

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

**CWP NO. 13425 OF 1997
DATE OF DECISION: 21.04.2022**

Rajinder Prasad and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Abha Rathore, Advocate,
for the petitioners.

Mr. R. K. S. Brar, Addl. AG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioners are before this Court aggrieved against their regularization from a date after agreed date of 01.05.1992 and seek a writ in the nature of Mandamus and/or otherwise appropriate orders directing the respondents to regularize their services w.e.f. 01.05.1992 along with the consequential benefits.

2. Succinct facts first. Petitioners were appointed as daily wager/helper with Haryana Roadways depot at Bhiwani and they all belong to technical category having been appointed on their respective posts on different dates in the year 1988/1989 as more particularly stated in Para-2 of the writ petition. The dates of their appointments are not of much consequence at this stage, as the controversy to be adjudicated is *qua* non-implementation of a

settlement agreement arrived between them and the respondents as more particularly stated hereinafter.

3. Vide settlement agreement dated 01.06.1992 arrived between the Transport Department and the Recognized Workers Union of the Transport who executed the aforesaid settlement on behalf of the petitioners, it was *inter alia* decided that subject to the petitioners' having completed 240 days on daily wage service, they would all be interviewed by departmental committee and those who are found suitable and excel shall be appointed to their respective posts on regular basis w.e.f. 01.05.1992. Relevant extract of settlement agreement has been reproduced in Para-3 of the writ petition. For ready reference, Para-3 of the writ petition is reproduced herein below:-

“3. That a settlement was arrived at between the Transport department and the Recognised Workers Union of the Transport. The relevant translated portion of the settlement is reproduced below:-

“This settlement was arrived at between the management of transport Department and the recognized workers Union of the transport Department (Haryana Roadways Workers Union) on 1.6.92 through mediation of D.L.C.:

<i>Officers of Transport Deptt.</i>	<i>Office holders of Haryana Roadways workers Union</i>
<i>1. Shri R.S. Gujral, I.A.S. Transport Commissioner</i>	<i>1. Sh. Ram Bhagat Pradhan</i>

2. Sh. Dalel Singh, Gen. Secy.

The details of the settlement are as under: -

- 1.*
- 2. Regularisation of those who have completed 240 days daily wage service: -*

It has been decided that the results of all those employees belonging to the technical category working on daily wage, who have been interviewed by the department Committee, shall be declared soon. All those who excel shall be appointed to suitable posts. These employees will be considered regularized from 1.5.1992.

The proceeding as regards the regularization of those daily wage employees who belong to no- technical and other categories shall be commenced on the 2nd stage.

3.

13.

Sd/-

Dalel Singh Dahiya
General Secy. 1.6.92

Sd/-

(Ram Bhagat) President
1.6.92

Sd/-

(Vice President)"

4. In response to the aforesaid Para-3 of the petition, following is the response given in the written statement filed by General Manager of Haryana Roadways Department:

"3. That para No.3 of the writ petition is admitted."

5. Likewise Para-5 of the writ petition which is also relevant and the corresponding response thereto are reproduced herein below:-

"5. That all the petitioners appeared in the interview holding by the departmental Committee on 16.3.92 they were all selected. Their names figure in the list of candidates who passed the test."

6. In response to the aforesaid Para-5 of the petition, following is the response given in the written statement filed by General Manager of Haryana Roadways Department:-

"5. That para No.5 of the writ petition is admitted."

7. The question that arises now is that having once entered into a settlement agreement which is in no uncertain terms admitted

in the written statement filed by the General Manager, Haryana Roadways as well as the factum that the petitioners had indeed appeared in the interview held by the departmental committee and were all selected as stated in Para-5 of the written statement which too has been candidly admitted in the written statement in corresponding paras, can the respondents now belatedly not only go back on the settlement agreement and try to negate the same on the ground that even though there was a mutual agreement with regard to their date of regularization but since there was no vacancy on regular post as on 01.05.1992, therefore, petitioners were accorded regularization subsequently when the vacancies arose i.e. 01.02.1996 ?

