

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

CWP-15205-2017 (O&M)

Date of decision: August 31, 2022

Parveen

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.P. Arora, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, seeks issuance of a writ in the nature of Mandamus directing the respondents to regularize the services of the petitioner w.e.f. 01.10.2003 i.e., from the date when the policy for regularization was issued by the State Government and further directing the respondents to fix the seniority of the petitioner accordingly in pursuance to the regularization w.e.f. 01.10.2003 per Annexure P-4 with all consequential benefits (Annexure P-5).

2. Succinct factual background first. As per the petition, initially on 10.04.1994, petitioner joined as Chowkidar and thereafter, on various occasions, he has been appointed as Taxation Peon on contract basis. His services were terminated on 21.12.2000. Reference was made to the Labour Court and the same was decided vide order dated 10.01.2006 (Annexure P-3) in favour of the petitioner and he was held entitled to reinstatement with continuity of service and 100% back-wages from the date of demand notice

i.e. 05.06.2002. State challenged the said award vide CWP-8220-2006 and on 03.06.2016, this Court ordered the reinstatement of the petitioner in service. Pursuant thereto, petitioner was allowed to join the respondent-Department on 26.06.2006. Said writ petition was dismissed as withdrawn but subsequently the same was restored and admitted. Respondents released the pay/ salary of the petitioner. Ultimately, said writ petition was dismissed vide order dated 27.02.2017. In the interregnum, State issued a policy on 01.10.2003 for regularization. Some amendments in the said policy were issued on 13.08.2004 vide Annexure P-4A. Some employees similarly situated as the petitioner, preferred CWP-5848-2011, which was decided vide order dated 11.01.2012 (Annexure P-5) whereby petitioners therein were held entitled to regularization of their services. LPA preferred by the State against the said judgment/ order was also dismissed. The case of the petitioner is squarely covered by the law laid down in the aforesaid writ petition i.e. CWP-5848-2011.

3. I have heard rival contentions of the parties and perused the record.

4. In the written statement dated 14.01.2019 filed on behalf of respondents No.1 and 2, following stand has been taken in Para-17 of reply on merits thereof:-

“17. That para 17 of the writ petition, to the extent facts are admitted is not denied. However, it is submitted that the facts and circumstances of the case of the petitioner are totally identical with that of Karambir Singh and others versus State of Haryana. In regard to the daily wages workers, even the Government has very been conscious by giving Policy guidelines to the Head of Department to condone the break in service while considering the regularization of an official under 2003 policy. However the same benefit has been denied to the petitioner which is

arbitrary, discriminatory and violative of fundamental rights of the petitioner.”

5. On conjunctive reading of the case pleaded in the petition and response to corresponding para of the petition what thus, emerges is that the petitioner was appointed on daily wages sometime in the year 1995 as against his juniors who were appointed in 1999, but they were accorded regularization vide policy of the year 2003. All the said juniors were also aggrieved *qua* non-regularization of their services and had approached this Court by filing individual writ petitions, which were disposed of vide common judgment/ order dated 11.01.2012 rendered in **CWP-5848-2011** titled **Karamvir Singh versus State of Haryana and others**, wherein, speaking for this Court, my learned Brother Augustine George Masih, J. held as under:

“The facts, as depicted above, are not in dispute. The only question, which requires to be considered and decided by the Court, is whether the petitioners, who were initially appointed on daily wage basis and were subsequently appointed on ad-hoc basis when their services were terminated and on their reinstatement in service with all consequential service benefits by the Labour Court vide its Award dated 17.11.2005, which has been upheld by this Court as also by the Supreme Court, are entitled to the benefit of regularization of the services because of the regularization of the services of the persons, who have been appointed subsequent to the appointment of the petitioners or not? Once the termination of the services of the petitioners vide order dated 09.06.1999 has been found to be void and illegal by the Labour Court holding them entitled to reinstatement in service along with all consequential benefits including continuity of service and full back wages, the petitioners, for all intents and purposes, shall be deemed to be in service with the respondents. If that be so, the petitioners cannot be deprived of the benefit of the Policy Decision date 01.10.2003, which is fully applicable to the case of the petitioners for the reason that the assertion made by the petitioners in the writ petition in para-2 that they have been appointed on daily wage basis against vacant posts in accordance with law which fact has not been disputed by the State in the reply filed by them. If the appointment of the petitioners is in accordance with law, it does not lie in the mouth

of the State to now, without any basis or pleadings, assert that their appointment was not in accordance with the service rules when such pleadings are not on the record.

