

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

CWP-24825-2018 (O&M)

Date of decision: September 02, 2022

Prem Kumar

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Deepak Sonak, 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 under regularization policy dated 01.10.2003 (Annexure P-2). He claims to be working continuously for the last about 18 years and identically placed persons in the respondent-Department, appointed in the similar manner as the petitioner was appointed, have been regularized vide orders dated 06.07.2018 (Annexure P-7) and 07.09.2015 (Annexure P-8).

2. Succinct factual background first. Pledged case is that petitioner was appointed as Labourer in the Kangthali Forest Beat under Saraswati Range at District Kaithal in June 2000 on daily wage basis. Subsequently, his services were terminated by respondent No.3 w.e.f. 20.01.2016. Petitioner, along with some other workmen, raised Industrial Dispute by serving a demand notice and his case was referred to the Labour Court, Kaithal. Labour Court announced a common award dated 23.12.2016 (Annexure P-1), ordering reinstatement with continuity of service and 50% back-wages. In compliance thereof, petitioner

was taken back into service. Since then, he is working continuously in the respondent-Department. State Government promulgated policies for regularization of daily wager employees from time to time viz dated 07.03.1996, 18.03.1996 and 01.10.2003. Respondents have regularized the services of similarly situated employees, as well as, juniors to the petitioner, but have not considered his case for regularization. Petitioner made several requests in this regard, but to no avail. Legal notice dated 18.07.2018 (Annexure P-9) was also served upon the respondents.

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

4. In order to determine whether petitioner's case at the relevant time was covered by the regularization policy dated 01.10.2003 (Annexure P-2), one has to necessarily see when he was first hired as daily wager by the Department before adverting to the other defense for denial of regularization of his services.

5. In Para-2 of the writ petition, it has been specifically pleaded that he was hired as a Labourer in Kangthali Forest Beat in June-2000 on daily wages and he continued to work till 20.01.2016 when his services were terminated. In the corresponding para of the writ petition, there is not only specific denial to the same, but in a rather roundabout manner, it has been merely stated "*That though the contents of para No.2 of the petition are matter of record yet the length of service of the petitioner was not the issue before the Ld. Industrial Tribunal while passing the award dated 23.12.2016 (P-1)*". It is thus clear that though hiring of the petitioner in June-2020 is not disputed, but an attempt has been made to divert the same by stating that length of service of the petitioner was not the *lis* before the Industrial Tribunal.

6. Be that as it may, even before the Industrial Tribunal, the Department did not succeed and vide an award dated 23.12.2016 (Annexure P-1), petitioner was directed to be taken back into service with continuity and 50% backwages. In that context, case of the petitioner is squarely covered by the judgment/ order dated 08.05.2015 rendered in **CWP-16325-2012** titled **Bhagirath and another versus State of Haryana and others**, where speaking for this Court, Amit Rawal, J. (as he then was in this Court) held as under:-

“In the instant case, there is no question involved with regard to illegal or irregular appointments and, therefore, the plea that the petitioners were not appointed on sanctioned/regular posts would be, thus, meaningless. Since similarly situated employees, who were also work charged/daily wagers, have been regularized, the petitioners cannot be, thus, deprived of their right of regularization. The aforementioned judgment of Khajjan Singh has also been upheld by the L.P.A. Bench of this Court and the operative part of the same, thus, reads:-

“3. As we mentioned earlier the appellant was employed with effect from 19.08.1995. The termination of his services on 31.05.1996 were held to be illegal and he was reinstated in service. Thus, as on 31.09.2003, the respondent must be deemed to have been in service. Under the policy of 01.10.2003, the petitioner was entitled to have his services regularized. All other employees similarly situated whose services had not been terminated were in fact granted the benefit of regularization under the policy of 01.10.2003. The termination of the respondent's services having been held to be illegal and having been set aside, he must also be deemed to have been in service on 01.10.2003 and entitled to the benefits of the policy on par with the others. The petitioner cannot be denied the benefits of the policy on par with the others similarly situated for no fault of his namely and on account of the appellants having issued an illegal order of termination. The Supreme Court in Hari Nandan Prasad and another Versus Employer I/R to Mangmt. of FCI and another, held as follows:-

“However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus,

the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision”.

