

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

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**CM-828-LPA-2020 in/and
LPA No.310 of 2020 (O&M)
Decided on: 21.04.2022**

Punjab Small Industries and Export Corporation Limited and another

... Appellants

Versus

Tarvinder Kumar and another

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Sanjiv Gupta, Advocate and
Mr. Gaurav Singla, Advocate for the appellants.

G.S. Sandhawalia, J.(Oral)

CM-828-LPA-2020

Application for condoning the delay of 63 days in filing the appeal has been filed.

For the reasons mentioned in the application, duly supported by affidavit of the official, the same is allowed. Delay of 63 days in filing the appeal is condoned.

CM stands disposed of.

LPA-310-2020 (O&M)

The present letters patent appeal is directed against the order dated 29.10.2019 of the learned Single Judge passed in **CWP No.15901 of**

2016 'Tarvinder Kumar Vs. State of Punjab and others'. The learned Single Judge directed the appellant-Corporation to consider the case of the writ petitioner for regularization of services on parity with his juniors, who had been regularized while working on the post of work charge/daily wager. It was further directed that the benefit has to be given from the date when his juniors were accorded the said benefits alongwith all consequential past pecuniary benefits arising therefrom for 38 months prior to filing of the writ petition alongwith interest @ 7% per annum with effect from the date of entitlement till the actual date of disbursement.

2. The reasoning given by the learned Single Judge is that hostile discrimination as such had been done against the respondent/writ petitioner as work charge/daily wager had been regularized by the Corporation after obtaining requisite approval from the State Government. It was noticed that he was senior while referring to the order of the Coordinate Bench dated 22.09.2010, whereby the Award in favour of the said employee was upheld by noticing that daily wagers employees after 27.10.1988 were still working with the Corporation, whereas his services had been dispensed with in the year 2001. It was also noticed that there were Policy Instructions dated 23.01.2001 (Annexure P-1) for review of the policy of regularization of work-charge/daily wagers and other categories of employees, who had completed 3 years of service and, therefore, the writ petitioner was also entitled for the benefit of the

said instructions, since those who were working on work charge basis, though employed after the writ petitioner, had been regularized.

3. Counsel for the appellant has mainly tried to distinguish the case of the writ petitioner on the ground that it was a contractual employment and the employee would be governed by the terms of the contract, therefore, he could not claim parity with the daily wager/*ad hoc* employee.

4. The said argument is an argument of desperation and we are not willing to accept the same. It is to be noticed that the exploitation of the writ petitioner is patent on the face of the record by a Government Corporation, who had employed him way-back on 27.10.1988 as a T-Mate. His services had been terminated on 22.06.2001 and he had preferred a reference before the Labour Court, in which he was successful. The defence of the Corporation that it was a contractual employment and, therefore, he was not liable to be reinstated, was rejected. It was noticed by the Labour Court that the employee had worked for more than 12 ½ years before the termination of the services and there were short breaks, which were borne from the cross-examination of the management witness. The juniors had been retained, but his services had been terminated under the garb of contractual employment. Resultantly, it was held that the provisions of Industrial Disputes Act, cannot be allowed to be used as a tool of exploitation. It was also noticed that the

provident fund of the workman had been deducted from 1990 to 1995 continuously and in such circumstances, reinstatement had been directed with 50% back-wages.

5. The writ petition bearing CWP No.1580 of 2010 filed by the appellant-Corporation, was dismissed on 22.09.2010 (Annexure P-5) by noticing the above facts and the fact that daily wagers employed after 27.10.1988 are still working with the Corporation. It has been specifically pleaded in the writ petition regarding the factum that vide order dated 26.02.2013 recommendations for regularization for 57 work charged and 322 daily wagers employees of the appellant-corporation was done.

6. A perusal of the said annexure would go on to show that the Finance Department of the Punjab Government had given sanction for the same. These facts have been pleaded in paragraph No.8 of the writ petition and in the reply filed by the Corporation, it has been admitted that employees were to be regularized on the basis of fulfillment of conditions of service as stated in Government instructions dated 01.06.2001.

7. A perusal of the Instructions dated 23.01.2001 (Annexure P-1) also goes on to show that the Corporation was under legal obligation to prepare the list of work charged/daily wage and other categories of employees, who had completed 3 years and consider the case of regularization of such employees against the available regular vacancies. Apparently, the said exercise was not

done in the case of the writ petitioner.

8. Thus, the findings recorded by the learned Single Judge cannot to be held to be suffering from any illegality or irregularity, which would warrant interference in the present letters patent appeal. Resultantly, we are of the considered opinion that no case is made out entertain the present appeal and the same is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

April 21, 2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No