

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3505 of 2012 (O&M)
Date of decision: 23.02.2023

Kuldeep Singh

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amarjit Singh, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Sr. DAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. The petitioner prays for the issuance of a writ in the nature of mandamus to direct the respondents to regularize his services as Gardener. He is stated to be working since January, 1993 with respondent no.2. Though, in 1996, his services were dispensed with, however, the Labour Court vide award dated 09.01.2002 ordered his reinstatement with continuity of service and back wages from the date of demand notice dated 09.11.1999. He is still continuing to work as Gardener.

2. The claim of the petitioner is contested by the respondents on the ground that he did not work for a period for 240 days in each year prior to 31.12.2006 to make him eligible for consideration. It is also contended that the petitioner has not challenged the correctness of the seniority/priority list prepared by the State.

3. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

4. On the one hand, the learned counsel representing the petitioner submits that once the Labour Court vide award dated 09.01.2002 ordered the

reinstatement of the petitioner with continuity of service, then, he shall be deemed to be continuing in service for the purpose of calculating the period of 10 years.

5. On the other hand, the learned counsel representing the State of Punjab submits that the petitioner's continuity of service has been ordered to be counted only from the date of demand notice dated 09.11.1999 though, his services were dispensed with in the year 1996. He submits that hence the petitioner is not eligible to be regularised. Sh. Chhabra, the learned counsel representing the State has also contended that the petitioner has failed to challenge the correctness of the priority/seniority list prepared by the respondents in order to regularise the services of the temporary employees.

6. This court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

7. The concluding para of the award passed on 09.01.2002 reads as under:-

“Resultantly, the reference is answered as dismissed as withdrawn with no order as to costs against respondent no.1 and answered ex-parte against respondent no.2 who is enjoined upon to reinstate the workman with continuity of service and back wages from the date of demand notice dated 9th November, 1999 as indicated in the reference itself. No order as to costs. The workman is directed to report for duty within 30 days of the publication of the award.”

8. On its plain reading, it is evident that the petitioner was directed to be reinstated with continuity of service. Undoubtedly, the petitioner has been held entitled to the back wages from the date of demand

notice however, the award passed by the Labour Court cannot be read in the manner as suggested by the State counsel to conclude that the continuity of service was also to be counted with effect from 09.11.1999. Had it been the intention of the Labour Court, then, there was no requirement for ordering his reinstatement with continuity of service.

9. The term 'Continuity' itself clearly indicates that the petitioner shall be deemed to have continued to serve the department from the date of his original engagement i.e. January 1993. It is only the amount of back wages which has been restricted to be calculated from the date of demand notice i.e. 09.11.1999.

10. As regard the second objection, it may be noticed that the priority list/seniority list is a list prepared by the respondents in order to have sufficient information about the persons, who are at the top of the priority list for the purpose of regularization. Such list is only informal in nature and does not have any statutory backing. Hence, the second objection of the learned counsel representing the State has no substance.

11. Keeping in view the aforesaid facts and discussion, the writ petition stands allowed and respondent no.2 is directed to reconsider the petitioner's request for regularization, by treating him to have continuously worked as Gardener from January, 1993, within a period of two months from today, positively.

12. All the pending miscellaneous applications, if any, are also disposed of.

February 23, 2023
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(ANIL KSHETARPAL)
JUDGE

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