

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

235

**CWP No.16606 of 2020
Date of Decision : 5.12.2023**

*Ram Kumar**..... Petitioner**versus**State of Haryana and others**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

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

Mr. Rohit Arya, DAG, Haryana

TRIBHUVAN DAHIYA J.

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the order dated 15.9.2020, Annexure P-13, and a writ of *mandamus* directing the respondents to regularise the petitioner's service from the date his juniors have been regularised, and pay all consequential benefits.

2. The facts of the case in brief are;

2.1. The petitioner was engaged as Pump Operator on daily wages in the Department w.e.f. 26.9.1990. His service was terminated on 30.6.1991. He raised a dispute through demand notice dated 23.7.1999, and his reference no.432 of 2001, under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short 'the Act') was made.

2.3. The reference was answered in his favour vide award dated 1.6.2001, Annexure P-1, passed by the Industrial Tribunal-cum-Labour Court (for short 'the Tribunal'), granting the following relief:

In view of my finding on issue no.1 the reference is answered to the effect that the workman is entitled for reinstatement with continuity of service but without back-wages.

2.4. The award attained finality, and pursuant thereto the petitioner re-joined the Department in April 2004. Since then, he has been working to the entire satisfaction of his superiors.

2.5. The Government of Haryana has framed Regularisation Policies from time to time, for regularising work-charge, casual-charge, daily wages employees in service. Since the petitioner is entitled to regularisation in terms thereto, he made a representation for regularisation in terms of applicable Policy, including Policy dated 18.3.1996, which is to the effect that service of those work charge, casual charge, daily wages employees, who completed three years on 31.1.1996, and fulfilled other conditions laid down therein, should be regularised in service.

2.6. The representation was declined by the respondent vide impugned order dated 15.9.2020 on the ground that the petitioner did not fulfill the terms and conditions laid down in the Regularisation Policies, including the Policy dated 18.3.1996, and was not entitled to regularisation.

2.7. In these circumstances, the instant petition was filed.

3. Learned counsel for the petitioner contends that the petitioner is entitled to regularisation in service as he was held entitled to reinstatement with continuity of service by the award passed by the Tribunal. Therefore, there was no basis for the respondents to decline regularisation on the ground that he did not fulfill the requirement of the Regularisation Policy of completing three years on 31.1.1996.

4. Learned State counsel, on the contrary, contends that the petitioner was terminated from service on 30.6.1991 and raised a demand after a long delay on 23.7.1999, leading to making of the reference in question, and the award passed in consequence thereof. Therefore, the continuity of service provided to the workman is only with effect from the date of the demand notice, and not prior thereto. Accordingly, he cannot be considered to be in service prior thereto and benefit of regularisation cannot be given in terms of the Policy dated 18.3.1996.

5. Heard.

6. It is apparent on record that the petitioner was terminated from service as a daily wager on 30.6.1991. He sent a demand notice dated 23.7.1999, and the reference was answered in his favour vide award dated 1.6.2001, passed by the Tribunal. By answering the reference, the petitioner's/workman's termination was declared illegal, and he was held entitled to reinstatement with continuity in service without back-wages. There is no stipulation in the award that his reinstatement is to be with effect from the date of the demand notice or from the date of reference. Therefore, it has to be held that he was reinstated with continuity of service from the date of termination, i.e., 30.6.1990. This declaration of continuity in service is to be given full effect to in letter as well as in spirit. Accordingly, the petitioner has to be considered in service with effect from the date of termination, as also on 31.3.1993. There was no basis for the reasons to hold otherwise, and declared regularisation of petitioner's service on the ground that he did not complete three years service as on 31.1.1996.

7. The law in this regard is well settled, and reference can be made

to latest decision of this Court dated 17.1.2018 rendered in CWP No.1102 of 2013 titled *Mohinder Singh v. State of Haryana and others*, Annexure P-10. Relevant para of the judgment reads as under:

Learned counsel for the petitioner relies on the Division Bench judgment in *Dalip Singh Vs. State of Haryana*; 1993 (3) SCT 385. In this case the Court held that awards of Labour Court are statutory in character under Section 18 of the Industrial Disputes Act, 1947. They have the effect of conferring rights on the petitioners-workmen to be deemed in service. The intervening period is not to be treated differently for regularization in accordance with the policy of the Government. Therefore, the argument of the learned law officer raised on behalf of the Government that the terms and conditions of the policy have not been satisfied has to be summarily rejected because of the legal fiction created by the labour court and the bad action of the department in wrongfully terminating the services of the petitioner leaving him in forced idleness and out of service from the year 1993 to 2004 and till date of the actual reinstatement.

8. In view of the discussion, the petition is allowed and the order dated 15.9.2020 is set aside. The respondents are directed to consider the petitioner for regularisation in terms of Policy of Regularisation dated 18.3.1996, and issue the letter of appointment/regularisation with all consequential benefits, subject to his fulfillment of all the conditions laid down therein, within a period of four weeks from the date of receiving a certified copy of this order.

9. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

5.12.2023

Ashwani

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