

(225) **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CM Nos.11273 & 11276 of 2019 in/and
CWP No.1042 of 2017 (O&M)
Date of decision: 12.03.2020

Ramesh Kumar Petitioner

Versus

State of Haryana and Ors. Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Ms. Abha Rathore, Advocate for the petitioner.
Mr. Harish Rathee, Sr. DAG, Haryana.
Mr. Arvind Seth, Advocate for respondents.

B.S. Walia, J. (Oral).,

CM No.11273 of 2019

Allowed as prayed for.

CM No.11276 of 2019

Allowed as prayed for. Written statement along with annexure's is taken on record.

Main case

[1] Prayer in the petition under Article 226/227 of the Constitution of India is for the issuance of a writ of Certiorari / Mandamus for modifying order, Annexure P/3 dated 20.10.2014 and to regularize the petitioner under regularization policy, Annexure P/7 dated 01.10.2003.

[2] Brief facts of the case leading to the filing of the writ petition are that the petitioner was appointed as Tubewell Operator on daily-wages on 01.01.1996 and worked continuously under respondent No.4. However, on 31.01.1997 services of the petitioners were terminated. The petitioner served a demand notice under Section 2-A of the Industrial Disputes Act, 1947 on 13.06.2006 challenging his termination and seeking reinstatement with full back-wages vide Annexure P/1 dated 25.02.2011. Award was passed by the Industrial Tribunal-cum-Labour Court, Panipat reinstating the petitioner with continuity of service and 50% back wages with effect from the date of demand notice i.e. 13.06.2006. In compliance of order Annexure P/1, respondent No.4 took the petitioner back on duty, where after the petitioner submitted a representation for regularization of his service and was regularized vide order, Annexure P/3 dated 20.10.2014 w.e.f. 18.06.2014 although claim was for regularization w.e.f. 01.10.2003.

[3] Learned counsel for the respondents on the other hand by referring to preliminary submission No.4 of the written statement contends that the petitioner has nowhere pleaded in the writ petition of his fulfilling the conditions as envisaged in policy dated 01.10.2003 and that in the circumstances, no case is made out warranting interference with the regularization of the petitioner in service w.e.f. 18.06.2014.

[4] Learned counsel for the petitioner on the other hand contended that the petitioner was appointed as Tubewell Operator on daily-wages on 01.01.1996 and worked continuously till 31.01.1997 whereupon his services were terminated. However, termination order was held to be legally unsustainable and was set aside vide award Annexure P/1 dated 25.02.2011 and the petitioner was ordered to be reinstated in service with continuity of service with 50% backwages w.e.f. date of demand notice i.e. 13.06.2006.

Learned counsel for the petitioner has referred to paragraph No.2 of policy, Annexure P/7 dated 01.10.2003. Relevant extract of the same is reproduced as under:-

“2. Daily – Wage Employees (Group – C) :-

That only such daily wage employees who have completed three years service on Group – C posts on 30th September, 2003 shall be regularized against their respective Group – C posts, provided they fulfill the requisite qualification and were originally appointed against vacant posts. Provided further, that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days.”

[5] Learned counsel for the petitioner contends that since termination of service of the petitioner on 31.01.1997 was held to be illegal vide award, Annexure P/1 dated 25.02.2011 and the petitioner was reinstated with continuity of service and 50% backwages w.e.f. date of demand notice i.e. 13.06.2006, the petitioner fulfills the requisite qualifications inasmuch as on account of setting aside of illegal order of termination, the petitioner would complete three years of service on 30.09.2003 and would be deemed to be in service on said date, besides, the petitioner was originally appointed against a vacant post and had also worked for a period of 240 days where after in view of his termination having been set aside and the petitioner

having been reinstated with continuity in service, he would be deemed to have completed 240 days service in each year.

[6] Admittedly, the petitioner joined service on 01.01.1996 and continued uninterruptedly till his termination on 31.01.1997. However, the termination of service of the petitioner was declared to be unsustainable vide award Annexure P/1 dated 25.02.2011 and the petitioner was ordered to be reinstated in service with continuity and 50% backwages w.e.f. date of demand notice i.e. 13.06.2006. The petitioner had completed 240 days of service in the year 1996-97. Thereafter once termination order was set aside, the petitioner shall be deemed to have worked for a minimum period of 240 days in each year till 30.09.2003. Since it is the claim of the petitioner that he fulfills the requisite qualifications and was originally appointed against a vacant post, the petitioner is entitled to be considered for regularization w.e.f. 01.10.2003 in accordance with the policy, Annexure P/7.

[7] At this stage, learned counsel for the respondents seeks liberty for the respondents to pass a fresh order with regard to the claim of the petitioner for regularization in terms of policy, Annexure P/7 dated 01.10.2003 after taking into account all aspects of the matter as also by taking into account as to whether the petitioner fulfills the requisite conditions for regularization as stipulated in the regularization policy with effect from the date claimed.

[8] The same satisfies learned counsel for the petitioner.

[9] In the light of the position as noted above, the writ petition is disposed of by granting liberty to the respondents to consider and decide the claim of the petitioner for regularization in terms of policy, Annexure P/7

expeditiously as possible preferably within a period of three months from the date of receipt of certified copy of this order. In case the petitioner is found entitled to grant of regularization w.e.f. 01.10.2003, the order regularizing the petitioner w.e.f. 18.06.2014 would accordingly be modified and the petitioner entitled to the benefits as per law.

(B.S. Walia)
Judge

12.03.2020
amit

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