8. Before adverting to the defence *qua* vacancy, it would be relevant to refer to Section 29 of the Industrial Disputes Act, 1947 (for short 'ID Act'), which is reproduced as below:-

“29. Penalty for breach of settlement or award.- Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both 2[and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first] and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid by way of compensation, to any person who, in its opinion, has been injured by such breach.”

9. Perusal of the above leaves no manner of doubt that the settlement arrived between the parties was under the ID Act as admittedly the settlement in question was arrived pursuant to the

mediation/conciliation proceedings initiated by The Deputy Labour Commissioner as has been stated in the settlement agreement itself. And therefore, it is nobody's case that the aforesaid provision of the ID Act is not attracted. Being so, I am of the opinion that on that short ground alone, writ petition deserves to be allowed.

10. Adverting now to the defence of the respondents that there was no vacancy available, same is also belied by the administrative orders contained at Annexures P-3 to P-7, vide which services of certain other employees who were regularized though under a subsequent regularization policy dated 27.05.1993. The factum of their regularization proves that vacancies were available and yet the petitioners were not given the benefit thereof. It is not relevant as to how the certain other employees were regularized prior to the regularization of the petitioners particularly when there was a settlement which came in the nature of award having been mutually arrived after the conciliation proceedings under the ID Act. The settlement is akin in the nature of award as borne out from Section 18(3) of the ID Act, which reads thus:

“18. Persons on whom settlements and awards are binding.- (1) xxxxxx

(2) xxxxxxxxxxxx

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of Section 10A] or an award of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal], as the case may be, records

the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause(b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

11. Furthermore the moonshine defence has been taken in the reply filed to the replication of the petitioners that they were since not eligible to be regularized in terms of the subsequent regularization policy dated 27.05.1993 as they had not completed 5 years of continuous service. This plea is completely insignificant as what is to be seen is the implementation of the settlement arrived between the parties. And in any case, once the settlement had been arrived, the same could not have been revoked or negated by virtue of subsequent regularization policy, saying that the case had to be considered afresh.

12. Learned State counsel strenuously argues that writ petition is barred by principle of *res judicata* owing to the petitioners having earlier resorted to previous round of litigation vide CWP-9970-1994 which was disposed of vide order dated 06.05.1996, which reads as under:-

“Mr. Sethi, on the basis of letter dated 3.5.1996 which is taken on record, candidly concedes that the service of 31 petitioners have been regularized and the cases of eight petitioners are under active consideration. He further states that remaining four petitioners have been transferred from Hissar Depot.

In view of the above position, this writ petition has become infructuous and is disposed of as such. In case the petitioners still have any grouse, they may represent to the respondents for the removal of their grievances.”

13. Having perused the aforesaid order, I am not inclined to agree with the argument canvassed by the learned State counsel. The above order itself is self-speaking and makes it amply clear that the writ petition was disposed of summarily without dealing with the merits of the case merely because the letter was produced in course of hearing stating that the services of the petitioners had been regularized. As regards the date of regularization, there is not even a remote whisper and/or discussion of any kind and in fact Division Bench then seized of the matter being conscious of the same in the parting stated that petitioners are at liberty to file appropriate representation in case any grievance still out survives. In terms thereof, they represented vide Annexure P-2, receipt of which though had been denied in the written statement. However, learned counsel for the petitioner has placed on record a postal Acknowledgement Receipt which is day after the date of the representation, and therefore, a legal presumption has to be drawn that the same was duly delivered in the office of the Haryana Roadways from where acknowledgement receipt was received in the office of learned counsel for the petitioner. Said receipt is taken on record and marked as Annexure ‘A’ as a part of the writ petition.

14. As an upshot of the above, the instant writ petition is allowed and the respondents are directed to accord regularization of services to the petitioners with effect from 01.05.1992 in terms of the

settlement agreement *ibid* . All consequential benefits be also accorded to the petitioners along with arrears of pay to be calculated with interest at the rate of 5% per annum with effect from the date the same became due and payable till the actual payment.

(ARUN MONGA)
JUDGE

April 21, 2022
Shalini

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