

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

CWP-9505-2012 (O&M)

Date of decision: 13.02.2023

Malkiat Singh

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.P.S.Tinna, Advocate for the petitioner
Mr. R.K. Kapoor, Addl. AG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The petitioner prays for issuance of a writ in the nature of Certiorari to quash the impugned order dated 26.04.2012 whereby the services of the petitioner were dispensed with and he was removed from the service. The relevant facts in brief are required to be noticed.

2. The petitioner claims to have worked as a daily wager in the office of the Sub Divisional Engineer, Water Supply and Sanitation, Sub Division No.1, Abohar, District Fazilka from 02.02.1983 to 31.03.1987. Thereafter, he was removed from the service by the concerned authority. The proceedings assailing the order of said removal were pending before the Labour Commissioner. The petitioner was once again engaged w.e.f 01.10.1997 by the authority subject to the condition that he will not claim any arrears of back wages and other related benefits. On 18.03.2011, the Government of Punjab, in accordance with the decision of the Supreme Court, in **State of Karnatka and others vs. Uma Devi and others 2006 (4) SCC 1** issued instructions for the regularization of the services of the daily wage/work charge employees. It was provided that the daily wage/work charge employees, who have completed 10

years of service upto December, 2006 shall be considered for the regularization subject to stipulations provided in the instructions. The petitioner's services were regularized w.e.f 24.05.2011, however, subsequently, the petitioner's services have been dispensed with as he does not fulfill the condition of 10 of years service for regularization which was made a primary requisite in the instructions.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. Learned counsel representing the petitioner submits that if the period from 02.02.1983 to 31.03.1987 is added in the service, the petitioner completes 10 years period as required on 31.12.2006. He submits that once the petitioner was reinstated on 01.10.1997, his period from 1983 to 1987 could not be kept out of consideration by the concerned authority. He submits that in the aforementioned policy the word 'continuous service' is not used anywhere.

5. On the other hand, learned State counsel while defending the writ petition submits that the petitioner was a back door entrant and he remained willfully absent from duty w.e.f 01.04.1983 to 30.11.1997. Hence, his service from 1983 to 1987 cannot be considered for regularizing his service.

6. The petitioner was engaged on a daily wage basis. At the end of each day his services would be deemed to have come to an end subject to his fresh engagement on the very next day. There is a gap of more than 10 years between 01.04.1987 to 30.11.1997. The petitioner has not placed on file the terms of his re-engagement in October, 1997.

In the absence thereof, the petitioner cannot be treated as reinstated by the authority. In fact, the petitioner can only be treated to have been appointed on 01.10.1997. Though, in the policy, the word ‘continuous service’ has not been used specifically, however, it is evident that the aforesaid policy was notified in terms of the observations made in **Uma Devi’s case (supra)**. If the petitioner is treated to have been appointed on 01.10.1997, he fails to fulfill the requirement of the said policy. As already noticed, in the absence of evidence to prove that he was reinstated in service, the petitioner is required to be considered to have been appointed with effect from 01.10.1997. No doubt, the policy does not use the expression ‘continuous service’ however, the intent of the policy is to grant one time benefit to the employees who were working for the last 10 years on the date of the issuance of the policy. The intent of the policy is clear from its interpretation that it was meant to benefit the employees who had been continuously working for the department.

7. The petitioner is also out of service since 2012.

8. Keeping in view the aforesaid facts and discussion, this Court does not find it appropriate to exercise its extraordinary writ jurisdiction.

9. Hence, dismissed.

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

13.02.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE