

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

CWP No. 12961 of 1999 (O&M)

Date of decision: 04.02.2022

Shri Jogi Ram	Versus	...Petitioner
State of Haryana and others		...Respondents

Coram : **Hon'ble Mr. Justice Arun Monga**

Present : Mr. Rajesh Garg, Senior Advocate with
 Ms. Neha Matharoo, Advocate, for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Arun Monga, J. (oral)

Prayer in the present writ petition is for regularization of services of the petitioner and granting regular pay scale on and of the post of 'welder' with effect from the date of his initial appointment i.e. 01.12.1983 alongwith all other consequential benefits.

2. Succinct facts first. Petitioner was initially appointed on 01.12.1983 on contract as welder on daily wage basis in Haryana Roadways Workshop at Hisar. His contract was extended from time to time. However, his services were terminated on 01.07.1984. Termination order was challenged before the Labour Court. A settlement was arrived at and the petitioner was reinstated with continuity of service on contract basis w.e.f. 01.07.1986.

3. On 25.03.1992, the petitioner appeared for interview before the Technical Committee set up for regularization of daily wage employees. The said committee found the petitioner fit and his name was recommended for

regularization on the post of Assistant Welder, which is a semi-skilled post, even though the petitioner was appointed and working as Welder continuously from 01.12.1983. The services of the petitioner were not regularized on the post of Assistant Welder inspite of the recommendations of the Technical Committee. On the other hand, services of the persons junior to him were regularized. Whereas, the petitioner, instead of promotion, was demoted from Welder to Assistant Welder with effect from 01.05.1992. He was also transferred from Hisar to Kurukshetra on 03.11.1992 as Assistant Welder on daily wages.

4. Petitioner represented the respondents from time to time. He was assured that as and when the posts become available, his services would be regularized. The posts were not in existence due to financial restraint imposed by the Finance Department, Haryana. But the respondents regularized the services of the persons junior to the petitioner and even promoted to them at higher posts in various depots. The petitioner was ignored without any fault, charge, enquiry and show cause notice. More specifically, Shri Ram Phal son of Shri Vijay Singh and Shri Jai Singh were promoted from the post of Helper to Assistant Welder and Devinder Singh from Assistant Welder to Welder vide order dated 15.02.1993 (Annexure P-3).

5. The services of the petitioner were later regularized as Helper Welder, which is a post of unskilled labour, vide order dated 06.01.1994 (Annexure P-4), whereas the Technical Committee recommended him to be regularized as Assistant Welder on 01.05.1992. Subsequently, vide order dated 14.08.1996 (Annexure P-5) petitioner was also promoted as Assistant Welder from the post of helper welder in the pay scale of Rs. 950-1400.

6. Petitioner served a legal notice dated 27.07.1998 (Annexure P-7) through his counsel *inter-alia* alleging that he was working as welder but was illegally and arbitrarily made Assistant Welder and then Helper Welder in the year 1994. Whereas, junior persons were promoted from the date of their joining and granted pay scales. He prayed for grant of pay scale of Welder from the date of his initial appointment on 01.12.1983 with all consequential benefits including arrears of pay on account of revision of pay scales. As his legal notice was not decided, the petitioner approached this Court vide CWP No. 17454 of 1998, which was disposed of vide order dated 13.11.1998 with the direction to the respondents to take action on the legal notice within a period of 3 months. The same was rejected by the respondents vide impugned order dated 23.02.1999 (Annexure P-9). Hence, the writ petition.

7. In the return filed by the respondents, the petition has been resisted *inter alia* on the ground that as per Government instructions dated 03.12.1993 issued for regularization of services of the daily wage employees, the services of the petitioner could not be regularized as there was no vacancy of Assistant Welder on 31.03.1993. It was submitted that the petitioner was appointed as Black Smith on daily wage basis on 01.12.1983 in Haryana Roadways, Hisar. There was no policy issued by the Government for regularizing the services with effect from 01.12.1983. The Haryana Government issued instructions on 03.12.1993 for regularization of the services of the daily wage employees, who had completed 5 years of service on daily wage basis on 31.03.1993. In compliance to the instructions of the Haryana Government, the services of the petitioner were regularized as Helper Welder with effect from 06.01.1994. Order dated 06.01.1994 was not challenged by him. Once he has accepted the order of his regularization on the post of Helper Welder, writ ought to be

dismissed. Also, he was promoted to the post of Assistant Welder on 14.08.1996 on the basis of seniority. The said promotion order has been duly accepted by him. Thus, he is stopped from claiming pay scale of Helper.

8. As regards regularization of persons junior to the petitioner is concerned, it is the stand of respondents that since the petitioner was transferred to Kurukshetra Depot, therefore, his services could not be regularized along with juniors working with him at Hisar depot. It is further submitted that the seniority of the Assistant Welders is maintained at the depot level.

9. I have heard the rival contentions of learned counsel for the parties, perused the record appended with the writ petition and return filed thereto.

10. Petitioner had earlier filed CWP No. 17454 of 1998, which was disposed of by this Court vide order dated 13.11.1998 with a direction to the State Transport Commissioner, Haryana to consider and take action on the legal notice served on behalf of the petitioner within a period of three months from the date of receipt of copy of that order. The respondents rejected the claim of the petitioner vide order dated 23.02.1999 (Annexure P-9), which is impugned herein. The relevant of the said order is extracted as below:-

“The petitioner Jogi Ram was initially appointed as Blacksmith on daily wages basis on 1.12.83 in Haryana Roadways, Hissar. The General Manager, Haryana Roadways, Hissar, vide order No. 6128/R.K. dated 3.11.92 transferred the petitioner to Kurukshetra depot of Haryana Roadways as Asstt. Welder on daily wages basis. The petitioner was declared pass by the screening committee of headquarter in technical test w.e.f. 1.5.92, but due to non availability of post, the services of the petitioner Jogi Ram were not regularized. So far as Sh. Ram Phal is concerned he was initially appointed in 1986 by the General Manager, Haryana Roadways Hissar, as Helper Welder daily wages. Thereafter, Sh. Ram Phal was appointed as Conductor on 25.8.1988 in the pay scale of Rs. 950-1500 by the General Manager, Haryana Roadways Hissar and 11.5.89. He was

redesignated as Helper Welder in the pay scale of Rs. 750-940/- at his own request. Thereafter Sh. Ram Phal was promoted as Asstt. Welder w.e.f. 15.2.93 on the basis of seniority in Hissar depot, Sh. Jai Singh was appointed as Helper daily wages on 19.1.87 in Hissar Depot and not on 25.2.88 and his services were regularized w.e.f. 31.3.93 on completion of 5 years service in compliance of instruction issued by the Transport Commissioner, Hissar (Haryana) vide Memo No. 6897-6910/A6/E3 dated 6.12.93. Sh. Davinder Singh was initially appointed as Car Driver on 1.9.87 and thereafter he was redesignated as Asstt. Welder.

The Govt. of Haryana vide memo No. 6/4/90-2/C.S.T. dated 3.12.93 issued instructions for regularization of services of the daily wages employees. There was no vacancy of Asstt. Welder on 31.3.93 hence the services of the petitioner were not regularized. Thereafter the services of the petitioner were regularized w.e.f. 6.1.94 on the post of Helper vide roder No. 54/RK dated 6.1.94 in compliance of instructions dated 11.5.94 issued by the Govt. wherein it was provided that the employees in group-C who could not be regularised due to non availability of posts in Group-C, their services to be regularised in Group-D. Though Sh. Jogi Ram was appointed as Blacksmith on daily wages basis on 1.12.83. The Haryana Govt. vide memo No.6/4/90-2/C.S.T. dated 3.12.93 with regard to regularization of services of the daily wages employees issued instructions that the services of daily wages employees who completed 5 years services on daily wages basis as on 31.3.93 their services be regularised. In compliance of the instructions of the Haryana Govt., the services of the petitioner Jogi Ram were regularised as Helper Welder w.e.f. 6.1.94 and he was promoted to the post of Asstt. Welder on 14.8.96 on the basis of seniority.

In view of the facts explained above Shri Jogi Ram is not entitled to any benefit from 1.12.83 as claimed in the legal notice dated 27.7.98. Therefore, the legal notice dated 27.7.98 served by Sh. Jogi Ram is without any merit and the same is hereby rejected.”

11. Thereafter, the instant writ petition was filed in the year 1999 assailing aforesaid order. It was admitted on 20.01.2003. During pendency thereof, on 25.09.2018, this Court passed the following order:-

“State to file an additional affidavit as to how the seniority of daily wage helper, Assistant Welder, Blacksmith and Driver were maintained in the Transport Department. In support, they will produce the seniority list of both Kurukshetra and Hisar Depot. State would also produce the recommendations of the Technical Committee transferring the petitioner from Hisar to Kurukshetra. Affidavit would also explain why others were not offered that opportunity to serve on a higher post in Kurukshetra

depot. Affidavit would also state whether seniority is maintained inter se Group 'C' and 'D' post or is it depot wise. It would also reveal whether on transfer to Kurukshetra the petitioner was in receipt of higher wages than he received at Hisar. Documentary proof be produced in that behalf. In addition original record of the petitioner, Rampal, Jai Singh and Devender Singh (Hisar Depot) be produced for perusal of the Court.

List on 26.10.2018.”

