

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

374

RSA-1643-2002 (O&M)
Date of decision: 11.12.2023

State of Haryana and Another

....Appellants

Versus

Ramesh Kumar and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jagdish Manchanda, Addl. AG Haryana

Mr. Naveen Daryal, Advocate for the respondents

AMAN CHAUDHARY. J.

1. The present regular second appeal is filed challenging the judgment and decree dated 05.01.2002 passed by Addl. District Judge, reversing the findings of fact returned by the trial Court. For the sake of convenience, parties shall be referred as per their original status.
2. The plaintiffs filed a suit seeking declaration that they are entitled for regularisation of their services alongwith seniority and consequential relief from the date of their appointment. They were appointed as Special Conductors on contractual basis in the office of General Manager, Haryana Roadways, Karnal in the year 1988 and continued in service. As per the Instructions dated 20.07.1993, the services of conductors, who had completed two years' of service were to be regularised by the Department, as was done in the case of 25 drivers and conductors, who filed CWP-14370-1997, **Krishan Chand vs. State of Haryana** and CWP-687-1989, **Punna Ram vs. State of Haryana**. Later, on 28.07.1994,

another set of instructions were issued to grant regularisation to those, who had been appointed on a contractual basis and were continuously in service for more than two years, even if they were initially hired on a daily wage basis and not under a contractual arrangement. However, still the services of plaintiffs were not regularised in terms of the above, and it was only done w.e.f. 01.02.1996 in pursuance of instructions dated 18.03.1996. Not only this, but the Department also extended the said benefit to persons junior to them.

3. In the written statement filed on behalf of the defendant-State, apart from taking of the preliminary objections, it had been submitted that the services of plaintiffs were not to be regularised under the instructions dated 20.07.1993 or 28.07.1994, as they did not have continuous service, since they were initially appointed on 02.06.1988 for 2 months, on adhoc basis. In view of the fact that they had three years of continuous service as on 31.01.1996, in accordance with the instructions issued on 18.03.1996, it led to the regularisation of their services from 01.02.1996. Hence, they prayed for dismissal of the suit.

4. The trial Court after framing the issues and hearing the arguments, dismissed the suit by observing that plaintiff No.2 gave a statement in writing to the Department regarding his willingness to work on daily wages and in his cross-examination deposed that their initial appointment was as special conductors on a contractual basis for a period of two months, thus it was concluded that they did not maintain continuous employment in the Department to claim regularisation from the year 1990. Consequently, it was held that their case fell within the purview of the instructions issued on 18.03.1996, the benefit of which, stood granted to them and were not eligible for regularisation prior thereto.

5. The lower appellate Court reversed the aforesaid findings and allowed the appeal by holding that the plaintiffs had been performing their duties regularly since 07.02.1989, thus are entitled for regularisation of their services with effect from 28.07.1994, including all the benefits. As regards the statement made by plaintiff No.2 to remain as a daily wage employee, it was observed that the same would not preclude their right to regularisation of services, as it might have been made to safeguard his job.

6. Learned counsel for the State would contend that the findings of the lower appellate Court stand in complete contradiction to the evidence adduced on record. The plaintiffs only fulfilled the criteria under the instructions dated 18.03.1996, pursuant to which, their services having been regularised from 01.02.1996 was in order. Their case did not conform to the requirements outlined in the instructions prior thereto, since they were not in continuous service, as earlier, they were appointed on an ad-hoc basis from 02.06.1988 to 31.07.1988.

7. On the other hand, learned opposite counsel would submit that the lower appellate Court has rightly considered the case of the plaintiffs and held them eligible for regularisation, effective from 28.07.1994, in view of the fact that similarly situated persons and their juniors, were regularised from the date anterior to theirs.

8. Heard the learned counsel on either side and perused the record.

9. Indisputably, the plaintiffs were appointed as conductors in 1988 and their services were regularised by the defendant-Department from 1996 in pursuance of government instructions dated 18.03.1996. It was pleaded before the trial Court that their services be regularised from 1990, for which parity was

sought with similarly situated persons, whose services were regularised by the Department as they had fulfilled the criteria in accordance with government instructions issued on 20.07.1993 and 28.07.1994, however, the same were denied to the plaintiffs by dismissing their suit. While accurately reversing the same, the lower appellate Court, examined the matter in the correct perspective by holding that they were appointed as adhoc employees on 07.02.1989, though, were not covered under the 1993 instructions, however, since they had completed two years' of service as required under the instructions dated 28.07.1994 and had been regularly discharging their official duties without break, were eligible for the same effective from 28.07.1994 and the stand taken by the Department was rightly not accepted. By placing reliance on the view of this Court in Kanvar Pal vs. State of Haryana 1990(2) RSJ 342, where the services of petitioners therein, being in service continuously for more than 15 years were regularised on the basis that those of their juniors were regularised, they were held entitled for regularisation with effect from 28.07.1994 and to all the additional benefits that were extended to the juniors from the said date.

10. It is apposite to make a reference to the judgment passed by the Division Bench of this Court in LPA-1037-2012, titled as **State of Haryana and others vs. Ved Pal and others**, decided on 25.07.2012, wherein the juniors were regularised overlooking the senior workers, which was termed to be discriminatory and in contradiction to Articles 14 and 16 of the Constitution. The relevant paras thereof read thus:

“There is no denial to the fact that claim of the juniors was considered first and they were made regular. However, the recommendations made by the Divisional Forest Officer in favour of private respondents for regularization of their

services were not accepted by the Head Office on the plea that meanwhile the Hon'ble Supreme Court in State of Karnataka versus Uma Devi, 2006 (4) SCC-1 had annulled the Government Policies leaving no right to seek regularization. The same argument was advanced before the Kumar Paritosh learned Single Judge which has been turned down while observing that the private respondents have been subjected to discrimination.

In the peculiar facts and circumstances, the solitary question that arises for consideration is whether the private respondents have sought regularization of their services in terms of the Government Policy or on the plea of discrimination and violation of Articles 14 & 16 of the Constitution?

Since it stands admitted on record that juniors to the private respondents were made regular and no effort to de-regularize their services was made even after noticing the fact that seniors have been overlooked and ignored without any reasonable classification, in our considered view, the private respondents have made out a case of hostile discrimination within the ambit of Articles 14 & 16 of the Constitution. It would necessarily mean that even if the Government Policy is not in existence and deemed to have been annulled, the private respondents shall be entitled to seek regularization of their services from the date such a benefit was granted to their juniors.”

The SLP filed by the State challenging the said judgment before Hon'ble the Supreme Court stood dismissed on 02.05.2014.

11. Before arriving at a judicious conclusion, the lower appellate Court is found to have meticulously sifted through the evidence and recorded its own findings without any flaw. It being the last Court of facts and law have examined the same and rightly held that the trial Court has erred in coming to the conclusion that the respondents were not entitled to regularisation, which in view of this Court, cannot be faulted with. It has not been pointed out by the learned State Counsel, during the course of hearing, that there is any misreading or ignorance of evidence.

12. In **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026, Hon'ble the Supreme Court has held that, “Be that as it may, though the requirement of

formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a “question of law”. In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court”.

13. From the above conspectus, it is evident that neither is any question of law involved nor the impugned judgement suffers from any infirmity or illegality, as such, the present appeal being devoid of merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

11.12.2023
M.Kamra

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