

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

LPA No. 738 of 2022 (O&M)

Date of Decision: 29.11.2022

Ram Chander and others

.....Appellants

Vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Ashwani Bakshi, Advocate,
for the appellants.

G.S.SANDHAWALIA, J. (ORAL)

Present appeal has been preferred against the order dated 11.05.2022, passed by the learned Single Judge, whereby the Civil Writ Petition No. 21395-2013 filed by the appellants has been dismissed, in which the relief for regularization has been sought.

The claim of the appellants whereby they have raised challenge to the action of the State rejecting their claim for regularization was the subject matter of consideration before the learned Single Judge. The learned Single Judge has noticed that the writ petitioners were not in service and had been initially engaged on a daily basis for Aravali Project at Mahendergarh. The said project was wound up sometime in the year 1999 and their claim that they were still working was refuted by the State observing that only petitioner no. 8, Basti Ram, was working. Admittedly, Basti Ram is not an appellant in the present appeal. Considering the above, the petition was disposed of while observing that in case services of the

petitioners were required for the project called Haryana Community Forest Project, their services shall not be dispensed with without following due procedure in law. The same was subject to the verification by the official respondents qua the claim of learned counsel for the petitioners that they are in service as on the date of the decision, i.e. 11.05.2022.

Learned counsel for the appellants vainly contended to convince this Court that the order of the learned Single Judge is liable to be interfered with and the claim for regularization was on the strength of a policy dated 07.03.1996 which was modified on 18.03.1996 (Annexure P-2) (colly), wherein period of 03 years' service was the requisite period required as on 31.01.1996 for consideration for regularization. It is thus, submitted that the rejection of the legal notices dated 31.08.2011 and 31.10.2011 (Annexure P-8) (colly), vide the replies dated 09.11.2011 and 18.01.2012 (Annexure P-9) were not justified and therefore the challenge had rightly been raised in the writ petition filed in the year 2013.

We are of the firm opinion that the arguments now raised that they were eligible for regularization is without any basis, especially, seeing the background of appellant no. 1 herein.

In the reply by the State to the legal notices, it is specifically mentioned that appellant no. 1 had challenged his removal which is stated to be on 31.10.1999, in an Award before the Labour Court, Gurugram, which was dismissed on 14.05.2008. The writ petition filed by him bearing CWP No. 16694 of 2009 was dismissed by this Court on 30.08.2011. Thereafter, he filed LPA No. 2179 of 2011, which also stands dismissed on 22.03.2013.

The said judgments were never appended along with the writ petition. A perusal of the said judgments would go on to show that the case as such was that the services had been terminated on 01.11.1999 and therefore, he had approached the Labour Court. The learned Single Judge has noticed that the workman had not given the detail of the working after January 1997 and he had only worked for 162 days during the period of 12 months preceding the date of his termination.

In such circumstance, it was held that the argument that the muster-roll had not been produced was rejected on the ground that the official record would show that he had only worked for 162 days in the preceding 12 months of his termination. The said order was upheld in the Letters Patent Appeal which had been filed. It is thus, apparent that even the factum of continuing service preceding the date of termination, i.e. 01.11.1999 had not been proved before the Labour Court, whereas as per the policy as such he was required to have 03 year service from January 1993. As noticed he had not given the details even after January 1997 and therefore now for him to raise the plea that he has continued 03 years service on the cut off date is not acceptable.

Another aspect which is to be noticed is that the claim for regularization is based on a policy of the year 1996, the legal notices were served only on 31.08.2011 and 31.10.2011. If appellant no. 1 was in service, he would have raised the claim at the earliest and he did not do so. It is thereafter the State's reply to the legal notices it was pointed out that he was not in service. Similar is the position of the other appellants who also served legal notices much after their claim of employment of the year

1993-94 which is now sought to be appended as Annexure P-4.

We are thus of the considered opinion that it is a belated claim and at this stage it would not be appropriate even to relegate them to the remedy before the Labour Court. In case they were in service at that point of time they would have filed representations and sought their claim for regularization, in view of the prevalent policy. Thus, we keep in mind the ratio of the judgment of the Apex Court in **State of Karnataka and others vs. Uma Devi and others** (2006) 4 SCC 1, wherein, it was observed that if the nature of the post is temporary employment merely working for some time as such, would not entitle the person to seek regularization.

Similarly, in **Executive Engineer Zp Engineering Division vs. Digambara Rao** AIR 2004 SC 4839, the Apex Court held that project employees appointed against a particular scheme cannot seek regularization merely on the ground of completion of 240 days of continue service.

In **Oshiar Prasad and others vs. The Employers in relation to Management of Sudamdih Coal Washery of M/s BCCL, Dhanbad, Jharkhand** (2015) 4 SCC 71, it was held that once the contract of employment is not subsisting and has come to an end by efflux of time or as per the term of the contract, regularization cannot be sought. The relevant paragraph reads as under:-

“28. It is a settled principle of law that absorption and regularisation in the service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and employer. Once it comes to an end either by efflux

of time or as per the terms of the Contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.”

Thus, we are of the considered opinion that the learned Single Judge has rightly rejected the claim of the appellants for regularization in view of the peculiar facts and circumstances.

Resultantly, the appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

November 29, 2022
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	Yes