are seeking direction to the respondents to regularise their services in terms of policy dated 01.10.2003 or from the date the services of junior to them, have been regularized. However, for facility of reference the facts are being taken from CWP No. 26455-2017.

Petitioner was appointed as P.R. Chowkidar on daily wages basis on 08.05.1999 by the respondent-department. His services were terminated and he raised Industrial dispute before the Labour Court and the

Labour Court vide award dated 12.04.2005 (P-1) passed the award in his favour and the petitioner was held entitled to reinstatement with continuity of service benefits along with 50% back wages from 12.06.2000. Against award dated 12.04.2005, the department filed CWP No. 19149-2005 which was dismissed on 08.12.2005 (P-2). The department filed SLP No. 7777-2006 before Hon'ble the Apex Court, which was also dismissed on 11.03.2008 (P-3) and the petitioner was reinstated on 24.07.2008

After reinstatement in service, the petitioner made claim for regularization in view of policy dated 01.10.2003, vide legal notice dated 20.04.2017.

On notice of the petition, a reply was filed on behalf of respondent Nos. 1 to 3 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. Further it has been submitted that the respondent had already withdrawn orders of regularization of Mr. Sushil Kumar vide order dated 28.02.2018 (R-1).

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 (P-10). Learned State counsel has further argued that the petitioner is claiming regularization on the ground that services of junior to the petitioner has been regularized but now the respondent-department has withdrawn the regularization order of Mr. Sushil Kumar vide order dated 28.02.2018 (R-1) and thus the present petition deserves to be dismissed.

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 SLP 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 1999.

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.

In the present case as well, firstly the petitioner was appointed on 08.05.1999 as P.R. Chowkidar on daily wages basis and after his termination, he raised Industrial dispute before the Labour Court and the Labour Court vide award dated 12.04.2005 (P-1) reinstated him into service with 50% back wages. Against the award, the writ petition as well as SLP filed by 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 respondent-State cannot take benefit of the fact that regularization order of Mr. Sushil Kumar has been withdrawn, vide order dated 28.02.2018 (R-1), as the petitioner has been working since 08.05.1999.

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 (Annexure P-7). 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. The services of the petitioner is ordered to be regularized w.e.f 01.10.2003. The petitioner is entitled to notional fixation of pay w.e.f 01.10.2003. The arrears will be restricted to 38 months.

(RITU BAHRI)
JUDGE

22.01.2020
G Arora

Whether speaking/reasoned	Yes
Whether reportable	No