

213

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

CWP-6974-2017
Date of decision: 26.05.2022

Sona Davi

...Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Surinder Kumar Daaria, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

CM-9306-CWP-2018

Application is allowed as prayed for and replication is taken on record, subject to all just exceptions.

Main case

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to regularize the services of the petitioner according to the policy decision dated 01.10.2003 (Annexure P-3) with all consequential benefits.

2. Petitioner joined the respondent Department in the year 1997 as daily wager. Her services were later dispensed with on 26.04.2009. However, vide an award dated 29.11.2012 (Annexure P-1), in so far as it related to the petitioner, learned Labour Court allowed the petitioner's plea for reinstatement. She was held entitled to reinstatement with continuity of service and 50% back wages. Assailing the Award, department filed CWP-

19253-2013 in which award passed by the learned Tribunal was modified to the extent that claimant/workman shall not be entitled to back wages.

3. Learned counsel for the petitioner submits that petitioner was entitled to regularization of her services as per the then applicable State Government Policy dated October 1, 2003. whereby services of the daily wagers who have completed three years' service up to 30.09.2003 were to be regularized. Petitioner has worked continuously for more than 240 days in one calendar year. He further submits that services of similarly situated employees, who are junior to the petitioner, have been regularized but the petitioner has been meted out with discriminatory treatment. Hence the instant petition.

4. Learned State counsel has canvassed arguments on similar lines as the stand taken in the written statement.

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

6. What emerges from the aforesaid is that the petitioner was denied the benefit of the applicable regularization policy on the premise that there was a break in service and, therefore, was held disentitled to be regularized. Qua the disentitlement what flies in the face of the denial of benefit to the petitioner is the Labour Court Award dated 29.11.2012 (Annexure P-1) vide which she was granted continuity of service. The above mentioned award has attained finality, since the writ petition filed by the department assailing the said award qua the benefit of continuity of services given under the award of Labour Court was also dismissed vide order dated 08.04.2015 (Annexure P-2).

7. On an earlier occasion 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.

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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.”

8. 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.”

9. I see no reason as to why the petitioner be not accorded the benefit of similar treatment. In view of the aforesaid, the instant writ petition is allowed. Respondents are directed to regularize the services of the petitioner with effect from the date her counterparts were regularized. However, the petitioner shall though be entitled to seniority and other notional benefits from the date her counterparts were regularized, but monetary benefits are confined to 38 months’ prior to filing of the writ petition.

(ARUN MONGA)
JUDGE

May 26, 2022
vandana

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