

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

CWP NO. 16160 of 2016

DATE OF DECISION: 05.04.2022

Krishan Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sandeep Goyat, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Prayer in the present writ petition is for quashing of impugned order dated 26.04.2016 (Annexure P-10) passed by respondent No.4 whereby representation of the petitioner dated 31.03.2015 (Annexure P-4) seeking regularization of his services was rejected. Further prayer has been made directing the respondents to regularize services of the petitioner in view of the policy decisions dated 01.10.2003 and 10.02.2004.

2. Succinct facts first. Petitioner was initially appointed as Beldar on 01.06.1998 on daily wage basis with respondent No.4.. His services were terminated on 01.08.2000 without issuing any notice. Feeling aggrieved, the petitioner approached Labour Court, Hisar, which answered the reference in favour of the petitioner directing the respondent to reinstate him with continuity in service along with all consequential benefits including 50% of back wages from 07.11.2000. He was accordingly reinstated.

3. The aforesaid Labour Court award was challenged vide CWP No. 16005 of 2007 wherein vide an order dated 09.12.2008 (Annexure P-2), the said award was set aside. Petitioner challenged the said order dated 09.12.2008 in Apex Court by filing an SLP which was allowed and converted into Civil Appeal No. 10006 of 2014. During the pendency of proceedings before Supreme Court, the petitioner was again reinstated. The Supreme Court, via its order dated 31.10.2014, directed the respondent to pay a sum of Rs.1 lac as full and final settlement against back wages. For ready reference, Apex Court order dated 31.10.2014 is as below:-

- “1. Leave granted.*
- 2. These appeals are directed against the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No.13975 of 2008, dated 20.10.2008 and connected matters.*
- 3. We have heard learned counsel for the parties to the lis.*
- 4. Shri Manjit Singh, learned counsel for the respondent(s) would submit that the appellants, in all these appeals, have been reinstated into service and now, the only question that remains to be considered is about the payment of back-wages.*
- 5. In our view, in all these cases, if a sum of Rs.1,00,000/- (Rupees One Lakh only) is paid to each one of the appellants as full and final settlement towards the back-wages, it will suffice their interest.*
- 6. Accordingly, while allowing these appeals in part, we direct the respondent(s) as under:-*
 - (i) The employment of appellant(s) in all these cases shall not be disturbed except on any disciplinary grounds;*
 - (ii) The respondent(s) shall pay a sum of Rs.1,00,000/- (Rupees One Lakh only) to each of the appellants as full and final settlement towards their back wages, within a period of three months time from today.*

Ordered accordingly.”

4. On 31.03.2015, petitioner represented to the department for regularization of his services with effect from 01.10.2003. Similarly situated employees, whose appeals were clubbed with the appeal of

petitioner and were decided at the same time by the Supreme Court on 31.10.2014, have already been granted the benefit of regularization. The petitioner had earlier approached this Court by filing CWP No. 1735 of 2016 which was disposed of vide order dated 28.01.2016 with a direction to the respondent to decide the representation of petitioner. Respondent No.4 has rejected his claim on the ground that he did not fulfill the requisite condition of three years as he has worked in the department only from 01.06.1998 to 31.07.2000 which is less than three years.

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

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

7. Concededly, the services of petitioner were terminated vide an order dated 01.08.2000 when the retrenchment drive was carried out by the respondents. The said retrenchment order was assailed by the petitioner before the Labour Court. Vide an award dated 05.12.2006, the same was set-aside with direction to the employer to reinstate the workman with effect from the date of his retrenchment along with 50% back wages and continuity of service along with all consequential benefits. When the said Award was still under challenge, services of the petitioner meanwhile were resumed in terms of the Labour Court Award. Later, the said Award was set-aside but eventually merged into Supreme Court order dated 31.10.2014 directing the employer to pay a sum of Rs.1 lac as full and final settlement against back wages to the workman. 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 :

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It is pertinent to mention here that the Government of Haryana vide Letter No. U.O. 6/26/2015-IGSI dated 05.05.2015 has put on hold all the regularization policies framed/received on or after 16.06.2014 in respect of the Group B, C and D employees till final decision to be taken by the Govt. as the policy dated 01.10.2003 also has been put on hold by the Govt.

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The contents given in the representation are not applicable in the facts of case in view of notification dated 01.10.2003, mentioned ibid.

Hence in compliance of the order dated 28.01.2016 passed by the Hon'ble High Court of Punjab and Haryana Chandigarh in CWP No. 1735 of 2016, an opportunity of hearing has given to the petitioner vide this office Memo No. 973-76 dated 15.03.2016. The representation dated 31.03.20215 for regularization of services of the workman has been considered under policy dated 01.10.2003 and the same is not maintainable in view of explained as above. The above named Krishan Kumar has worked in this department only from 01.06.1998 to 31.07.2000 (02 Years + 02 months). Accordingly, the representation dated 31.03.2015 is hereby rejected/filed.”

8. 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 there from have to be accorded in terms thereof.

A perusal of the Supreme Court order arising out of Labour Court award would reveal that award was not set aside, inasmuch while disposing of the Civil Appeal, the question that was considered was only with regard to payment of back-wages. To that extent, Apex Court directed that if a sum of Rs.1,00,000/- is paid to each of the workmen/appellants as full and final settlement towards back-wages, it would suffice their interest. The continuity of service which was awarded by the Labour Court was neither touched upon nor set aside. In the premise, I see no reason as to why the notional/ consequential benefits arising out of the continuity of service be not accorded to the workman.

9. In somewhat similar case on an earlier occasion, in CWP No.12961 of 1999 vide order dated 04.02.2022, I have opined 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.”

10. In view of the above, the instant petition is allowed. The petitioner shall be accordingly accorded benefit of regularization with effect from **01.10.2003**, 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**