4. In the circumstances, the appeal is dismissed. We reiterate that the all other issues decided by the impugned judgment are kept open. The time to comply with the order of learned Single Judge is extended up to and including 28.02.2015. There shall however be no order as to costs.”

In view of the notification dated 18.6.2014 issued under Article 309 of the Constitution of India, the State of Haryana has made a provision for the left out Group “C” and “D” employees working on adhoc/contract/daily wages/work-charged basis, whose services could not be regularized under the regularization policy issued vide notifications. The aforementioned observations read thus:-

*“HARYANA GOVERNMENT
GENERAL ADMINISTRATION DEPARTMENT
(GENERAL SERVICES-I)*

Notification

The 18th June, 2014.

No.6/7/2014-I.G.S.1.-In exercise of the powers conferred by the proviso to article 309 of the constitution of India read with the proviso to clause 6 of the Haryana Government, General Administration Department (General Services), the Government of Haryana hereby makes the following amendment in Haryana Government, General Administration Department (General Services-I), Notification No.G.S.R.13/Const./Art.309/2007, dated 13th April, 2007, namely:-

AMENDMENT

In the Haryana Government, General Administration Department (General Services), Notification No.G.S.R.13/Const./Art.309/2007, dated 13th April, 2007, the following proviso shall be added at the end, namely:-

“Provided that the left over Group “C” and “D” employees working on adhoc/contract/daily wages/workcharged basis, who could not be regularized under the regularization policy issued vide notifications mentioned at serial No.1 to 4 above due to administrative reasons but were otherwise eligible, shall be regularized with effect from the date(s) they were eligible for regularization.”

*S.C.CHOUDHARY,
Chief Secretary to Government
Haryana”.*

In view of the fact that the State of Haryana has decided to regularize the services of the left out group “C” and “D” employees and the fact remains that the learned Single Judge of this Court, after noticing the judgment rendered by Hon’ble Supreme Court in Hari Nandan Prasad’s case (supra), which has discussed the ratio decidendi culled out in Umadevi’s case, I deem it appropriate to issue directions to the State to regularize the

services of the petitioners from the date they were eligible and release all the consequential benefits, if any, to them forthwith.

The plight of the employees may not go unnoticed for the reason that the State is conscious of the same, but owing to the rigors enunciated in Umadevi's case, the State could not vindicate the grievance of the petitioners or similarly situated persons. Be that as it may, the fact remains that the State has now come out with a notification in view of the ratio decidendi culled out in Hari Nandan Prasad's case noticed by the learned Single Judge of this Court, wherein the State has also been directed to regularize the services of the petitioners.

The writ petitions stand allowed."

7. Having perused the judgment aforesaid, wherein the other defense of the Department, as also taken even herein, that there is no sanctioned post, therefore, services cannot be regularized has been duly dealt with. I am in respectful agreement with the reasons recorded by my brother. I see no reason why the petitioner be also not accorded the benefit thereof, on parity with his counter-parts.

8. In this context, reference may also be had to an office order dated 06.07.2018 (Annexure P-7), wherein similarly situated daily wagers were appointed without there being sanctioned posts, and yet they were accorded the benefit of regularization.

9. On the lines of the judgment *ibid*, same view has been expressed by me also in another subsequent similar case bearing CWP-12961-1999, decided on 04.02.2022. 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.”

10. Likewise, 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.”

11. As regards the defence taken *qua* posts not being sanctioned, I am of the view that it is a complete hogwash, inasmuch as, in every case, such a

defense though taken, but has been negated by this Court in various judgments. And yet, the Department continues to indulge in the same moonshine.

12. 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. Petitioner shall be entitled to seniority and other notional benefits from the date his counterparts were regularized vide office order dated 06.07.2018 (Annexure P-7). Monetary benefits be given on the same terms as were awarded to the counter-parts who were accorded regularization of services in terms of office order *ibid*, along with interest at the rate of 5% per annum.

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

(ARUN MONGA)
JUDGE

September 02, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No