

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

(263)

RSA-812-2019 (O&M)

Date of Decision : February 17, 2023

**State of Haryana Through Collector, Kurukshetra and others
.. Appellants**

Versus

Balwant Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Mr. Deepak Saini, Advocate, and
Ms. Mehak Jain, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed by the State impugning the judgment and decree of the trial Court dated 01.12.2016 by which, the suit filed by the respondent-plaintiff seeking regularization of services w.e.f. 11.12.1995 i.e. the date when he completed two years of service, has been allowed along with the consequential benefits as well as qua the order dated 13.11.2018 passed by the lower Appellate Court by which, the appeal preferred by the appellant-State was dismissed.

Certain facts need to be mentioned herein to appreciate the controversy in the correct perspective.

The respondent-plaintiff was appointed as a Conductor on

contractual basis on 11.12.1993. While the respondent-plaintiff was working on contract basis, the appellant-State issued a policy for regularizing the services of the contractual employees working in the Haryana Roadways on 28.07.1994. According to which policy, the contractual employees, who had completed two years of service, were entitled for regularization of their services. The claim of the respondent-plaintiff was considered by the Department under the said policy but as the respondent-plaintiff was appointed as a Conductor on 11.12.1993, two years service period required for regularization under the instructions dated 28.07.1994 was to be completed by the respondent-plaintiff on 11.12.1995 but prior to the said date, the instructions dated 28.07.1994 were withdrawn by the appellant-State vide instructions dated 17.11.1995. The net result was that on the date when the respondent-plaintiff completed two years service, the instructions dated 28.07.1994 were not in operation, hence the benefit of the service was not extended to the respondent-plaintiff.

Later on, on 23.06.1997, a clarification was issued that the instructions dated 28.07.1994 were withdrawn but certain employees had already completed two years service prior to the said withdrawal, hence, those employees, who had completed two years required service prior to the withdrawal letter dated 17.11.1995, be considered for regularization. The said instructions did not come to the rescue of the respondent-plaintiff as upon the date of withdrawal of instructions dated 28.07.1994, respondent-plaintiff had not completed required two years of service and he continued working on contract basis till the instructions dated 23.03.1998 came into being. As per the instructions dated 23.03.1998, the employees who were

appointed between the period 16.06.1994 till 08.01.1998 and were still working, be regularized. Keeping in view the said fact, as the period in question ended on 08.01.1998, the benefit of regularization of service was extended to the respondent-plaintiff and his services were regularized w.e.f. 08.01.1998.

The respondent-plaintiff continued working with the Department without raising any grievance till he filed a civil suit on 29.05.2015 claiming the benefit of regularization of his services w.e.f. 11.12.1995 instead of 08.01.1998 with all consequential benefits. The said suit was allowed by the trial Court vide order dated 01.12.2016 by interpreting that as per the instructions dated 28.07.1994, contractual employees having two years of service were entitled for regularization but the benefit of the said instructions could not be granted to the respondent-plaintiff as the said instructions were withdrawn on 17.11.1995 but keeping in view the regularization policy dated 23.06.1997, according to which, an employee was entitled for regularization of his services on completion of a period of two years, the respondent-plaintiff is entitled for regularization of his services when he completes two years of service i.e. on 11.12.1995 and the direction was given to change the date of regularization of services of the respondent-plaintiff along with all consequential benefits.

Feeling aggrieved against the said decision, the appellant-State filed an appeal, which came to be dismissed on 13.11.2018 by the lower Appellate Court and the judgment of the trial Court was upheld on the basis that the employees who were working within the period of 16.06.1994 to 08.01.1998 were to be regularized with effect from the completion of two

years of service, hence, even as per the instructions dated 23.03.1998, the claim of the respondent-plaintiff is covered for regularization on completion of two years service.

The judgment and decree of the trial Court dated 01.12.2016 and the judgment of the lower Appellate Court dated 13.11.2018 are under challenge in the present Regular Second Appeal.

Learned counsel for the appellants argues that the the Court below have misdirected themselves. As per the argument raised by learned counsel for the appellants, the trial Court misconstrued the clarification dated 23.06.1997 to mean that whosoever completed two years of service is to be regularized by treating the said instructions independent of earlier instructions dated 28.07.1994 and the lower Appellate Court misread the instructions dated 23.03.1998 to mean that the employees, who were working on contractual basis , were entitled for regularization of their services w.e.f. the date they complete two years of service whereas, there is no such clause in the policy dated 23.03.1998.

Learned counsel for the respondent-plaintiff submits that the interpretation which has been given by the Courts below is perfectly valid and legal and though, initially, the instructions dated 28.07.1994 were withdrawn on 17.11.1995 but keeping in view the clarification dated 23.06.1997, which clearly stated that the employees, who completed two years of service are to be regularized are to be treated as independent instructions so as to grant the benefit of regularization to the respondent-plaintiff from the date he completed two years of service and even the interpretation given by the Courts below to the instructions dated

23.03.1998 that employee is entitled for regularization w.e.f. the date he/she completes two years of service, cannot be faulted with and the Regular Second Appeal filed by the appellants may kindly be dismissed.

