

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

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**CWP-10538-2016 (O&M)**

**Decided on 28.11.2023**

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Vijay Kumar

... Petitioner

VS.

Haryana State Agricultural Marketing Board & Ors.

... Respondents

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**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

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Present: Mr. Nihal S. Chaudhary, Advocate  
for the petitioner in CWP-10538-2016.

Mr. Naveen Daryal, Advocate  
for the petitioner in CWP-8551-2017.

Ms. Saloni Sharma, Advocate and  
Mr. Prateek Mahajan, Advocate for respondents

Mr. Dhananjay Singh, Advocate  
for respondent No.3 in CWP-10538-2016.

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**Sandeep Moudgil, J.**

This order shall dispose of CWP-10538-2016 & CWP-8551-2017 as identical issues are involved. For the purpose of order, CWP-10538-2016 is treated as the lead case.

The petitioner has filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of mandamus directing the respondents to grant benefit of regularization w.e.f. 01.10.2003 under the policy dated 01.10.2003 at par with his junior person – respondent No.3 along with consequential benefits.

Learned counsel for the petitioner submits that the petitioner joined the services of the respondent-Board on work charge basis in April 1994. His services were initially terminated on 31.07.2002 without following provision of Section 25-F of the Industrial Disputes Act, 1947 and the

industrial dispute raised was decided in favour of the petitioner which has since attained finality upon dismissal of SLP No.4486 of 2007 by the respondent-Board and thereafter, the petitioner filed CWP-23423-2013 for regularisation under the policy dated 01.10.2003, however, the respondent-Board regularized his services on 27.08.2014 as per policy dated 20.06.2014 and not under the policy dated 01.10.2003.

It is vehemently contended that junior person, namely, Dharampal respondent No.3 has been regularized on 06.08.2014 w.e.f. 01.10.2003 under the policy of 2003 and pay fixed accordingly, as is evident from Annexure P8 & Annexure P9 and as such, the petitioner claims parity as granted to the junior persons, namely, Dharambir, Pyare Lal, Satbir, Krishan and Rakesh, who were appointed much after the petitioner's appointment in service. He averred that though the petitioner has been regularized, however, benefit from back date has not been given to him whereas similarly situated employees have been given appointment/regularization from back date i.e. 01.10.2003 which is in violation of Article 14 of the Constitution.

Written statement on behalf of respondents No. 1 & 2 has been filed. In the preliminary submissions, it is stated that the present petition is barred by principle of *res judicata* and is liable to be dismissed as the writ petition earlier filed by the petitioner was disposed of vide order dated 11.11.2014 without any liberty to file afresh. He submits that the policy under which the petitioner was regularized vide order dated 27.08.2014 has already been set aside by this Court in Yogesh Tyagi vs. State of Haryana (CWP-17206-2014) decided on 31.05.2018, however, order of regularization of the

petitioner has not been withdrawn due to interim order granted by the Supreme Court on 26.11.2018 in SLP No.33265/2018 and even otherwise, the petitioner is not eligible for regularization as he does not fulfill the eligibility condition for the reason that the petitioner being a Steno-typist was not even qualified at the time of regularization inasmuch as he did qualify the shorthand test and therefore, the petitioner cannot claim parity with respondent No.3 who was regularized against class-IV post whereas petitioner was a Class-III employee.

Heard learned counsel for the parties and gone through the record.

The respondents are not disputing the fact where the services of the similarly situated employees were regularized as per policy dated 01.10.2003. Even if the ground of seniority is not to be taken into account when services of some of the similarly situated employees have been regularized, the Department is bound to maintain parity with respect to all the employees and this aspect has already been considered by the Supreme Court in **Hari Nandan Prasad and another V/s. Employer I/R to Management of FCI and another, 2014(2) SCT 234** and it has been held that wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left over workers itself would amount to invidious discrimination *qua* them in such cases and would be violative of Article 14 of the Constitution. Once it is held that the respondents are bound to consider

the case of the petitioner for regularization under the 2003 policy, the issue as regards pendency of litigation qua 2014 policy does not arise in so far as the petitioner is concerned.

The argument raised on behalf of the respondents that the writ petition is barred by *res judicata* is ill-founded for the reason that at that time CWP-23423-2013 earlier filed by the petitioner was disposed of on the statement of the respondent to the effect that the desired relief has been granted and as such there was no occasion left for the petitioner to seek liberty for revival of the petition or for filing a fresh petition. There is no justification for the respondents to now raise question on the eligibility of the petitioner as to passing of shorthand test as the stage for calling upon the petitioner to qualify such test has bypassed in view of the fact that the respondents have been availing the services of the petitioner as such, since April, 1994 satisfactorily and therefore, the condition of passing of such skilled test has become redundant in view of the long standing satisfactory service of the petitioner.

Keeping in view above observations, writ petition is allowed and direction is being given to the respondents to regularize services of the petitioner in terms of policy dated 01.10.2003 with all consequential service/pensionary benefits including arrears thereof alongwith 9% interest within one month from the date of receipt of certified copy of this order

Ordered accordingly.

28.11.2023

V.Vishal

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

**(Sandeep Moudgil)**  
**Judge**

Yes/No  
Yes/No