

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15492-2019 (O&M)
Date of decision: 01.09.2023

Kartar Singh

... Petitioner

VS.

Haryana Dairy Development Coop. Fed. Ltd. & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RK Malik, Sr.Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner

Mr. Hitesh Pandit, Advocate and
Ms. Suman Rani, Advocate for the respondents

Sandeep Moudgil, J.

(1). The petitioners have filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondents to consider the claim of the petitioners for regularization from the date his juniors were regularised.

(2). The petitioner was appointed as Helper in March, 1986. His services were terminated w.e.f. 01.04.1988 which led to raising of an industrial dispute, however, the Labour Court vide Award dated 05.02.1992 reinstated the petitioner with continuity of service and full backwages from 01.04.1988 to 21.05.1989 except for the period from 22.05.1989 to 04.02.1992 and granted full salary from the date of award. The respondent-management even challenged the said award in CWP-6787-1992 including CWP-8716-1992 which was dismissed however, the backwages was restricted for a period of five years i.e. almost 25% to the total wages. Thereafter the petitioner was allowed to join the duty in 2007 and is

continuing as such. The Board of Directors took a decision on 25.04.1995 (Annexure P3) to regularize the services of daily-wagers/ad hoc employees w.e.f. 01.04.1995, and in pursuance thereof, various other employees were regularized, however, the case of the petitioner was kept.

(3). Learned counsel for the petitioner has relied upon the information sought by some other employees under RTI Act for providing details of initial appointments of those persons whose services have been regularized vide order dated 28.04.1995/10.05.1995 (Annexure P4). A perusal of the information so supplied on 24.01.2013 (Annexure P5) would show that many persons junior to the petitioner have been regularized. The relevant extract read as under:-

Name	Date of appointment on daily wages	Date of regularization
Kartar Singh (petitioner)	March, 1986	Not regularized uptil now
Shamsher Singh	01.03.1987	01.04.1995
Rakesh Kumar	02.03.1987	01.04.1995

(4). He contended that the respondents are adopting pick and chose inasmuch as one Sube Singh has been regularized vide order dated 07.11.2012 w.e.f. the date when his junior has been regularized. He further submitted that similarly situated persons who were even junior to the petitioner have filed CWP-12878-2013 which was allowed vide judgment dated 07.03.2019 (Annexure P9) and on that basis, the petitioner even moved a representation dated 20.04.2019 (Annexure P10) which has still not been considered.

(5). Written statement has been filed by the respondent wherein the stand taken by them is that the petitioner was appointed as casual labour for civil construction works and currently there are no sanctioned posts available

and, therefore, his services cannot be regularized. It is, however, not controverted that the petitioner has been working continuously without any break ever since his reinstatement pursuant to the orders passed by this Court as already noticed above.

(6). Heard learned counsel for the parties and gone through the record.

(7). The argument raised by the respondent is not tenable in view of Division Bench judgment rendered by this Court in case titled as **Baldu Ram vs. State of Haryana, reported as 2000 (5) SLR 1** wherein it has been held that once the respondents have engaged an employee on work, which is continuous in nature and permitted them to serve for 10 years, it will be unfair on the part of the respondents to decline their claim for regularization.

The relevant extracts are reproduced below:-

“So far as the second ground is concerned, it is sufficient to point out that the work for the petitioners was with the respondents and they continued to serve and are in service even as on today, and since they have already rendered more than 10 years service, it cannot be said that their services cannot be regularized for non-availability of the required posts. Once the respondents have engaged the petitioners on work, which is of continuous nature, and permitted them to serve on their respective posts for more than 10 years, it will be unfair for the respondents to decline the case of the petitioners for regularisation of their services for non-availability of posts.”

(8). Furthermore, the denial of regularization to the petitioners is also in violation of their fundamental rights envisaged under Article 14 read with 16 of the Constitution of India. Once, the Labour Court as also this Court had reinstated the petitioners with a clear direction that they shall be

entitled to continuity of their service, the benefits of the same has to be granted to the petitioner. Therefore, the argument of the learned counsel for respondents that those who are regularized are seniors by virtue of the fact that at the relevant time the petitioners were not in service since their services were terminated by the Management vide order dated 01.04.1988, is not tenable. As such, for all practical purposes including benefit of regularization, the petitioners are deemed to be in service w.e.f. the date when they were originally appointed on daily wages basis and once, he is treated to be in service w.e.f. the original date of the appointment, he would be entitled to seek regularization on the ground of parity as has been held in identical circumstances by this Court in **LPA No. 1037 of 2012 (State of Haryana and others vs. Ved Pal and others)**, decided on 25.07.2012, in following terms:-

“.....Since it stands admitted on record that juniors to the private respondents were made regular and no effort to deregularize their services was made even after noticing the fact that seniors have been over-looked 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....”.

(9). Accordingly, this writ petition is allowed and the respondents are directed to regularise the services of the petitioner with effect from 01.04.1995 as per Annexure P4, on parity when his juniors, and refix his pay

accordingly. All the consequential benefits are liable to be calculated and disbursed to the petitioner in a time-bound manner, along with interest @ 6% p.a. The respondents are directed to grant and release the arrears of the consequential benefit by dint of this judgment, within a period of two months from the date of receipt of certified copy of this order, failing which the petitioner shall be entitled for further interest @ 18% p.a.

(10). Ordered accordingly.

01.09.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No