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

The question which arise in the present appeal is whether, keeping in view the policy dated 28.07.1994, coupled with the clarification issued dated 23.06.1997, the contractual employees are entitled for regularization of their service on completion of two years or not. The interpretation being given by the Courts below is not correct. The service period required for regularization as per the instructions dated 28.07.1994 was defined to be two years. There is no clause in the policy dated 28.07.1994 that the services of an employee are to be regularized w.e.f the date an employee completes two years of service. There is a vast different between having two years service for regularization and regularization of service w.e.f the completion of two years service. The Courts below have totally misread the instructions to come to the conclusion that as per the regularization policy dated 28.07.1994, an employee on completion of two years service is to be regularized on the date he/she completes two years. The said interpretation is totally arbitrary and illegal. The perversity in the findings can be illustrated also. It is a settled principle of law that nobody can be regularized from a date prior to the issuance of the instructions for the reason that the executive instructions operate prospectively and cannot be made to operate retrospectively under any circumstances unless and until the same is envisaged there.

In the present case, it is a conceded position that the instructions dated 28.07.1994 are to be implemented prospectively. In case the interpretation as being extended by the learned counsel for the respondent-plaintiff is accepted that the employees are to be regularized w.e.f the date they complete two years service then an employee who might be in service from the year 1990 and completes two years service in the year 1992, will claim a benefit of regularization under the policy dated 28.07.1994 from a date which is much prior to even the instructions, which interpretation cannot be given under any circumstances. Hence, the interpretation being given by the learned counsel for the respondent to the policy dated 28.07.1994, cannot be accepted that w.e.f the date an employee completes two years of service, he/she was entitled for regularization from the same date.

Even otherwise, the facts in the present case are different. Though the policy dated 28.07.1994 envisage minimum service period of two years before being considered for regularization in service but before the respondent-plaintiff completed the period of two years of service, the instructions dated 28.07.1994 under which the benefit is being sought, were withdrawn. Once, the respondent-plaintiff was not even eligible to claim the benefit of regularization under the policy dated 28.07.1994, grant of benefit under the said policy does not arise.

The contention of the learned counsel for the respondent-plaintiff is that by clarification dated 23.06.1997, it was mentioned that whosoever completed two years of service, be regularized though, the instructions dated 28.07.1994 already stood withdrawn on 17.11.1995. The

said interpretation being given to the said clarification dated 23.06.1997 by the learned counsel for the respondent-plaintiff as well as by both the Courts below that the same is independent instructions to mean that employees having two years service are to be regularized, is incorrect.

Bare perusal of the clarification dated 23.06.1997 is that whosoever had completed two years of service under the policy dated 28.07.1994, before the said instructions were withdrawn on 17.11.1995, needs to be regularized though the benefit of regularization was not given to the said employee prior to the withdrawal of the said instructions despite being eligible. The instructions dated 23.06.1997 are being misconstrued by the respondent-plaintiff and the said misconstrued interpretation, has wrongly been accepted by the Courts below while allowing the suit filed by the respondent-plaintiff and the dismissal of the appeal filed by the appellant-State.

Further, it is a conceded fact that the services of the respondent-plaintiff has been regularized from 08.01.1998. The benefit of regularization has been given to the respondent-plaintiff under the instructions dated 23.03.1998. A bare reading of the instructions dated 23.03.1998 which was also on record, shows that a decision was taken to regularize the services of the employees, who were appointed between 16.06.1994 till 08.01.1998. The employees, who had completed two years service and were appointed within the said period, were entitled for regularization, which benefits was extended to the respondent-plaintiff also.

The lower Appellate Court has recorded a finding that as per the instructions dated 23.03.1998, the employees who were on contractual

basis, are entitled for regularization of service “with effect from” the date they complete two years of service. The words “with effect from” completion of two years service does not find mentioned in the instructions dated 23.03.1998. Hence, while dismissing the appeal filed by the State, the lower Appellate Court has misread the instructions dated 23.03.1998 and hence, the said order dated 13.11.2018 is perverse and cannot be allowed to operate.

Even otherwise, the order regularizing the service of the respondent-plaintiff was passed in the year 1998, he remained silent till the year 2015 i.e. for a period of 17 years and thereafter filed a petition for the change of the date of his regularization.

Learned counsel for the appellants submits that the suit was totally time barred, which fact has totally been ignored by the Courts below while allowing the suit.

Learned counsel for the respondent-plaintiff submits that there were representations submitted by the respondent-plaintiff for claiming the benefit as per his entitlement though he conceded that the civil suit was filed after a period of 17 years of passing of the order of regularizing the services of the respondent-plaintiff w.e.f 08.01.1998.

The above mentioned stated facts are not in dispute. From the plain reading of the facts itself shows that the cause of action if any arose to the respondent-plaintiff in the year 1998 when his services were regularized w.e.f. 08.01.1998. Nothing has come on record as to how, the suit filed in the year 2015 was within the limitation. The findings which have been recorded by the Courts below on the said issue are totally perverse and

without going through the actual facts and evidences on record.

The reason being extended by the learned counsel for the respondent-plaintiff that he had filed representations, cannot be taken into consideration as it is a settled principle of law that repeated representations does not condone the delay in any manner, hence, even otherwise the suit filed by the respondent-plaintiff was much beyond the limitation prescribed for the redressal of the grievance as raised in the suit.

Keeping in view the above, the judgments of the Courts below dated 01.12.2016 and 13.11.2018 are perverse to the facts and evidence on record as well as the settled principle of law and cannot be sustained and are hereby set aside. Consequently the suit filed by the respondent-plaintiff is also dismissed.

The present Regular Second Appeal is allowed in above terms.

CM-1878-C-2019

As the main Regular Second Appeal is allowed, present application stands disposed of.

February 17, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No