

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24400-2016 (O&M)

Reserved on 26.07.2023

Pronounced on: 08.11.2023

Suresh Kumar

... Petitioner

VS.

HUDA & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. YS Malik, Advocate and
Ms. Divya Jyoti, Advocate for the petitioner

Mr. Padamkant Dwivedi, 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* seeking re- fixation of the monthly wages of the petitioner after preponing the date of his regularisation of service from 18.06.2014 to 01.10.2003 alongwith consequential service benefits. The petitioner has also sought issuance of writ in the nature of certiorari seeking nullification of the office order dated 13.04.2011 (Annexure P-7) vide which the case of the petitioner was not considered for regularisation holding that the petitioner remained absent from 12.01.2001 to 19.02.2001 for a continuous period of 39 days as against the maximum permissible limit of 30 days.

(2). The petitioner was appointed on daily wages basis w.e.f. January 1995 in the office of Executive Engineer, HUDA Division-1, Faridabad. The petitioner remained absent from duty for a period of 39 days from 12.01.2001 to 19.02.2001. The case of the petitioner was considered for regularisation under the Govt. policy dated 01.10.2003 and 10.02.2004 and

the same was rejected on account of break of period of 39 days. The Engineer-in-Chief, HUDA, Panchkula vide Letter No. 3341, dated 27.03.2006 made the following observations:

"Official submitted medical certificate for 15 days only (i.e. 25.01.2001 to 09.02.2001) whereas he remained absent for 39 days continuously from 12.01.2001 to 19.02.2001, during absent period he went to Nepal from Faridabad. The break in service has been caused due to fault of employee attributable to him. Moreover, there is no any provision for any leave etc. for daily wages as in this case he gets pay for the day when in come and work. As such medical certificate for 15 days only does not come to rescue for his regularisation service" and accordingly the case could not be finalized."

(3). The petitioner filed CWP No. 18145 of 2010 before this Court and the same was disposed of vide Judgment dated 06.10.2010 with a direction to pass speaking order and in pursuance thereof, the respondent passed a speaking order dated 13.04.2011 rejecting the claim of the petitioner. The said order dated 13.04.2011 was challenged by the petitioner in CWP No. 2317 of 2012 also claiming regularisation of his service, however, during the pendency of the said writ petition, the services of the petitioner were regularised on 21.10.2014 w.e.f. 18.06.2014 i.e. after completion of 21 years of service. Thereafter, the petitioner filed representation with a prayer to prepone the date of regularization of his services followed by legal notice dated 23.07.2016 and having received no response from the respondent, the present writ petition has been filed.

(4). Learned counsel for the contended that as per policy dated 01.10.2003 modified on 10.02.2004 (Annexure P11 colly), the State of Haryana has framed regularization policy in respect of daily wage employees

which has been duly adopted by the respondent-HUDA and in terms thereof, the daily wage employee, who has completed 3 years service on Group D post and was service on that date, shall be regularized against Group-D post provided he fulfills the requisition qualification and was appointed against vacant post. It has been further mentioned that the employee should have worked for a minimum period of 240 days in each year and if the break in service of daily wage employee has been caused for no fault attributed to him and that the government may not condone the break if the period of such break is more than the period of 30 days. He further added that the said policy was modified on 10.02.2004 laying down a condition that the daily wage employees under Group-C and D category, who were engaged before 31.01.1996 shall be regularized.

(5). It is argued that the break in service of the petitioner was because of the reasons that the petitioner fell ill which fact has been supported by medical certificate (Annexures P1 & P2) and that apart, the case of the petitioner to regularization has also been recommended by respondent-authority on 13.09.2009 (Annexure P4) and as such, the break in service, if any, is not attributable to the petitioner.

(6). Notice of motion was issued on 28.11.2016 and pursuant thereto, cost of Rs.5000/- was imposed vide order dated 05.12.2018 for the respondents' failure to file reply which they ultimately filed on 11.04.2019.

