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

**CWP NO.1651 OF 2001 (O&M)
DATE OF DECISION : 13.07.2022**

Parkash and others	...Petitioners
Versus	
Govt. of Haryana and another	...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

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

Mr. R. D. Sharma, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petitioners herein, *inter alia*, seek issuance of a writ in the nature of mandamus directing the respondents to pay the petitioners, regular salary and increments, which they are entitled to as per their appointment orders w.e.f. 01.02.1996 onwards.

2. Succinct facts first. Petitioners had been working since 1987/1988 and had to undergo multiple rounds of litigations before filing the present petition seeking enforcement of their legitimate right, as is shown from the record of the case. Having rendered years of service, the petitioners have been denied the regular salary and all the increments w.e.f. 01.02.1996 onwards till the date of their regular appointment. Notwithstanding, the petitioners had submitted various representations from time to time and also filed writ petition bearing CWP No.5922 of 1996 for regularization, which was disposed of with directions to decide

their representations within a period of four months. The respondents rejected the representations of the petitioners stating that their case was not covered under the 1993 Regularization Policy. Even at the time of rejecting their representations, subsequent policy of 1996 had already been notified but for some inexplicable reason their case was not considered under the subsequent policy either. Petitioners were then compelled to file another writ petition bearing CWP No.522 of 1997 stating that assuming their case is not covered under the 1993 policy then they ought to be given the benefit of subsequent regularization policy/instructions dated 07.03.1996. Their writ petition was disposed of with directions to the respondents to decide their representation seeking regularization after taking their entire service into account from 1987/1988 upto 1996 within a period of six months. Yet again, their representation was rejected solely on the ground that on 31.01.1996 (which was the cut-off date) since they were not present on duty on the particular day, they were not entitled to seek regularization. Aggrieved, the petitioners No.1 to 6 filed a writ petition bearing CWP No.10037 of 1997, while petitioner No.7 filed a writ petition bearing CWP No.5057 of 1998 assailing the impugned orders vide which their claim for regularization had been rejected. Both the aforesaid writ petitions were allowed by this Court with a direction to the respondents to accord the benefit of regularization as per 1996 policy to the petitioners. The respondents still did not comply with the Division Bench directions leading to the institution of contempt proceedings. It would be apposite to first reproduce the Division Bench directions passed in CWP No.10037 of 1997:-

“After hearing the learned counsel for the parties, we are of the view that the stand taken by the respondents is not well founded. The import of the instructions, referred to above, is that a person must have worked continuously on daily wages for at least three years prior to January 31, 1996. A year would mean 240 working days and break in service has not to be more than 30 days. No doubt, the instructions do provide that such a person has to be in job on 31.1.1996, but he can be absent on January 31, 1996 as no job is provided to him or for any other such reason but he is immediately assigned duties on the very next day, he will be deemed to be in job on January 31, 1996, though actually physically he may not be assigned duties. The intention of the instructions does not seem to be that the person must be physically in job on January 31, 1996. As observed above, he may be physically present, but may not be assigned duties on that date as there is no work for him. The intention of the instructions, as observed above, is that the person should have worked for sufficiently long period on work charge/adhoc basis and there should not be any unnecessary break for more than 30 days. Take for instance, a person is on job on January 30, 1996 and again on Feb. 1, 1996, if literal meaning is taken, he being not in job on January 31, 1996, his case will not be covered by the instructions. The interpretation would defeat the very object of the instructions. Since the petitioners were in job prior to Jan 31, 1996 and immediately thereafter, we are of the view that their cases would be covered by the instructions pertaining to regularization.

For the foregoing reasons, we allow this writ petition and quash the orders (Annexure P-1 to P-6) and direct the respondents to consider the petitioners as eligible for regularization under the aforesaid instructions and pass necessary orders to that effect. Let these directions be carried out within a period of one month of the receipt of a

copy of this order from this Court or a certified copy of the same from any of the petitioner, whichever is earlier.”

3. A perusal of the Division Bench order clearly reflects that the respondents were directed in no uncertain terms to accord the benefit of regularization to the petitioners. *Per contra*, learned State Counsel argues that the reliance sought by the petitioners herein, is hit by *res judicata* since the petitioners in the earlier round of litigation disposed of by the Division Bench had also sought consequential benefits, which were specifically pleaded. Since the Division Bench while allowing the petition did not specifically grant the said relief, it is, therefore, deemed to have been denied and the petitioners can not at this stage reopen the same. In this context, it would also be important to mention what the petitioners had prayed for in the earlier writ petition which had been disposed of by the Division Bench. The prayers made in CWP No.10037 of 1997 are as under:-

“Civil Writ Petition under Article 226/227 of the Constitution of India, praying that :-

- i) a writ, order or direction in the nature of certiorari for quashing the illegal and arbitrary orders Ann.P/1 to P/6;*
- ii) a writ, order or direction in the nature of mandamus directing the Respondents to regularize the services of the petitioners from 1.2.1996 in accordance with Haryana Govt. Policy Annexure P/7 & 7A;*
- iii) any other relief to which the petitioners are entitled in peculiar facts of the case be granted;*
- iv) advance notice to the Respondents be dispensed with;*
- v) filing of certified copies be dispensed with;*
- vi) cost of the writ be awarded to the petitioners.”*

The prayers made in CWP No.5057 of 1998 are as under:-

“Civil Writ Petition under Article 226/227 of the Constitution of India praying that:-

- i) records of the case be sent for and after perusing the same;*
- ii) a writ, order or direction in the nature of certiorari be passed quashing Annex.P-1 dated 30.6.1997;*
- iii) suitable writ, order or direction be given to the respondents, to grant the petitioner same relief as granted to the similarly placed persons in CWP No.10037 of 1997;*
- iv) any other relief to which the petitioner is entitled in peculiar facts of the case be granted;*
- v) advance notice to respondents be dispensed with;*
- vi) filing of certified copies be dispensed with;*
- vii) cost of the writ be awarded to the petitioner.”*

4. None of the above-mentioned prayers would reflect that any of them had sought the relief of consequential benefits arising out of regularization and therefore there was no occasion for the Division Bench to deal with the same as has been argued by the learned State counsel.

5. In the premise, the bar of *res judicata* is not applicable for denial of the consequential benefits to the petitioners. At the relevant time despite being entitled to, they were denied the benefit of regularization and worked on reduced wages even after having worked at par with the regular employees and subsequently once the relief was granted to them after multiple round of litigations, denying them the consequential benefits would amount to a travesty of justice. Resultantly, I am not inclined to accept the arguments as canvassed by the learned State counsel.

6. Petition is allowed. Respondents are directed to grant consequential benefits arising from regularization to the petitioners. Needless to say, that what has already been drawn by the petitioners while they were in service would be deducted from what they will eventually be entitled to after due calculations. Let the consequential benefits be granted alongwith interest @ 5% per annum to the petitioners from the date it was due till the date of realization.

7. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

JULY 13, 2022
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No