

Sr. No.228

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-32392-2018

Date of decision: 26.04.2022

Shish Pal

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

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

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein seeks issuance of a writ in the nature of mandamus directing the respondents to regularize his services in terms of regularization policy dated 01.10.2003.

2. Petitioner was hired as Mali-cum-Beldar on daily wages basis way back on 20.06.1994. His services were dispensed with leading to an Industrial dispute followed by a writ petition bearing CWP-964-2013. Vide an order dated 30.03.2015, passed in writ proceedings the award of Industrial Tribunal was set aside and petitioner was ordered to be re-instated with continuity of service without back wages. Haryana Government framed a policy dated 01.10.2003 vide which those who had completed three years service in Group 'D' as on 30.09.2003 and completed 240 days of service in a year and the break in service is not more than 30 days during the year, were held entitled for regularization.

3. Learned counsel for the petitioner submits that services of similarly situated employees as well as of juniors have been regularized but the petitioner has been left out. Thereafter, petitioner made number of representations but to no avail. Hence, the writ petition.

4. Having heard arguments of learned counsel for the petitioner and in the backdrop of afore noted facts, it emerges that the ground that weighed in the mind of the official respondents in not giving regularization to the petitioner was that he had not physically worked for the relevant period in order to reckon the minimum period required to be eligible for the regularization in terms of the policy dated 01.10.2003.

5. In my opinion, it is irrelevant whether the petitioner had physically worked for the relevant period once the continuity of job was directed by the Court at the time of re-inducting him in service. All the notional benefits are to be accorded to him including regularization.

6. It is trite to say that for no fault of a workman he should suffer adverse consequences of remaining out of job. His having won with continuity of service flies in the face of the stand taken by respondents that continuity of service does not include the notional benefits which are envisaged by the common sense meaning of the word “continuity”. In this context, 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.

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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.”

6. In the premise, writ petition is allowed. Respondents are directed to grant benefit of regularization to the petitioner with effect from the date when his juniors were given similar benefits as pleaded in para 9 of petition. 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.

26.04.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No