

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

**CWP-19793-2017 (O&M)
Date of Decision: April 20, 2021**

Bhoop Singh (since deceased) through his LR

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Alka Chatrath, Advocate,
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana,
for the respondents.

ARUN MONGA, J.

CM-11836-CWP-2018:

For the reasons stated in application, same is allowed.

Consequently, Annexures P-21 to P-23 are taken on record.

CM-18986-CWP-2019:

Instant application is to bring on record Legal Representative/widow of the petitioner-Bhoop Singh who died during pendency of writ proceedings on 23.10.2018. For the reasons stated therein, application is allowed. Amended memo of parties is taken on record.

CWP-19793-2017:

1. Indulgence sought from this court for mitigation of petitioner's grievance, appointed as a Mali-cum-Chowkidar on 03.02.1988 on daily wages, inter alia, is for issuing a writ of mandamus directing regularization of his services w.e.f. 31.01.1996, by implementing policy instructions dated

07.03.1996 and 18.03.1996 (Annexures P-4 and P-5), along with all consequential benefits arising there from.

2. Petitioner, unfortunately died on 23.10.2018 during pendency of instant petition, before he could get to know the final fate thereof. Just before his death, he did have a sigh of relief though, when on 04.10.2018 claim for regularization of his services was allowed by a common judgment in the first round of same very writ proceedings. Said common judgment dated 04.10.2018 was rendered by a co-ordinate bench in bunch of petitions qua a set of employees seeking regularization. However, in an intra court appeal, appellate bench remanded the entire bunch, to be decided afresh, after segregating the petitions individually, leading thus to the second foray herein. Petitioner's widow-legal representative is currently pursuing the cause.

3. Brief factual narrative first, shorn of unnecessary details. Petitioner since the day of his appointment i.e. 03.02.1988, worked on daily wages as a Mali-cum-Chowkidar in the Public Health Department. However, due to unauthorized absence from work, allegedly on account of illness, his services were brought to an end on or about 29.05.1993, when he was not permitted to resume work on reporting back. Subsequently, vide a Labor Court award dated 10.04.2000 (Annexure P-1), it was ordered that he be reinstated with continuity of service and full back wages. The aforesaid award was challenged through CWP No. 15175 of 2000, which was dismissed vide Single Bench judgment dated 17.09.2009 (Annexure P-2), albeit with the modification that back wages of petitioner were restricted to 50%. Single Bench judgment was further challenged in LPA No. 1312 of 2010, which too was dismissed. Notwithstanding, the petitioner was not allowed to join. Compelled, he filed a

contempt petition before this court. It was only thereafter, he was allowed to rejoin duty on 01.02.2011, that too on muster roll basis. He was also paid 50% back wages i.e. a sum of Rs. 99,278/-.

4. Petitioner has pleaded that his services ought to have been regularized by the respondents in terms of policy instructions dated 07.03.1996 (Annexure P-4) read with instructions dated 18.03.1996 (Annexure P-5).

5. Instructions dated 07.03.1996 (Annexure P-4) issued by the State, qua regularization of services of work charged/casual/daily rated employees, contemplate that those who had completed five years services as on 31st January, 1996 and were in service as on that date, were to be regularized. Provided, in the preceding years, they had worked for a minimum period of 240 days in each year and the break in service in any year was not more than one month at a time.

6. Aforementioned instructions dated 07.03.1996 were later modified further vide Annexure P-5, dated 18.03.1996. Scope of regularization was enlarged to larger section of employees. It was instead decided that whoever had completed three years of service as on 31.01.1996 and fulfilled the conditions laid down in the instructions dated 07.03.1996 (Annexure P-4), shall be regularized.

7. To seek benefit of the aforesaid twin-set policy instructions, petitioner relied on his admitted service record (as deposed by SDO before the Tribunal) to claim that he had worked for 6 continuous years, till his services were initially discontinued, as detailed hereunder:-

Year	No. of days worked
1998	169
1989	356

1990	303
1991	296
1992	242
1993 (worked upto 29.05.93)	181 (sic)

As already stated, on 10.04.2000 (Annexure P-1), it was ordered that he be reinstated with continuity of service.

8. Despite being backed up as above, his repeated requests seeking regularization did not yield any result. He then served a legal notice dated 07.03.2017 (Annexure P-13) but to no avail. Hence, the instant petition.

9. When this petition came up for consideration on 16.04.2018, speaking for this court, my learned Brother Arun Palli, J. observed as under :

“Contends that the petitioner was employed as Mali-cum-Chowkidar on 03.02.1988. But his services were brought to an end on 29.05.1993. Vide award, dated 10.04.2000, the Labour Court ordered his reinstatement with continuity of service and full back wages. However, in a writ petition preferred by the State, this Court, vide order and judgment, dated 17.09.2009 (Annexure P-2), modified the award, and the back wages awarded to the petitioner were restricted to 50%. Concededly, the award rendered by the Labour Court has since attained finality, and the petitioner was reinstated into service. Meaning thereby, he has over 30 years of service as of today. Learned counsel for the petitioner in reference to the regularization policy, dated 07.03.1996 (Annexure P-4), submits, that all those employees who had rendered five years service as on 31.01.1996, their services had since been regularized by the respondents. And, therefore, the claim of the petitioner too ought to have been considered likewise.

