

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

(235)

CWP-10341-2021

Date of Decision : August 23, 2023

Bhajan Lal**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. R.S. Mamli, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present petition, the grievance raised by the petitioner is qua the order dated 01.08.2007 (Annexure P-3) by which, the benefit of regularization under the 1996 Policy has been declined to the petitioner on the ground that the claim of the petitioner is not covered under the said policy.

2. As per the facts mentioned in the petition, the petitioner was appointed as a daily wage labourer on 10.04.1991. After joining, the petitioner was working with the respondents and he continued working till 02.04.1994 when his services were terminated by the respondents. The termination was challenged by the petitioner before the Labour Court and an Award was passed in favour of the petitioner on 20.11.1997 (Annexure P-1) holding that the order terminating the services of the petitioner was bad in law and direction was given to the petitioner that petitioner should be reinstated in service with all consequential benefits and 50% of the back wages.

3. It may be noticed that by the time the Award was passed by the Labour Court in the year 1997, the respondents had already issued a Policy for regularization of the employees who were working with the respondent-State. The said Policy was issued on 07.03.1996.

4. In pursuance to the Award of the Labour Court, the petitioner was reinstated in service in the year 1998 and the petitioner is continuously working for the last 25 years after his reinstatement but his services have not been regularized.

5. It may be noticed that after the petitioner joined, the petitioner raised a claim for regularizing his services and the same was not being accepted and the petitioner filed CWP No.4442 of 2007 seeking a direction to the respondents to regularize the services of the petitioner under the Regularization Policy dated 18.03.1996 along with consequential benefits. The said writ petition was disposed of by this Court on 23.03.2007 (Annexure P-2) directing the respondent-State to decide the claim of the petitioner for regularization of his service under the Regularization Policy dated 18.03.1996.

6. Keeping in view the said direction given, the respondents passed an order on 01.08.2007 rejecting the claim of the petitioner on the ground that as per the Regularization Policy of 18.03.1996, an employee has to have three years of service in his credit as on 31.01.1996 and in all the three years, the employee should have worked for more than 240 days whereas, the petitioner did not had service of 240 days in each year due to which his services cannot be regularized. The said order dated 01.08.2007 (Annexure P-3) is under challenge in the present petition.

7. The respondents have taken a stand that though the petitioner was reinstated in service with continuity by the Labour Court, which Award

has already been accepted and as per the Award of the Labour Court, the consequential benefits are to be granted but only the service which the petitioner has actually rendered, is to be taken into account for considering the claim for regularization and not the deemed service hence, the order passed declining the benefit of regularization under the Regularization Policy dated 18.03.1996, is perfectly valid and legal.

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

9. The facts which have been mentioned hereinbefore are conceded and are not disputed. The only dispute which the respondents are raising is only the actual service rendered by the petitioner is to be taken into account while considering the claim of the petitioner for regularization of his services under the Regularization Policy dated 18.03.1996. The said stand which has been taken by the respondents is contrary to the Award passed by the Labour Court.

10. It may be noticed that in the year 1997, the Award was given by the Labour Court for reinstating the petitioner with continuity of service with 50% of the back wages. While implementing the said Award, the petitioner has been given the wages for the year he remained out of service starting from the year 1994 onwards. Once, the respondents themselves have given the wages to the petitioner for the period he remained out of service and that too with discharging actual duties and as per the Award of the Labour Court, the petitioner is deemed to be in service with continuity, taking the actual service rendered by the petitioner into consideration so as to consider him for the benefit of regularization of his services under the Regularization Policy dated 18.03.1996 is contrary not only to the direction of the Labour Court but the actual facts keeping in view the benefits which

the petitioner has been given under the said Award. Hence total service which the petitioner has rendered starting from his initial appointment is to be taken into consideration for considering his claim under Regularization Policy dated 18.03.1996.

11. Even otherwise, three years of service was required to be eligible for regularization of the services under the Regularization Policy dated 18.03.1996. Prior to the termination of the services of the petitioner, it is a conceded fact, which is mentioned in the impugned order itself, that for the year 1992 and 1993, the petitioner had more than 240 days of service to his credit. In the year 1994, prior to the terminating, the petitioner has already rendered 87 days service. Granting the benefit of continuity means that the petitioner is deemed to have worked continuously in the year 1994, 1995 and 1996 which means that in this year, petitioner is deemed to have discharged duties for more than 240 days, for which he has already been paid, hence, the action of the respondents in not granting the benefit of deemed continuity given by the Labour Court despite payment of wages for the year 1994, 1995 and 1996 while considering his claim for regularization of his services, is totally arbitrary and illegal and is bad.

12. From the record, it is clear that keeping in view the Award of the Labour Court by which, the petitioner has been granted continuity of service and the said Award has already been accepted by the respondent-State, the petitioner is deemed to be in continuous service starting from the year 1991 hence, the petitioner has 240 days service in three years preceding the instructions dated 18.03.1996.

13. Keeping in view the findings recorded in the present petition, the respondents are directed to reconsider the claim of the petitioner for regularization of his services under the Regularization Policy dated

18.03.1996. The impugned order dated 01.08.2007 (Annexure P-3) is quashed. Let the fresh order qua the claim of the petitioner under the Regularization Police dated 18.03.2016 be passed by the respondents within a period of eight weeks of the receipt of certified copy of this order.

14. The present petition is allowed in above terms.

15. Any civil miscellaneous application pending, if any, stands disposed of.

August 23, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No