

217 2nd case

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-19417-2017

Date of decision: 29.04.2022

Sushil Kumar

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Dharamveer Phour, Advocate,
For the petitioner.

Mr. Sharan Sethi, Additional A.G., Haryana.

ARUN MONGA, J. (ORAL)

Issuance of a writ in the nature of certiorari to quash the impugned order dated 04.01.2017 (Annexure P-8) is sought herein. Thereby, claim of the petitioner for regularization was rejected. Further prayer has been made for issuance of a writ in the nature of mandamus directing the respondents to regularize the services of the petitioner from the date when his juniors were regularized with all consequential benefits.

2. Petitioner joined as P.R. Chowkidar on 20.06.2000 in Department of Food and Supplies, State of Haryana. His services were later dispensed with on 06.08.2004. However, vide an award dated 19.03.2012, in so far as it related to the petitioner, learned Labour Court allowed the petitioner's plea for reinstatement. He was held entitled to reinstatement with continuity of service and 25% backwages from the date of demand notice i.e. from 03.05.2005. Assailing the Award, department filed four CWPs Nos. 20013 of 2012, 20030 of 2012, 20078 of 2012 and 20285-2012. CWP No.20285 of 2012 was dismissed by this Court vide order dated 29.01.2013. After dismissal of above said CWP,

the department regularized the services of another similarly situated employee, who happens to be name sake of the petitioner. After regularizing the services of said Sushil, department filed LPA No. 1522 of 2013, which was also disposed of as infructuous vide order dated 21.11.2013.

3. Learned counsel for the petitioner submits that petitioner was entitled to regularization of his services as per then applicable State Government Policy dated October 1, 2003. Later on, his services were not regularized on the ground that after the judgment of Uma Devi's case, all the policies of regularization have been withdrawn by the State. In the absence of any policy, petitioner cannot/was not regularized, is the defense. He further submits that services of similarly situated employees as well as of the petitioners' juniors have been regularized. Petitioner filed CWP No.17416-2016 for the same relief which was disposed of with a direction to decide representation within 3 months vide order dated 01.09.2016 (Annexure P-7). The respondents vide impugned order dated 04.01.2017 (Annexure P-8) have rejected the claim of the petitioner. Hence, the instant petition.

4. In the return filed to the writ petition, respondents have inter alia taken following stand:

“6. That the petitioner has filed a demand notice before the Ld Labour Tribunal, Panipat for reinstatement and regularization but the same was decided by the Ld Tribunal with the order that “In view of my finding on the above discussed issues as discussed in the preceding paragraphs this reference is decided in favour of the workman to the effect that he is entitled to reinstatement with continuity of service and 25% back wages from the date of demand notice i.e. 03.05.2005 and as award is passed accordingly.” Meaning thereby that Ld Tribunal has rejected the claim of the petitioner for regularization after going through the record in hand. Hence, the petitioner is not entitled for any regularization as alleged as the petitioner has not fulfill the condition of regularization as per instructions issued by government of Haryana from time to time. It is pertinent to mention here that the petitioner has not completed 240 days in any calendar year as mandatory for regularization. Further the

order passed by Ld Tribunal has already been complied with by the answering respondent in letter and spirit.

7. *That the petitioner in the present writ petition has claimed that the department has regularized the services of one Sh. Sushil Kumar vide letter dated 08.02.2013; in this regard it is submitted that the record of that employee Sh. Sushil Kumar was rechecked by the answering respondent and found that the services of the employee has wrongly been regularized w.e.f. 08.02.2013 and in this regard the office has issued show cause notice to that employee Sh. Sushil Kumar with the submissions that why his services cannot be de regularized as he is not entitled for any regularization. The copy of show cause notice is attached herewith as Annexure R-1.*

8. *That the government of Haryana has already withdrawn all the relevant policies in respect of the services of the daily wages, contractual, Adhoc employees employed by the departments. At present no regularization policy exists in State of Haryana. Hence the petitioner is not entitled for regularization on this score also."*

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

6. While rendering judgment in CWP-12961-1999 on 04.02.2022, I opined 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.

XXX XXX XXX XXX

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. In view of the aforesaid, the instant writ petition is allowed. Respondents are directed to regularize the services of the petitioner w.e.f. the date his counterparts were regularized. 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.

(ARUN MONGA)
JUDGE

April 29, 2022
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No