12. In compliance of the aforesaid order dated 25.09.2018 passed by this Court, Shri Ravinder P. Pathak, General Manager, Haryana Roadways, Kurukshetra, filed additional affidavit on 19.08.2019. It is stated therein qua wage Helpers, Assistant Welders, Blacksmith and Drivers hired on daily wages, there is no provision for maintaining a seniority list in the Department. However, the seniority lists of the regular Helpers, Assistant Welders, Blacksmith and Drivers are maintained as per provision contained in Rule 11 of the Haryana Transport Department (Group-C), Haryana Roadways Service Rules, 1995 and as per instructions dated 23.05.1995 (Annexure R-1/T), issued by the department in the wake of the decision of this Court in CWP No. 4706 of 1993 and CWP No. 8704 of 1994. The tentative seniority lists of regular Helper Welder, Assistant Welder, Blacksmith and extract of tentative seniority list of Driver of that period have been annexed as Annexures R-2 to R-5, respectively.

13. It is also stated in the additional affidavit that in the year 1992, a committee was constituted by the department for regularization of employees on daily wages basis. On 05.06.1992, the Committee recommended the name of the daily wage employees for regularization. But the Transport Commissioner, Haryana, had directed not to take any action on the recommendations. Vide memo dated 16.10.1992 (Annexure R-7), the Transport Commissioner, Haryana, it was directed that the daily wage workers are to be regularised only

at the same level as there would be discrimination in the case of promotion and regularization of daily wage employees on higher post (on the basis of test) when opportunity for promotion was not provided to the regular worker. Copy of the recommendations of the Technical Committee dated 05.06.1992 transferring the petitioner from Hisar to Kurukshetra are annexed as Annexure R-8.

14. It is also mentioned in the additional affidavit that seniority of Group-D employees is maintained at depot level and seniority of some posts of Group-C employees is maintained at Head Office level and some posts at depot level. Post wise detail for maintaining the seniority list of Group-C employees in the tabular form is annexed as Annexure R-9.

15. Regarding wages of the petitioner, it is stated that the petitioner was being paid wages @ 1021.70 per month after his transfer in the month of November 1992 from Hisar Depot to Kurukshetra Depot. He was paid wages of Rs. 1,600/- in the month i.e. 05.11.1992 by the Hisar Depot before his transfer to Kurukshetra Depot. Meaning thereby, he was paid less wages at his new place of posting.

16. In so far as regularization of services of the persons junior to him are concerned, it is stated that Ram Phal was initially appointed on daily wages on 04.11.1986 on the post of Helper. His services were regularised on the post of Conductor on 25.08.1988, later on the said designation was converted to the post of Helper Welder. He was promoted to the post of Assistant Welder on 15.02.1993 and as Welder on 28.12.2004. He retired on 31.10.2020. The academic qualifications of Ram Phal are Matric and ITI. Services of Jai Singh, who was initially appointed on daily wages on 19.01.1987, was regularised on the post of Helper on 31.03.1993, vide order dated 03.01.1994. Later on he was

promoted as Assistant Welder vide order dated 05.06.1996. He retired on 31.03.2008.

17. Position which emerges thus is that the petitioner was appointed as welder with effect from 01.12.1983 on daily wages. His services were terminated on 01.07.1984. The order of termination was challenged before the Labour Court. He was reinstated on 01.07.1986 with continuity of service. He was transferred from Hisar to Kurukshetra on 03.11.1992 as Assistant Welder on daily wages. On 06.01.1994, his services were regularised on the post of Helper Welder. He is stated to have since retired on 31.10.2020. Claim in the instant petition is regarding grant of pay scale of welder from the date of his initial appointment i.e. 01.12.1983. The services of the junior persons appointed on 04.11.1986 (Ram Phal) and 19.01.1987 (Jai Singh), were regularised on 25.08.1988 (Ram Phal) and 31.03.1993 (Jai Singh). Thus, the action of the respondents is on the face of it discriminatory.

18. It is also pertinent to note that in the judgment rendered in CWP 16425 of 2018 – Jagdish vs State of Haryana and others on 31.01.2022, I have already opined on the issue whether the workman/ employee would be entitled to regularization if his name was not sponsored by the employment exchange or if he was not appointed by the Selection Committee pursuant to any advertisement. Whereas, petitioner's claim for regularization herein is based only upon the fact that his juniors at Hisar depot were regularized by ignoring the petitioner on the ground as stated in the preceding paragraph.

19. Likewise in CWP 19793 of 2017 decided by this Court the stand taken by the respondents was that at the relevant date of entitlement for regularization, petitioner was not in service. It was noticed by this Court and relief of regularization was granted to the petitioner therein by holding that

continuity of service had been granted to the petitioner by the labour Court by directing his reinstatement. As already stated above, claim of the petitioner arises out of discriminatory treatment meted out to him, in as much as, his juniors appointed in the same District Office (Hisar depot) were regularized before the petitioner and regularization to the petitioner was denied on the ground that he stood transferred to another District (Kurukshetra depot) on the date for regularization.

