

DHARAM

...Petitioner

versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. J.S. Maanipur, Advocate,
 for the petitioner.

Mr. Pankaj Midda, Additional A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus and/or otherwise commanding the respondents to grant regularization/ approval on the post of Labourer in terms of the recommendation/letter dated 29.06.2018 (Annexure P-6) issued by office of Principal Chief Conservator of Forests, (PCCF) Haryana.

2. Reliance is also placed on an earlier order dated 27.03.2018 passed in CWP No.13172-2016 contained at Annexure P-4 for the purpose of seeking parity with the petitioners therein and consequentially regularizing the services of the petitioner with effect from 01.10.2003 i.e. the same date as the petitioners in CWP-13172-2016.

3. During pendency of the writ petition, claim of the petitioner was considered by Divisional Forest Officer (for short 'DFO') on the administrative side and vide an order dated 26.06.2018 R-3/1 same was rejected premised on the following reasoning:-

"That the petitioner/ applicant had again approached PCCF, Haryana Panchkula and PCCF, Haryana directed to consider the case of Sh. Dharma for regularization under the policy of 2003 vide letter no 904 dated 15-6-2018. But it is pertinent to mention here vide notification dated 13-4-2007. the State Government rescinded all earlier notifications issued regarding regularization of services of

adhoc/ daily-wage/ contract/ part-time workers etc. including regularization policy of 2003.

1-In view of the contents of the civil Writ Petitions No.13172 of 2016 where it has been clearly stated by the petitioner that the case for his regularization to be considered under the policy of the year 2014 for regularization and as he himself admitted that Haryana Government has withdrawn the earlier policies for the regularization in para no. 13 of the Writ Petition, now in view of the above contents, case of the petitioner for regularization could not be considered under regularization policy of the year 2014 as the same is not in existence and is quashed by the Hon'ble Punjab and Haryana High Court vide its Order dated 31.05.2018 in C.W.P. No.17206/2014 titled as Yogesh Tyagi and another Vs. State of Haryana and others. Therefore, claim of Sh. Dharma S/o Sh. Kewal resident of village Kalesar, Tehsil Jagadhri, Distt. Yamuna Nagar is hereby rejected as no such policy of regularization is in existence as prayed for by the petitioner in CWP No.13172 of 2016."

4. After the rejection of the claim of the petitioner in the aforesaid terms, a recommendation dated 29.06.2018 (Annexure P-6) was made by the office of Principal Chief Conservator of Forests to the Additional Chief Secretary to Government, Haryana Forest and Wild Life Department, Chandigarh stating as below:-

"In connection with the above subject it is intimated to you that Shri Dharma son of Shri Kewal Village and Post Office Kalesar Tehsil Chhachhrauli District Yamunanagar has filed C.W.P. No.8662 of 2013 in the Hon'ble Punjab and Haryana High Court for regularization of his services which was decided by the Hon'ble High Court on 25.04.2013. The Hon'ble High Court passed the following order:-

"The present petition is disposed of with a direction to respondent Nos.2 and 3 to consider the claim of the petitioner and to take a final decision on the representation dated 14.03.2013 (Annexure P-6) strictly in accordance with law as also under the relevant policy issued by the State Government on the subject and by passing a speaking order within a period of four months from the date of receipt of a certified copy of the order."

In compliance of the aforesaid orders vide this office order No.173 dated 27.06.2013 due to not making available the documents/ record, the case of the workman was rejected. Now, the workman by obtaining information under the R.T.I. again filed C.W.P. No.13172 of 2016 in the Hon'ble Punjab & Haryana High Court. The Hon'ble High Court while disposing off the above said writ petition passed the following order:-

"Record shows that notice of motion was issued in the matter on 29.08.2017, but no written statement has been filed

on behalf of the respondents, so far, in the given situation, learned State counsel submits that these petitions itself shall be considered by the respondents as representation of behalf of the petitioner(s), and their claim/ grievance shall be dealt with within a period of three months from today. And, the respondents shall pass appropriate orders in accordance with law.”

