

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8905-2017 (O&M)

Date of decision: August 03, 2022

Girdhari Lal

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rakesh Nagpal, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

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 from the date the services of his juniors have been regularized with all consequential service benefits, including arrears of salary thereof and also in view of instructions issued by the respondent-State.

2. Succinct factual background first. Petitioner joined the service on daily wages in the month of January 1980 in Nala Block, Shikhar Gaha Beat, Pinjore Range under the respondents through proper channel. Services of the petitioner were illegally terminated on 28.09.2004 in violation of the provisions of Section 25-F and N of the Industrial Disputes Act, 1947. No notice and retrenchment compensation was paid to the petitioner. Petitioner challenged the said termination and the same was rejected by the Labour Court vide award dated 05.11.2008 (Annexure P-1). Thereafter, petitioner

challenged the said award before this Court vide CWP-20210-2009, which was allowed on 10.07.2015 (Annexure P-2) setting aside the award with costs, and respondents were directed to reinstate the petitioner with full back-wages. Petitioner was reinstated but his services were not regularized inspite of the fact that he has completed more than 36 years of service with the respondent-Department. Services of juniors to the petitioner have been regularized. Petitioner fulfills the requisite requirement as per policy of regularization issued by the State Government dated 01.10.2003 (Annexure P-6), and 18.06.2014 (Annexure P-7). Petitioner served legal notice dated 22.08.2016 (Annexure P-4).

3. Petitioner is working as Mali for the past 36 years and so having been appointed sometime in 1980 is before this Court aggrieved *inter alia* on the ground of hostile discrimination inasmuch as juniors who were appointed 10 years later than the petitioner, have been accorded the benefit of regularization, while the case of the petitioner was rejected ostensibly on the ground that he is not at par with those juniors as they were appointed against sanctioned posts. In fact, controversy to be adjudicated herein has been succinctly summarised vide order dated 28.04.2017 passed by P.B. Bajanthri, J. (as he then was in this Court) in the following terms:

“Short question for consideration in the present petition is whether the petitioner is entitled for regularization on par with his juniors in the background that the petitioner's services were terminated and it was a subject matter before the Industrial Tribunal and by virtue of award passed by the Industrial Tribunal, petitioner was reinstated.

Notice of motion for 22.08.2017.”

4. In the return filed on behalf of the respondents, substantially following defence has been taken to deny the claim to the petitioner:-

“6. That the contents of para No.6 of the writ petition are wrong and to the extent that the petitioners rendered 36 years of service rather the details of service/ tenure of petitioner is given in para 2 of the preliminary objections of instant reply. It is submitted that the cases of the alleged juniors namely Banarsi son of Sh. Khushi Ram, Rattan Singh, Prem Chand son of Sh. Uday Ram, Banti son of Sh. Bala Ram mentioned in this paragraph are not at par with that of petitioner. It is pertinent to mention here that the petitioner was never appointed against the sanctioned vacant post and he does not fulfill the conditions of regularization policies issued by the State Government from time to time.”

5. Learned State counsel has argued on similar terms, as is the stand taken in the return filed by the respondents.

6. Adverting first to the defence that the petitioner was since appointed on seasonal basis, the same is not sustainable in view of the findings rendered by the Labour Court in award dated 05.11.2008 (Annexure P-1) and a candid admission made by the witness of the Department, which is extracted herein below:

*“14. After scrutinizing and scanning the evidence whatever the parties have led to prove their respective contentions, I find that the version of the workman that he remained in the employment of the management from Jan. 1980 to 28.9.2004 stands evidently proved, even from the witness examined by the management. The bare perusal of the detail of the working days as given by the petitioner and not specifically denied by the management and then admitting the letters placed on the record in the shape of *ExW4, ExW5, ExW6, ExW9 and ExW12 strengthens the claim of the petitioner-workman. Further the perusal of statement of MW1 who is the sole witness of the respondents-management who is not less a person than Clerk also makes the things evidently clear. This witness though has denied the claim of the workman thereby denying the completion of 240 days of the working of the workman in the calendar year but during his cross-examination he admitted that “**vadi ki hazri kabhi muster rolls par va muster***

roll jari na hone par pay bill par lagti thee.” which inherently establishes that the working days of the workman has not been properly shown in the statement of working days given by the respondents-management, in the court. Hence, no reason appears to belie the evidence of the workman particularly when no cogent and reliable evidence placed on the record by the respondents-management. More so, not even a suggestion was put to the petitioner-workman that the details of the working days given by him are wrong. Thus, I hold that the petitioner –workman has completed the service of 240 days with the respondents-management.”