Faced with this, learned State counsel prays for a short accommodation, to furnish a specific affidavit, and explain as to how in the given situation, the petitioner could be denied the relief prayed for.”

10. Pursuant to aforesaid order dated 16.04.2018, an affidavit dated 09.05.2018, was filed by the respondents. Stand taken in para Nos. 1 and 2 of the said affidavit is as below :

- “1. *That the petitioner was employed as casual labour on daily basis as Mali Cum Chowkidar, but the services of the petitioner were brought to end, due to his absence on the service. The petitioner moved to Hon’ble Labour Court. Vide award dated 10.04.2000, the Hon’ble Labour Court ordered that Sh. Bhoop Singh be reinstated with continuity of service, along with 100% back wages. However in a CWP No. 15175 of 2009 filed/preferred by the State, against the order of Hon’ble Labour court, the Hon’ble High Court of Punjab & Haryana, modified the award on dt. 17.09.2009 to the extent that the back wages awarded to petitioner be restricted to 50%. According to the judgment of Hon’ble Court, the petitioner was reinstated on his previous post and the arrear of back wages was also paid to the petitioner vide cheque No. A541374 dt. 13.02.2012 amounting to Rs. 99,978.00*
2. *That the service of the petitioner could not be regularized as per the policy of 07.03.1996 due to his absence & non fulfillment of other necessary conditions/qualifications mentioned in the policy. Further, case of petitioner was also subjudice in the Hon’ble Labour Court. The petitioner could not be regularized under the policy of 01.10.2003 as well, for the same reason. Further the CWP No. 15175 of 2009 against the petitioner, was pending/subjudice in the Hon’ble High Court of Punjab & Haryana, which got its finality on 17.09.2009 according to which the petitioner was reinstated on his previous post and given 50% back wages.”*

(emphasis supplied)

11. Subsequently, vide an order dated 04.10.2018 passed by my learned Sister Ritu Bahri, J. this petition was allowed, in terms of the common judgment rendered in CWP No. 2009 of 2016, titled as “Balwinder Singh and others v. State of Haryana and others”. However, as already mentioned above, the said order along with common judgment was assailed by the respondent State by filing various LPAs, which were allowed by the Letters Patent Bench vide order dated 18.03.2019, remanding the matter back for a decision afresh.
12. In the second round of writ proceedings, vide an order dated 05.02.2020, this court once again, *inter alia*, directed the official respondents to

file specific affidavit of respondent No. 2, clarifying as to how and why case of the petitioner was not considered for regularization. Said order is reproduced below for ready reference :-

“ Mr. Harish Nain, Assistant Advocate General, Haryana accepts notice on behalf of the non-applicant/official respondents and will file specific affidavit of respondent No.2 clarifying that pursuant to the award dated 10.04.2000 (Annexure P-1) why the case of the petitioner was not considered for regularization as per policy dated 07.03.1996 (Annexure P4). The petitioner had also expired on 23.10.2018. Respondent No.2 will also clarify in the affidavit whether any compassionate assistance has been granted to the family members of the petitioner. List on 15.04.2020.

05.02.2020

*Sd/-
(RITU BAHRI)
JUDGE”*

13. Pursuant to above order, an affidavit dated 15.04.2021, has been filed by respondent No. 2, para 3 and 4 whereof read as under:-

“3. That in compliance of the Hon’ble Court order dated 05.02.2020, and 18.02.2021, it is respectfully submitted that the case of the petitioner was examined thoroughly by the competent authority and after examining the same, it is found that the case of the petitioner with respect to the compassionate assistance is covered under the instruction dated 28.07.2016 issued by the Chief Secretary to Govt. of Haryana and compassionate financial assistance to the family of the deceased amounting to Rs. 3 lakhs has already been released vide EPS No. 0706023324 dated 08-04-2021, copy of which is annexure R-1. Whereas, with respect to the second query made by this Hon’ble Court vide order dated 05.02.2020, it is respectfully submitted that the case of the petitioner was not covered under the policy dated 07.03.1996 (annexure P-4), as the petitioner was not fulfilling the term and condition of the policy and on the basis of that the claim of the petitioner has not been entertain, it is further respectfully submitted that the petitioner was not in service on 31 January, 1996 and as per term and condition of the policy the casual and daily rated employee who have completed 3 years service on 31 January, 1996 and were in service on 31 January, 1996, shall be regularized provided they have worked for a minimum period of 240 days in each year and the brake in

service in any years is not more than one month at a time.

4. *That the Petitioner is not entitled for the relief as claimed, because he was not fulfilling the terms and conditions as prescribed in the policy dated 07.03.1996 (Annexure P-4).”
(Emphasis supplied)*

14. Having heard learned counsel for the parties and after going through the record with their assistance, I shall now proceed to record my discussion and outcome thereof.