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The contention of the counsel for the State that the Policy Decision has been withdrawn on 25.04.2007 by the State of Haryana and, therefore, the petitioners cannot be granted the benefit of the said Policy also cannot be accepted on the ground that the said withdrawal is prospective in nature and does not have the retrospective effect. Further, the employees, who have been granted the benefit of the said Policy, have not been deprived of the said benefit by the State as none of the employees, who have been regularized as per the said Policy, has been divested of his status as a regular employee. If that be so, the ground for denying the claim of the petitioners by the respondents cannot be accepted as the same would violate the principle of Article 14 of the Constitution of India, which clearly postulates equality before law. In view of the above, these writ petitions are allowed. Petitioners are held entitled to regularization of their services from the date, the services of Vipin Kumar and Krishan Chand were regularized and they are also held entitled to the benefit of the Policy Decision dated 01.10.2003. The consequential benefits including the order of regularization be passed within a period of three months from the date of receipt of a certified copy of this order.”

6. Perusal of the above judgment clearly reflects that the petitioner's case is squarely covered on the same footing inasmuch as at the relevant date when the policy was subsisting, he was though in service, but was not accorded the benefit of regularization on the ground that since physically, he was not in service but was granted continuity in service by Labour Court and the same be treated as notional, and therefore, his claim was rejected. Not only in the aforesaid judgment, in any case, same view has been expressed by me in another similar case bearing CWP-12961-1999, decided on 04.02.2022, where the workman was reinstated by the Labour Court with continuity in service along with consequential benefits. Reference may be had to the same

and I need not labour all over again. For the sake of brevity, relevant of the same is extracted as below:

“19. Likewise in CWP 19793 of 2017 decided by this Court the stand taken by the respondents was that at the relevant date of entitlement for regularization, petitioner was not in service. It was noticed by this Court and relief of regularization was granted to the petitioner therein by holding that continuity of service had been granted to the petitioner by the labour Court by directing his reinstatement. As already stated above, claim of the petitioner arises out of discriminatory treatment meted out to him, in as much as, his juniors appointed in the same District Office (Hisar depot) were regularized before the petitioner and regularization to the petitioner was denied on the ground that he stood transferred to another District (Kurukshetra depot) on the date for regularization.

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23. In the aforesaid premise, seen from any angle, none of the defenses put forth by the respondents is legally sustainable. Indisputably, the petitioner had been appointed on 01.12.1993. Services of subsequently appointed daily wagers Ram Phal (04.11.196) and Jai Singh (19.01.1987) were regularized from 25.08.1988 and 31.03.1993 respectively. This being the position, the petitioner seems entitled to regularization of services from the date of regularization of services of Ram Phal, who was appointed after the petitioner. It is, therefore, held that the petitioner is entitled to regularization of services from the date of regularization of services of Ram Phal, who was appointed after the petitioner, as per the policy then applicable for regularization of daily wagers appointed on the post of Welder or equivalent post of Blacksmith.”

7. Similar views were expressed by me, though in somewhat different words, while disposing of CWP No.19793 of 2017, as below:

“16. First, qua the denial of claim of regularization. Respondents’ defense does not stand judicial scrutiny. Reasons are not far to see. A bare perusal of the record of the case itself would show that the benefit has wrongly not been accorded to the petitioner. The stand of the respondents flies in the face of the Labour Court award dated 10.04.2000 (Annexure P-1), vide which the petitioner was held entitled to re-instatement with continuity of service. Meaning thereby, the deserved consequential benefit ensuing out of the same had to be accorded to the petitioner in totality. Needless to say, once the award had attained finality there is no getting away from it and respondents are bound by all the consequences flowing there from. The only modification made in the award by the learned Single Judge, vide

order dated 17.09.2009 (Annexure P-2), was: "...The award of the Labour Court is modified only to the extent of back wages by retaining the dispensation for reinstatement that instead of full back wages, 50% of the back wages be given to the workman.....". Resultantly, the petitioner for all legal purposes has to be considered de jure in service as on 31.01.1996, even though de-facto he was not in service. He is, therefore, held entitled to benefit of regularization of his services w.e.f. 31.01.1996 on that ground alone. Necessarily, all other benefits accruing therefrom viz. fixation and revision of pay and allowances etc. are also to be accorded to the petitioner once he is to be given the benefit of regularization as on 31.01.1996. Because, he could not have been considered a daily wager anymore."

8. As an upshot of the discussion, petition is allowed. Petitioner be accorded the benefit of regularization w.e.f. the date his juniors admittedly were accorded the same benefit along with all consequential benefits arising therefrom. However, petitioner shall though be entitled to seniority and other notional benefits from the date his counterparts were regularized, but monetary benefits are confined to 38 months prior to filing of the writ petition, along with interest at the rate of 5% per annum from the due date till payment.

9. Needful be done within a period of 3 months from today.

(ARUN MONGA)
JUDGE

August 31, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No