

CWP-17543-2002(O&M)

. 2023:PHHC:119078

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17543-2002(O&M)
Date of Decision :-11.09.2023

Jaspal and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. J.S. Maanipur, Advocate for the petitioners.

Mr. Sourabh Mohunta, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

In the present petition, challenge is to order dated 09.09.2002 (Annexure P/5) by which, the benefit of continuity in service has been declined to the petitioners.

Certain facts need to be mentioned for the correct appreciation of the issue in hand.

Petitioners No.1 to 3 were appointed as Mali-cum-Chowkidar and petitioners No.4 and 5 were appointed as Motor Mate i.e. all on class-IV posts starting from March, 1996 onwards. Petitioners continued working as such till their services were terminated by the respondents w.e.f. 1.06.1999.

The said order of termination of their services was challenged by the petitioners on the grounds that the said termination order was passed by

incompetent authority and also in violation of principle of last come first go as the juniors to them have been retained by way of filing CWP-8343-1999 titled as *Jaspal and others vs. State of Haryana and others*.

During the pendency of the said writ petition, the respondents informed the Court that the petitioners have been appointed again and, therefore, as the claim of the petitioners stands satisfied, the writ petition has been rendered infructuous. The petitioners raised an objection qua the said averment and claimed that the petitioners grievance qua claiming continuity in service has not been granted to them so far.

Keeping in view the said averments, vide order dated 16.05.2002, the said writ petition was disposed of by noticing the fact that as the petitioners have been already taken back in service and have joined the service hence, the claim of the petitioners for counting the intervening period as duty period shall be considered in the light of the fact that the impugned order could not have been passed especially, when juniors were working and appropriate order be passed within a period of four months.

In pursuance to the said direction of the this Court, respondents passed an order wherein, it has been mentioned that the petitioners have already been reinstated in service and they have already given up their claim qua the back wages for intervening period hence, they are not entitled for back wages and further the Sub-Divisional Engineer has rightly terminated the services of the petitioners and the appointment which was given to the petitioners was a fresh appointment hence, the petitioners cannot be granted the benefit of continuity in service, which order dated 09.09.20202 (Annexure P/5) is under challenge in the present petition.

Learned counsel for the petitioners argues that once the petitioners have been reinstated in service, the respondents were under an obligation to grant the petitioners the benefit of continuity in service. Learned counsel for the petitioners further submits that the claim of the petitioners for the grant of back wages was only given up by them in case the benefit of continuity in service is granted to them, which benefit of continuity in service has not been granted to the petitioners and the benefit of back wages have also been denied to the petitioners on the ground that they themselves have given up the said benefits hence, the impugned order passed by the respondents is incorrect and is liable to be set aside.

Learned counsel for the respondents submits that as per the averments made in the written statement, the petitioners were working under different sub-divisions therefore, there cannot be a ground that employee junior to them were working and hence, the claim of the petitioners that their juniors were still working when they were terminated is liable to be rejected as the decision to decline their claim qua continuity in service has been taken after appreciating all the facts.

Learned counsel for the respondents further submits that in the present case, the petitioners were given fresh appointment keeping in view the work, which came into existence in the year 2000.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is clear that there were certain employees, who were junior to the petitioners and were working in different sub-divisions. Once, the employer is same and nothing has come on record that the seniority or

employment was being given to the employees sub-division wise, the claim of the department that no junior of the petitioners was retained when their services were terminated is incorrect.

Further, in the order, by which, the petitioners were appointed afresh, it is clearly mentioned that petitioners are reinstated in service hence, they should have been given benefit of continuity in service. The petitioners have undertaken to give up the benefit of back wages only if they would be given continuity in service, which fact is clear from the undertaking given by the petitioners, copy of which has been appended as Annexure P/6 with the present petition. Once the said proposal of the petitioners qua the back wages has been accepted by the respondents, same could only be done by grant of continuity in service. Once, the said proposal of the petitioners has been accepted by the respondents qua the back wages, it cannot be said that the benefit of continuity in service cannot be granted to the petitioners hence, petitioners are held entitled for the benefit of continuity in service as well, which will be given to them only for the purpose of their pensionary benefits for which, they are found entitled at the time of their retirement.

Keeping in view the above, order dated 09.09.2022 (Annexure P/5) is set aside. Respondents are directed to grant the benefit of continuity in service to the petitioners from the date, they were initially appointed. It is made clear that the said benefit of continuity in service will be given to the petitioners only for the purpose of computing of their qualifying service for the grant of pensionary benefits only at the time of their retirement as undertaken by the learned counsel for the petitioners.

Petition stands allowed in above terms.

Any civil miscellaneous application pending if any, is also disposed of as such.

September 11, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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