While complying with the aforesaid order the Divisional Forest Officer, Yamunanagar has vide their letter No.597 dated 26.06.2018 the case of Shri Dharma son of Shri Kewal for regularization on the post of Labour to this office, which is sent to you for sympathetic consideration. It is also informed here that Shri Dharma is an illiterate Labour and is very hardworking and honest Labour. Being illiterate he could not maintain his attendance record. Now the workman has obtained information(s) under R.T.I. Act 2005 and collected the record.

Therefore, the case of Shri Dharma son of Shri Kewal village and Post Office Kalesar Tehsil Chhachhrauli District Yamunanagar is sent to you for regulation to the post of Labour under the Policy of 2003 along with BM 10, BM 16 and copy of the speaking order. One post of Labour may kindly be allotted so that the services of the workman can be regularized in order to avoid contempt of court.”

5. A perusal of the recommendation made by the PCCF vis-a-vis rejection by the Divisional Forest Officer (DFO) reflects that while recommending the case to the Additional Chief Secretary, the reasoning given by the DFO was duly gone into by the PCCF. The PCCF clearly recorded that the case of the petitioner was required to be reconsidered on sympathetic consideration, given that he is an illiterate, hardworking and an honest labourer.

6. Being illiterate, not only the petitioner had no access to his attendance record but even otherwise he is unable to comprehend the same.

Be that as it may, on being advised, petitioner sought the information qua his attendance records under RTI and the same was provided by the department reflecting the length of his service. It was only after having duly verified the record, the competent authority, who did not dispute the same, provided information under RTI. Based there upon, recommendation was made by the DFO dated 21.06.2018 Annexure P-5 wherein he observed as below:-

“3. The Government of Haryana had issued one Notification dated 01.10.2003. In para No.3 of this Notification it has been

mentioned that for regularization of the daily wages (Group-D) employees they must have worked for at least 240 days in every year. This condition has also been scrutinized by the office of the Principal Chief Conservator of Forests and is said to be well founded. This subject has also been certified by the Range Forest Officer, Kalesar and given certificate (copy enclosed) for completing more than 240 days by the applicant in every year.”

7. Even otherwise, the stand taken by the respondents to the specific averment in para 2 of the petition qua petitioner that he had been in service since 1990 is evasive, to say the least. There is a denial, but in a very guarded manner, inasmuch as, it is admitted that petitioner is a casual worker having been deployed as Cook-cum-Chowkidar at the Forest Rest House. However, it is stated that since cashbook and relevant record of the petitioner are not available with the office of answering respondent and it is therefore, left to the petitioner to adduce cogent evidence to establish that he is working on the said post.

8. The department cannot be allowed to conveniently shift the onus on the petitioner, particularly in the light of the RTI information obtained by him as well as the stand taken by the Deputy Conservator as well as PCCF, who are also senior functionaries and it was only after verification of the factual position that the recommendations were made.

9. I am not in agreement with the insipid argument of learned counsel for the State that reasons adopted by the DFO, should prevail over the recommendations made by his superior i.e. the Principal Chief Conservator of Forests, merely because he is the competent to take a decision on the regularization of the petitioner.

10. Intriguingly, even the order of the Additional Chief Secretary dated 20.09.2018 Annexure R-3/2, which is stated to have been though passed by the Additional Chief Secretary is signed by a Superintendent not even mentioning that he is under instructions of the Chief Secretary to convey the order. There is nothing on record to show that Additional Chief Secretary indeed either applied his

independent mind or passed any such order. Such a practice is highly deplorable to say the least and is to be deprecated. Respondents are well advised for future to place on record at least the orders passed by the competent authority to reflect that order relied is actually passed. There should atleast be a note on the administrative side that it is being conveyed under the instructions of competent authority.

11. Not being so, no credence can be given to such orders as the same is deemed to have been passed by Superintendent, who is not competent to do so.

12. As an upshot, writ petition is allowed to the extent that petitioner be accorded regularization on the ground of parity with the juniors stated in the office order dated 31.12.2014 (Annexure P-7) with effect from the same date as they were regularized. Monetary benefits are confined to 38 months prior to the filing of the writ petition and other notional benefits including seniority will be with effect from the date when his juniors were regularized. Necessary exercise be carried out within a period of two months.

13. Allowed in above terms, no order as to costs.

(ARUN MONGA)
JUDGE

April 08, 2022
vandana

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

Whether reportable: **Yes/No**