

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

CM-366-CWP-2022 IN/AND

CWP NO. 9097 OF 2004

DATE OF DECISION: 05.04.2022

Dalbir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. I. D. Singla, Advocate,
for the petitioner.

Mr. Sharan Sethi, Addl. AG, Haryana.

ARUN MONGA, J. (ORAL)

CM-366-CWP-2022

This is an application for fixing some actual date of hearing in main writ petition bearing CWP-9097-2004, which was admitted for hearing on 04.03.2005. The main case is at regular Board of this Court at Sr. No.1180.

For the reasons stated in the application, which is supported by an affidavit, the same is allowed and the main case is taken on Board today itself, with the consent of the parties.

Main case

Prayer in the present writ petition is for quashing of impugned order dated 18.03.2004 (Annexure P-1) passed by respondent

No.3 and for regularization of services of the petitioner with effect from 01.02.1996 in view of government instructions dated 07.03.1996/18.03.1996.

2. Succinct facts first. Petitioner was initially appointed as Mali-cum-Chowkidar on 04.02.1993 on daily wage basis in Public Health Division, Kaithal. His services were terminated on 28.03.1994 in violation of Section 25-F of the Industrial Disputes Act, 1947 without issuing any show cause notice. Feeling aggrieved petitioner approached Labour Court, Ambala, which answered the reference in favour of the petitioner. The petitioner was accordingly reinstated with continuity in service along with all consequential benefits on 03.05.2000 and he is continuously working in the department since then.

3. On 20.07.2003 and 20.10.2003, petitioner represented to the department for regularization of his services. The petitioner approached this Court vide CWP No. 19550 of 2003 for regularization and a Division Bench of this Court directed the respondents to decide the representation of petitioner. Respondent No.3 rejected his claim on the ground that he did not fulfill the requisite condition of three years as on 31.01.1996.

4. Learned counsel for the petitioner submits that respondent No.3 has not considered the claim of petitioner properly and the impugned order is liable to be set-aside.

5. I have heard learned counsels for the parties and have gone through the case file carefully.

6. Concededly, the services of petitioner were terminated vide an order dated 18.03.2004 when the retrenchment drive was carried out by

the respondents. The said retrenchment order was assailed by the petitioner before the Labour Court vide Award dated 18.01.1999, the same was set-aside with direction to the employer to reinstate the workman with effect from the date of his retrenchment along with full back wages and continuity of service. The said Award attained finality as the same was not challenged and the services of the petitioner were resumed in terms thereof. Subsequently when the petitioner sought regularization of the services as per applicable regularization policy, he was not accorded benefit thereof. The ostensible reason of denial of regularization of services of petitioner is stated to be as below :

17. That the petitioner was not regularized under Haryana Govt. policy dated 7.3.1996 because neither he has completed 3 years service on 31.1.1996 nor he was in service as on dated 31.1.1996 as he was not working under the department during the pendency of court case in Labour Court Ambala. The petitioner was reinstated on 3.5.2000."

7. Perusal of the above leaves no manner of doubt that it does not lie in the mouth of respondents to deny the benefit of regularization to the petitioner on the ground that for reckoning minimum three years of service in terms of regularization, he was held ineligible on the ground that he did not physically work in the department and that regardless of the benefit of continuity having accorded to him, his claim cannot, therefore, be considered on parity with other workmen who had rendered their services during the said period. The stand of the respondents is untenable. The position is no more *res integra*. Once the continuity of service has been accorded by way of a judicial order unless the same is modified or set-aside, all consequential and notional benefits arising therefrom have to be accorded in terms thereof.

8. In somewhat similar case on an earlier occasion, I had already opined in CWP No.12961 of 1999 vide order dated 04.02.2022, as below:

“xxx

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.

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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 Labour 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 dated 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.”*

9. In view of the above, the instant petition is allowed. The petitioner shall be accordingly accorded benefit of regularization with effect from 01.02.1996, as prayed for, in view of government instructions dated 07.03.1996/18.03.1996 along with all consequential benefits. The

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

APRIL 05, 2022
Shalini

(ARUN MONGA)
JUDGE

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

Whether reportable : **Yes/No**