

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16985-2017
DECIDED ON: 28th AUGUST, 2023

RAM CHANDER AND ANOTHER

.....PETITIONERS

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Tushar Wadhwa, Advocate and
Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Hitesh Pandit, Advocate
for the respondents.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked by the petitioners for issuance of a writ in the nature of *Certiorari* for quashing of the impugned order dated 02.02.2017 whereby, the claim of the petitioner has been rejected with further prayer for issuance of a writ in the nature of *Mandamus* to direct the respondents to consider their claim for regularization w.e.f. 31.03.1993 and to grant the benefit to other set of employee.

2. It is the case of the petitioners that the calculation of 240 days in a calendar year were wrongly made by respondent-Department, as is evident from the speaking order dated 02.02.2017 whereby, the calculations of working days were made w.e.f. 12.05.1988 to 31.05.1988. Relying upon the said calculation,

respondent-Department has rejected the claim of the petitioners vide impugned speaking order dated 02.02.2017 recording that they had worked for 234 days and short of six working days, which is a pre-requisite condition under policy dated 27.05.1993 (Annexure P-1).

3. On the other hand, Mr. Hitesh Pandit, learned Advocate for the respondents has drawn attention of this Court to the operative part of the speaking order, which reads as under:-

“4. And whereas as per their representation dated 23.6.2015 both the petitioners had joined HUDA services from 12.5.1988 and upto 31.3.1993 they had not completed five years service on daily wages since during the year 1988 they had worked for 234 days as detailed below and were not in service from 1.4.1988:-

<i>(i)</i>	<i>From 12.05.88 to 31.5.88</i>	<i>20 days</i>
<i>(ii)</i>	<i>For 6/88</i>	<i>30 days</i>
<i>(iii)</i>	<i>For 7/88</i>	<i>31 days</i>
<i>(iv)</i>	<i>For 8/88</i>	<i>31 days</i>
<i>(v)</i>	<i>For 9/88</i>	<i>30 days</i>
<i>(vi)</i>	<i>For 10/88</i>	<i>31 days</i>
<i>(vii)</i>	<i>For 11/88</i>	<i>30 days</i>
<i>(viii)</i>	<i>For 12/88</i>	<i>31 days</i>

234 days

While thee is no dispute in the working days of the petitioners from onward upto 31.3.1993 when in this context the petitioners do not fulfill the sine qua-non condition of five years working as On 31.3.1993 as stipulated vide Chief Secretary letter NO. 6/4/90-2GSI dated 27.6.1993 and therefore, they do not become entitled for regularization from 1.4.1993. while considering their daily wages services having been rendered onward as per the regularization policy of 1996 [as adopted by HUDA), their services have correctly been regularized from 1.2.1996 in regard to which the competent authority does not consider not to interfere in the matter. As such, the claim of the petitioner for regularization from 1.4.1993 does not become justified and is hereby ordered to be rejected.”

4. Mr. Pandit, further submits that in any case if calculation of days is made even from 01.04.1988 the working days by 31.12.1988 would remain the same and is not going to make any difference and the case of the petitioners has been rightly rejected by the respondent-Department, as they do not fulfill the requisite condition of 5 years working as on 31.03.1993.

5. This Court is sanguine of the fact that the petitioners are claiming regularization under the policy dated 27.05.1993 (Annexure P-1). Relevant part thereof, is reproduced as under:-

“CASUAL / DAILY RATED EMPLOYEES: *The casual and daily rated employees who have completed five years service on 31st March, 1993 and were in service on 31st March, 1993, shall be regularized on regularization, they shall be put in the time scale of pay applicable to the lowest Group D cadre in the Government and they would be entitled to all other allowances and benefits available to regular Government servants of the corresponding grade.”*

6. On perusal of the afore-said clause makes it abundantly clear that the period of 5 years is to be calculated as on 31.03.1993 with a further condition that the employee should be in service on 31.03.1993 making it ample clear that calculation of 240 days is to be calculated upto 31.03.1993. There is no mention about the financial years or the calendar year but the cut off date in itself is suffice leaving no doubt to the mind of this Court that working days is to be calculated for period ranging from 01.04.1988 till 31.03.1993 and if such calculation is made, the petitioners have completed 5 years of service with 240 days in each and every year and to that effect, Mr. Pandit, learned counsel for the respondents is not in a position to controvert, if that is the case.

7. Further as far as the reliance put by Mr. Pandit, learned counsel for

the respondents to the orders passed by this Court in the cases of “Satyabir and others vs. State of Haryana and others”; LPA No. 755-2015, decided on 15.05.2015 and “Brij Lal and others vs. State of Haryana and others”; LPA No. 1780-2016, decided on 28.11.2016; wherein, the proposition was to the effect that the appellants, therein, were seeking regularization from the deemed date or under the policy which was not even in existence on the date when they set their claim but their services were regularized w.e.f. 29.07.2011 in terms of policy dated 29.07.2011 vide order dated 25.10.2011. Thereafter, there were claiming regularization in terms of policy dated 01.10.2003 which was found to be non-sustainable as the said policy was withdrawn in the year 2007 itself and therefore, the benefit of said policy cannot be granted to the petitioners. Therefore, this Court is of the considered view that the facts and proposition involved in the instant case as well as in Satyabir and others case (supra) are totally distinct and not tenable to the present case at all.

8. In Brij Lal and others case (supra) the relief of deemed date regularization w.e.f. 01.01.1996 instead of 01.10.2003 was declined on the ground of delay but in the present case the petitioners have raised their claim in the year 2015 by sending a legal notice dated 23.06.2015 (Annexure P-6). AS far as the argument raised by Mr. Pandit, learned counsel for the respondents with regard to delay in approaching this Court is concerned, there is a speaking order dated 02.02.2017, which was assailed by the petitioners and in the speaking order there is no reference or any observation with regard to delay, therefore, such argument now being raised by learned counsel for the respondents is not tenable under the eyes of law. Moreso, the petitioners are vigilant enough and served a legal notice in the year 2015 upon the respondent-Department which was

considered and dismissed on merits by the department.

9. In view of discussions made hereinabove, the present petition is allowed and the respondent-department is directed to regularize the petitioners w.e.f. 31.03.1993 and also to grant them benefit of regularization as granted to the other set of employee. Respondent-department is further directed to release all the dues accrued to the petitioners within a period of two months from today along-with interest of 6% per annum on the delayed payment from the date it became due till its actual realization.

28th AUGUST, 2023
sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>