7. The aforesaid findings were never challenged by the Department though it is another matter that the claim of the petitioner was rejected by the Labour Court stating that merely he had rendered more than 240 days of continuous service would not entitle him to seek regularization. The said award was challenged by the petitioner by way of CWP-20210-2009, which was disposed of vide order dated 10.07.2015 in view of the decision rendered in CWP-19721-2009 titled **Narata Ram Versus Presiding Officer and others**, whereby the award dated 22.10.2009 was set aside and the petitioner therein was directed to be reinstated in service with full back-wages in the following terms:

“The aforesaid decision is fully applicable to the facts and circumstances of the present case. In fact the case of the present petitioner is on a better footing since he has put in 16 years and 5 months of service. This petition is allowed. The impugned award dated 22.10.2009 (P-1) is set aside. The respondent-Department is directed to reinstate the petitioner with full back-wages, since he was kept out of service by an illegal order and the workman did not withhold his labour. This petition is allowed in the above terms with costs of Rs 5000/- to be paid to the petitioner by the respondents for legal expenses incurred.”

8. Findings of the Labour Court as well as directions of this Court vide which petitioner was reinstated with full back-wages, have since attained

finality and petitioner continues to be in service, and in any case, the said finding flies in the face of the defence taken in the return by the respondents that the petitioner was employed only on seasonal basis. If that were so, he was naturally not entitled to full back-wages for the period he remained out of service and even otherwise, there is nothing on record to show that he is currently not being paid wages for the entire year and it is only for the season for which he is deployed. Therefore, the defence taken *qua* petitioner being a seasonal employee is necessarily being noted, only to be rejected.

9. Coming now to the second argument canvassed by the learned State counsel that since the petitioner was not appointed on sanctioned post, therefore, his case is not on parity with the juniors who have been accorded the benefit of regularization. It is not disputed that the petitioner's services were hired 10 years prior to those of other juniors who were regularized. It is rather intriguing that in case, sanctioned post was available, why the petitioner was not given the choice of being adjusted against the said sanctioned post rather than his juniors have been given the benefit which eventually is taken as a *ruse* to deny the petitioner his entitlement of regularization on the so called disparity created by the Department itself, if at all. Be that as it may, even the said defence of disparity has been noted by Coordinate Bench of this Court in the case of similar situated employee and speaking for this Court, my learned Sister Ritu Bahri, J. observed as below in order dated 31.01.2020 passed in CWP-24624-2016:-

“xx xx xx. Another ground for allowing the writ petition is that in paragraph 4 of the writ petition the petitioner has given names of some of the persons that is Madan son of Shri Narata

*Ram, Teja Ram son of Shri Gariboo, Hukam Singh son of Shri Ram Swaroop, Balbir Singh son of Kundan Singh and Dhani Ram son of Amar Nath who were junior to him and were regularized. In the written statement filed by the respondents, in reply to paragraph 4, it is stated that the cases of these employees were not at par with the petitioner, however, they have not denied that they were junior to the petitioner. Hon'ble Supreme Court in **Hari Nandan Prasad and another vs. Employer I/r to Mangmt. of FCI and another 2014 (2) SCT 234** has held that the state authorities have to maintain parity in the matter of regularization and if juniors have been regularized than the claim of the senior cannot be rejected."*

10. I am in respectful agreement with the view taken by the learned Judge as reproduced above and I see no reason why the petitioner be also not accorded its benefit.

11. Learned State counsel has strenuously relied upon a decision rendered by Supreme Court in **Union of India and others versus Ilmo Devi and another**, reported as **2021 (4) S.C.T. 312**, to canvass that the petitioner cannot take advantage of mere length of service which is indisputably 36 years to seek benefit of regularization in the absence of any regularization policy as has been held by the Supreme Court. Having gone through the **Ilmo Devi's case (supra)**, I find that shoe is in fact, on the other foot. All that has been laid down emphatically by the Supreme Court is that (A) those of the employees who have been hired on part time basis or ad hoc basis cannot claim any parity with the regular employees on the principle of "Equal Pay for Equal Work", (B) in the absence of any regularization policy, no employee is entitled to seek regularization merely on the ground of length of service howsoever long it may be. Clearly the said judgment is, therefore, not applicable to the defence of the State, but on the contrary the petitioner is

entitled to seek benefit thereof since at the relevant time policy dated 01.10.2003 (Annexure P-6) was holding the field and it is on the basis of said policy that the juniors were accorded benefit of regularization while case of petitioner has been rejected on the flimsy grounds, which are not sustainable as noted hereinabove.

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. 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.

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

(ARUN MONGA)
JUDGE

August 03, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No