

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

CWP-520-2000 (O&M)

Date of Decision : 01.08.2022

Brijbir Singh and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.K.Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate, for the petitioner.
Mr. R.D.Sharma, DAG, Haryana.

ARUN MONGA, J. (Oral)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari to quash the orders dated 07.10.1999 & 10.02.1999 vide which claim of the petitioners for regularization was rejected and further to consider the claim of the petitioners for regularization in the light of policy decision dated 07.03.1996.

2. Briefly stated, petitioner No.1 rendered service on adhoc basis from 01.02.1990 to 29.10.1992; petitioner No.2 was appointed on adhoc basis on 15.02.1990 and worked upto 23.10.1992 and he was again appointed on adhoc basis on 13.01.1995 and continuing since then. The Haryana Government took a decision that all the adhoc employees who had completed two years service on 31.01.1996 were entitled for regularization vide policy decision (P-3). The petitioners applied for regularization but their cases were rejected vide orders dated 07.10.1999 & 10.02.1999 (Annexures P-4 & P5, respectively).

3. I have heard learned counsel for the parties and gone through the case

4. Concededly what emerges thus from the aforesaid background is that the petitioners on the account of being in service as on the cut off date had rendered only 01 year and 09 months of continuous service immediately preceding the cut off date and if seen from that angle, they did not fulfill the two years minimum pre-requisite for being considered for regularization as per the policy dated **07.03.1996** (Annexure P-3). However, it is also a conceded position that prior to their having rendered one year and 09 months continuous service immediately preceding the cut off date, they had rendered more than 24 months of uninterrupted service i.e. petitioner No.1 had rendered continuous service from 01.02.1992 to 29.10.1992 and petitioner No.2 had rendered continuous service from 15.02.1990 to 31.10.1992 (about 32 months as against required 24 months) but after that they had a break before they were re-inducted in service on 01.09.1994 and 13.01.1995, respectively.

5. It is this break which is the bone of contention. It has been strenuously argued by learned State counsel that since the policy envisages continuous service and seen from that angle any break in continuous service which is more than 30 days would come in the way of an employee being eligible to be considered for regularization.

6. On first flush, the argument of learned State counsel may seem attractive but when examined in the light of the ratio rendered by the Full Bench in ***Jagdish Lal and others vs. State of Punjab and others, 1988 AIR (Punjab and Haryana) 272*** read with the Division Bench judgment in case titled ***Smt. Kavita Gandhi vs. State of Haryana and others*** in CWP-12367-1997, decided on 30.09.1997, the interpretation of the policy resorted by the respondents militates against the judgment *ibid.* For ready reference, view of Full Bench Judgment is as below:-

“7. XXXX XXXX

In our opinion, the more rational and just view to be taken on the interpretation of the relevant notification is that the minimum continuous period of service of one year need not necessarily be the continuous period of service of one year (sic) need not necessarily be the year immediately preceding April 1, 1985. If that, is so, the petitioners have satisfied the first condition of the notification and, therefore, they are entitled to be referred to the departmental selection committee for consideration for regularization after finding whether they satisfy the other conditions referred to in the first paragraph of the notification.”

7. Pertinently, the interpretation given by the Full Bench pertains to a policy wherein the qualifying period of service was 01 year but the issue qua the same being immediately preceding and/or otherwise even if somebody has rendered the service which was not immediately proceedings was as parimateria as involved herein.

8. The aforesaid view taken by the Full Bench has been argued to be not applicable in present case on the ground that it was a special concession accorded to the petitioners who were before the Full Bench on the ground that being from the Education Department, their services necessarily had to be met with the breaks corresponding with the academic session during the vacation period. Accordingly, they were given the special concession of break in service and were directed to be considered for regularization provided of course other parameters were met.

9. Even I accept the argument of learned State counsel, the same flies in the face of subsequent judgment rendered by Division Bench relying on the Full Bench judgment ibid wherein, K.K. Srivastav, J (as he then was) speaking for Division Bench opined as below:-

“In view of the judgement of the Full Bench of this Court in Jagdish

Lal and others (Supra) it is abundantly clear that in order to become eligible for consideration for regularization of the service under a particular notification of the State Government the prescribed years of completed service with reference to the cut-off date mentioned in the notification applies to such employees also who have completed those number of years of service prior to the cut-off date and not necessarily, immediately preceding the said date. In other words, if the employee has completed, with reference to the notification dated 7.3.1996/18.3.1996, three years of completed service and was in service on cut-off date i.e. 31.1.1996, he would become entitled for regularization of service provided he fulfilled the other conditions mentioned in the notification. It is not necessary that the period of three years should be taken immediately preceding the cut-off date i.e. 31.1.1996. If the case of the petitioner is examined from this angle. She rendered more than three years completed service without any break prior to 31.1.1996 and she was in service on the said date. The break of 48 days in service of the petitioner in the year 1994 would, thus, be not relevant to be considered for regularization of her service. Resultantly, the petition is allowed. The impugned order annexure P/4 is quashed and the respondents are directed to regularize the services of the petitioner within a period of three months from the date of production of the copy of this order. No order as to costs.”

10. The aforesaid view of the Division Bench was no doubt rendered in a case where the issue involved directly was only confined to whether if an employee during the qualifying period had break in service beyond the permissible limit of 30 days whether the same was to be exempted but while deciding the same, the Division Bench observed that the qualifying service need not be immediately preceding the cut off date and the said ratio has not been assailed by the State in any subsequent proceedings nor has any contradictory view been taken by this Court.

11. On a Court query with regard to the aforesaid Division Bench view,

learned State counsel as well as Senior counsel are ad idem that the said view has attained finality as any SLP was not filed, on the other hand the benefit has been accorded to the petitioners therein who were from the Forest Department.

12. I see no reason as to why similar benefits be not accorded to the petitioners.

13. In the premise, writ petition is allowed. The benefits of regularization of services will be accorded to the petitioners with effect from the cut off date provided, of course, petitioners qualify all the other parameters. Let the needful be done within a period of three months from today.

01.08.2022
mamta

(ARUN MONGA)
JUDGE

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