(7). It is the preliminary objection raised on behalf of the respondent-HUDA that the petitioner did not fulfill the requisite condition for regularisation of service as per the Govt. policy of 2004 therefore he was not

regularised vide the said policy. It is then contended that even otherwise later on the said policy was withdrawn by the Government.

(8). Mr. Dwivedi averred that the petitioner remained absent from 12.01.2001 to 19.02.2001 i.e. for a period of 39 days and as such the break in service being beyond the prescribed limit of 30 days as per policy of 1997, and as such, the petitioner was held not entitled for the benefit of regularization as per policies dated 01.10.2003 and 10.02.2004. It is further submitted that the petitioner was regularized in service vide memo dated 21.10.2014 as per policy of 2014 wherein the condition of break of more than 30 days was not mentioned.

(9). The petitioner filed replication dated 22.09.2019 controverting the averments made by the respondents in the written statement.

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

(11). The issue that requires to be adjudicated by this Court is whether the respondent-HUDA was justified in its action for not granting the benefit of regularization to the petitioner only on the ground that the break in service (39 days) of the petitioner was more than 30 days as per the requirement of policies dated 01.10.2003/10.02.2004?

(12). As per policy dated 01.10.2003 issued by the Government of Haryana, the services of such daily wage employees shall be regularized if they have completed three years service on Group D posts on 30th September, 2003 and were in service on 30th September, 2003, provided they fulfill the requisite qualifications and were originally appointed against vacant post and that they have worked for a minimum of 240 days in each year and if the

break in service of a daily wage employee has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. It further provided that if the break in service of such employee has been caused due to fault of the employee like abandonment of employment, the same may not be condoned if the break is more than 30 days in a year.

(13). The petitioner was admittedly considered for regularization under the notification dated 01.10.2003/10.02.2004. His claim for ante-dated regularization was rejected on account of break period of 39 days i.e. 12.01.2001 to 19.02.2001, whereas he had submitted Medical Certificate from 25.01.2001 to 09.02.2001 which was verified and accepted by the respondent-Authority as such the absence comes to 20 days as the medical certificate submitted was from 25.01.2001 to 09.02.2001 which comes to 7 days and thus, the total absence period would 13 days in January, 2001. Likewise, the absence period from 10.02.2001 to 19.02.2001 which comes to 10 days and in this way, the total absence i.e. without Medical Certificate come to 13 days in Jan and 10 days in February, 2001 which comes to a total of 23 days only.

(14). A perusal of Govt. Policy dated 01.10.2003/10.02.2004 (Annexure P-11 Colly) would show that if break in service of a daily wager has been caused for no fault attributable to him, such break period should be condoned unless “it is of an extraordinary longer period” has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same, if the period of such break is more than a period of 30 days. In the present case, the absence of the petitioner is shown for 39

days in two months i.e. January and February, 2001. The Medical Certificate was for a period of 16 days, to which no fault is attributable to the petitioner and as such, the alleged absence remains for 23 days which is less than 30 days, thus fulfilling the condition as provided under the policies (Annexure P11), in case of the petitioner.

(15). Besides, it is not necessary that the period of 3 years' service should be taken immediately preceding the cut-off date (i.e. 30.09.2003). One may complete three years and 240 days in any three years. A perusal of service record of the petitioner (Annexure P3) maintained by the respondent-Authority, regarding his working days, would show that that he had completed the requisite service period.

(16). In **Kavita Gandhi Vs. State of Haryana [1997 (4) RSJ 760]**, this Court in case of regularization of ad hoc service held that in order to become eligible for consideration for regularization of the service under a particular notification, the prescribed years of completed service with reference to the cut off date mentioned in the notification applies to such employees also who have completed those number of years of service prior to the cut off date and not necessarily immediately preceding the said date. The relevant extract of Kavita Gandhi's case is reproduced as under:-

*In view of the judgment of the Full Bench of this Court in **Jagdish Lal and others** (supra) it is abundantly clear that in order to become eligible for consideration for regularisation of the service under a particular notification of the State Government the prescribed years of completed service with reference to the cut-off date mentioned in the notification applies to such employees also who have completed those number of years of service prior to the cut off date and not necessarily,*

immediately preceding the said date. In other words, if the employee has completed, with reference to the notification dated 7.3.1996/18.3.1996, three years of completed service and was in service on cut off date i.e. 31.1.1996, he would become entitled for regularisation of service provided he fulfilled the other conditions mentioned in the notification. It is not necessary that the period of three years should be taken immediately preceding the cut-off date i.e. 31.1.1996. If the case of the petitioner is examined from this angle, she rendered more than three years completed service without any break prior to 31.1.1996 and she was in service on the said date. The break of 48 days in service of the petitioner in the year 1994 would, thus, be not relevant to be considered for regularisation of her service.