15. Pursuant to this court orders dated 16.04.2018 and 05.02.2020, two affidavits dated 09.05.2018 and 15.04.2021, respectively have been filed by the respondents. Ostensible reason of denial of regularization of services in both the affidavits is that as on the cut-off date, i.e. 31.01.1996, petitioner was not in service. He was thus not fulfilling the necessary conditions/qualifications mentioned in the regularization policy dated 07.03.1996 (Annexure P-4). As regards compassionate financial assistance to the family of the petitioner – Bhoop Singh (since deceased), it is stated that an amount of Rs. 3 lakhs has already been released vide letter/order dated 08.04.2021 (Annexure R-1).

16. First, qua the denial of claim of regularization. Respondents’ defense does not stand judicial scrutiny. Reasons are not far to see. A bare perusal of the record of the case itself would show that the benefit has wrongly not been accorded to the petitioner. The stand of the respondents flies in the face of the Labor Court award dated 10.04.2000 (Annexure P-1), vide which the petitioner was held entitled to re-instatement with continuity of service. Meaning thereby, the deserved consequential benefit ensuing out of the same had to be accorded to the petitioner in totality. Needless to say, once the award had attained finality there is no getting away from it and respondents are bound

by all the consequences flowing there from. The only modification made in the award by the learned Single Judge, vide order dated 17.09.2009 (Annexure P-2), was : “.....*The award of the Labour Court is modified only to the extent of back wages by retaining the dispensation for reinstatement that instead of full back wages, 50% of the back wages be given to the workman.*”. Resultantly, the petitioner for all legal purposes has to be considered *de jure* in service as on 31.01.1996, even though *de-facto* he was not in service. He is, therefore, held entitled to benefit of regularization of his services w.e.f. 31.01.1996 on that ground alone. Necessarily, all other benefits accruing therefrom viz. fixation and revision of pay and allowances etc. are also to be accorded to the petitioner once he is to be given the benefit of regularization as on 31.01.1996. Because, he could not have been considered a daily wager anymore.

17. As regards the compassionate assistance, once the petitioner is held entitled to regularization of his services along with all other consequential benefits, there is force in the argument, advanced by learned counsel for the petitioner, that compassionate assistance and other benefits are to be given as per Rule 5 of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short, ‘the 2006 Rules’). The relevant extract of Rule 5 of the 2006 Rules, which prescribes criteria for financial assistance, is reproduced as under:

“5. (1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim -

(a) & (b) XXX XXX

(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.

(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.

(3) to (5) XXX XXX” (Emphasis supplied)

18. Date of birth of the petitioner was 04.07.1970 and he was more than 48 years of age on the date he died i.e. 23.10.2018. Accordingly, his family members are held entitled to financial assistance of *a sum equal to the pay and other allowances for a period of seven years*, to be disbursed/calculated as per what was *last drawn by the deceased employee in the normal course without raising a specific claim*, after adjusting the amount of Rs. 3 lakhs already released on 08.04.2021. The family is also held eligible to receive family pension, if admissible, after completion of the period receipt of financial assistance, as envisaged under Rule 15(2), *ibid*.

19. In the premise, petition is allowed. A writ of mandamus is hereby issued, commanding the respondents to regularize services of the petitioner w.e.f. 31.01.1996, in terms of policy instructions dated 07.03.1996 and 18.03.1996 (Annexures P-4 & P-5), and also accord all the consequential benefits viz. pay fixation/arrears of salary etc. arising there from. Resultantly, if as per applicable Rules, the petitioner is found eligible and entitled to pensionary benefits such as leave encashment, Death-cum-Retirement Gratuity and family pension, the said benefits shall also be duly accorded to the widow of the petitioner. Compassionate assistance to the eligible member(s) of his family shall be also revised/released as per Rule 5 of the 2006 Rules. Needless

to say, amount of Rs. 3 lakhs, already disbursed towards compassionate assistance on 08.04.2021, shall be adjusted against the dues/arrears payable to the legal representative(s) of the petitioner.

20. Financial benefits qua regularization of services of the petitioner shall be calculated and disbursed to the LRs within a period of 60 days from the date the competent authority receives a web-print of the instant order, along with interest @ 7% per annum, to be calculated from the due date of accrual, till actual payment thereof. Interest on the balance amount of compassionate assistance shall be calculated from the date of death of the petitioner, i.e. 23.10.2018 @ 7% per annum till the actual date of disbursement.

21. Allowed in above terms along with cost of litigation, which to say the least, was completely needless but yet the petitioner was compelled into it. Costs are moderately assessed as Rs.50,000/-, to be paid to the widow of petitioner along with other dues.

(ARUN MONGA)
JUDGE

April 20, 2021

Pk Kapoor

Whether Speaking/Reasoned:

YES/NO

Whether Reportable:

YES/NO