20. Petitioner claims that he was initially appointed Welder from 01.12.1983 and his appointment as such was extended from time to time. Order dated 02.01.1984 Annexure P/1 issued by respondent No. 4 is for petitioner's appointment as Welder from 01.01.184 to 31.01.1984. Respondents claim that the petitioner was initially appointed as Blacksmith, however, document has been produced by them showing that his appointment was as Blacksmith with effect from 01.12.1983. In the premise, it is safe to presume that the petitioner was appointed as Welder with effect from 01.12.1983. In any case, the posts of Welder and Blacksmith are in the same pay scale of Rs. 1200-2040 as indicated in order Annexure P-3 dated 15.02.1993. These were thus equivalent posts at the relevant time.

21. Petitioner claims regularization as Welder from 1.12.1983 and consequential benefits. Instructions dated 03.12.1993 R-4 require that services of the eligible ad-hoc/work-charged/casual daily wages employees should be regularized in anticipation of the approval of the Finance Department and that after regularizing their services, the cases for creation of requisite posts should be referred to the Finance Department for ex-post facto sanction.

22. Subsequently, notification dated 11.05.1994 (Annexure R-5) was also issued in this connection directing, inter alia, that daily wagers who had

completed 5 years service on class III on 31.03.1993 should be regularized against respective class III posts provided they fulfilled the requisite qualifications and were originally appointed on class III posts and that if the posts were not available, they should be got created from Finance Department or such daily wagers should be regularized in group D scale on compassionate grounds like other daily wagers. Relevant part of notification dated 11.05.1994 Annexure R-5 is as under:

“ xxx xxx xxx

2.DAILY RATED EMPLOYEES:

i) The Government had issued instructions dated 27th May 1993 for regularization of services of all the work-charged, casual and daily wagers employees who had completed 5 years service on 31.03.1993. In the reference of these instructions, the regularized employees were entitled to the lowest group D scales of pay and all other allowances and the benefits available to regular Govt. employees. But it has come to the notice of the Govt. in some Departments daily wagers are working on class III posts such as clerks, steno-typists and drivers etc. The question whether such daily wagers should be regularized in Group D or Group C scale has been engaging the attention of Govt. for some time past and after careful consideration it has now been decided that daily wagers who had completed 5 years service on class III posts on 31.03.1993 and were in service on 31st March, 1993, should be regularized against respective class III posts and that if posts are not available, they should be got created from Finance Department or they should be regularized in Group D scale on compassionate grounds like other daily wagers.

Xxxxx xxxxx xxxx”

Order Annexure P-3 dated 15.02.1993 issued by respondent No. 4 shows that the posts of Welder and Blacksmith were in the pay scale of Rs. 1200-2040. It is not specifically shown on record whether these were class III(Group C) or class IV (Group D) posts. The petitioner had more than five years service on 31.03.1993. Admittedly, he was declared pass by the Screening Committee in technical test. This being the position, it follows that the petitioner was

entitled to regularization on the post of Welder or the equivalent post of Blacksmith, as per instructions dated 03.12.1993 R-4 and Notification dated 11.05.1994 R-5, then applicable for regularization of daily wagers appointed on the post of Welder or equivalent post of Blacksmith.

23. In the aforesaid premise, seen from any angle, none of the defenses put forth by the respondents is legally sustainable. Indisputably, the petitioner had been appointed on 01.12.1993. Services of subsequently appointed daily wagers Ram Phal (04.11.196) and Jai Singh (19.01.1987) were regularized from 25.08.1988 and 31.03.1993 respectively. This being the position, the petitioner seems entitled to regularization of services from the date of regularization of services of Ram Phal, who was appointed after the petitioner. It is, therefore, held that the petitioner is entitled to regularization of services from the date of regularization of services of Ram Phal, who was appointed after the petitioner, as per the policy then applicable for regularization of daily wagers appointed on the post of Welder or equivalent post of Blacksmith.

24. In certain cases, the arrears are restricted to 38 months from the date of filing of writ petition seeking regularization. However, in the instant case the petitioner has been running from pillar to post, including labor court and this court, from the date his services were terminated. With the intervention of labor court he was reinstated later on with continuity of service. For regularization of services, petitioner has been pursuing his claim since initial issuance of legal notice date 27.07.1998 followed by two rounds of litigation. I am, therefore, of the opinion that it is a fit case where the petitioner should also get benefit of interest on monetary dues for the relevant period all throughout.

25. The petitioner shall be accordingly accorded benefit of regularization with effect from the date when his juniors were regularized, with

consequential benefits. The monetary benefits shall be paid to the petitioner along with interest @ 7% per annum from the due date till payment.

04.02.2022

vs

(Arun Monga)
Judge

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No