[Emphasis applied]

(17). It is to be understood that the reasoning behind the incorporation of the 30-days limit may be to assess the seriousness of the person seeking regularisation towards his job. If a person is absent for a continuous period of more than 30 days without any intimation and/or valid reason, it can be deduced that such a person is insincere towards the job and hence cannot seek regularisation. However, it also needs to be evaluated that the reason for absence was within or beyond the control of the employee. In this regard, the decision in the case of **Subhash Chand v. State of Harvana [2002(2) S.C.T. 948]**, comes to the rescue of the petitioner, wherein a Division Bench of this Court made the following observations:-

"4. The respondents have certainly acted with an element of discrimination as far as the petitioner is concerned. The petitioner has submitted the medical certificate showing that his absence during the afore-referred period was for reasons beyond his control. Not a whisper has been made in the written

statement that the medical certificates furnished by the petitioner were baseless, were procured one or were not genuine. If that be so, it was obligation of the employer to fairly concede the case of the petitioner for regularisation in view of the principles enunciated by a Full Bench of this Court in the cases of Tek Chand and others v. State of Haryana and others, 2002(1) SCT 308 (P&H) (FB): 2001(3) R.S.J. 604 and Jagdish Lal and others v. State of Punjab and others, 1996(3) SCT 28 (P&H): (1998- 2) P.L.R. 43 referred to hereinafter.

(18). In fact, even in the present case, a perusal of Annexure P-3 shows that the petitioner has completed more than requisite 240 days of service in each year since 1995, without any longer break of more than 30 days making the aforesaid decision squarely applicable to the facts of the case. Even otherwise, there is no denying the fact that the absence of continuous period of 23 days out of the total period of 39 days was validly explained.

(19). In view of the detailed analysis given above, this Court is of the opinion that the petitioner, certainly, falls within the ambit of policies dated 01.10.2003 as amended on 10.02.2004 *inasmuch* as, the petitioner has successfully established that the period of absence was only 23 days as against the assertion of the respondents that the absence period of the petitioner exceeded 30 days for being considered under the relevant regularization policy. The respondents have wrongly not taken into consideration the medical certificates attached by the petitioner for his 'absence', which, otherwise, has been duly admitted to be 15 days and even if the period of 15 days is subtracted from the alleged absence period of 39 days, the total unaccounted period comes to only 24 days thereby bringing

the present petitioner within the ambit of the policies (Annexure P11) which provides for condonation of break in service of not more than 30 days in a year.

(20). I say so for the reason that the alleged 'break in service' is not of such an "extraordinary longer period", in view of the total length of daily wage service rendered by the petitioner as Mali-cum-Chowkidar from 1993. The policy itself provides that such break in service ought to be condoned unless it is found that the employee has abandoned the employment which is not the case of the respondents in so far as the petitioner is concerned. Absence from duties does not constitute break in service unless a specific rule or statute or regulation applicable to the Establishment prescribes such break in service. No such provision has been cited by the respondents before this Court governing the services of the petitioner to construe that the petitioner suffered a break in service owing to a particular period of absence or unauthorized absence.

(21). For the reasons aforesaid, this writ petition is allowed and the office order dated 13.04.2011 (Annexure P7) rejecting the claim of the petitioner for regularization w.e.f. 01.10.2003 is quashed and the respondents are directed to regularise the services of the petitioner with effect from 01.10.2003 instead of 18.06.2014 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 four 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.

(22). Ordered accordingly.

08.11.2023
V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No