

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

CWP No.3860 of 2015 (O&M)

Reserved on:04.05.2023

Pronounced on:17.05.2023

Karambir

...Petitioner

Vs

HVPNL and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. D.R. Bansal, Advocate
for the petitioner.

Mr. Hitesh Pandit, Advocate
for the respondents.

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JAISHREE THAKUR J.

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Mandamus directing the respondents to regularise the services of the petitioner w.e.f. 01.02.1988 and grant him promotion from the date his juniors were promoted, with all other consequential benefits.

2. In brief, the facts of the case are that petitioner joined the service in the erstwhile Haryana State Electricity Board on daily wages on 04.04.1980 in Construction Sub Division, Panipat. He was promoted as work charge T. Mate and thereafter promoted as work charge Lineman w.e.f. 25.02.1989 vide order dated 03.08.1989. A common enquiry was conducted against the petitioner and one Rajpal on the charge of submitting a bogus experience certificate, as a result of which, services of both the employees were terminated on 16.10.1992. Petitioner filed CWP No. 3935 of 1994 in this Court, which was allowed on 24.10.1994 and while setting aside the termination order, respondents were given liberty to proceed in accordance with law, if so desired.

3. Rajpal challenged his termination by filing a civil suit which was decreed on 21.4.1997 and his termination order was set aside and the respondents were directed to give all consequential benefits to him. The decree of the Civil Court was upheld upto the Hon'ble Supreme Court. However, on the same charges, he was again charge-sheeted and he challenged the same by way of CWP No.15771 of 2002, which was allowed on 25.8.2003 and the charge sheet was quashed. Even then, when Rajpal was not being regularised, he filed a Civil Suit which was dismissed and the first appeal preferred by him also met with the same fate. Raj Pal died during the pendency of first appeal, however, his legal representatives approached this Court in RSA No. 1315 of 2011 titled as *Sheelawanti & others v. HSEB, inter-alia* on the ground that when junior to the deceased employee stands regularised and promoted, Rajpal was also entitled to the same benefit from the date when his junior got the benefit. During the pendency of this RSA, service of late Rajpal was regularised vide order dated 29.01.2014 w.e.f. 24.09.1992 i.e. from the date his immediate junior Bachna Ram was regularised with a clear stipulation that it will not be treated as a precedent. Subsequently, vide order dated 27.08.2014, the deemed date of promotion of late Rajpal was allowed on notional basis, which was challenged by his wife through CWP No. 30 of 2015 titled as *Sheelawanti v. HVPN* in this High Court for getting the actual benefit instead of notional benefit of promotion, which was allowed vide judgment dated 08.02.2017.

4. As this Court vide order dated 24.10.1994 passed in CWP No. 3935 of 1994 had granted liberty to the respondents to proceed against the petitioner in accordance with law, respondents herein had initiated departmental proceedings against the petitioner on the same charge of submitting a bogus

experience certificate. On completion of enquiry proceedings, a show cause notice dated 06.02.2001 was issued, which was responded by the petitioner. Thereafter, the petitioner was terminated from service vide order dated 21.08.2001 (Annexure P-5). In appeal, his punishment of termination from service was reduced to reduction in rank to the post of work charge T. Mate and the petitioner was posted as work charge T. Mate vide letter dated 03.12.2001.

5. The erstwhile Haryana State Electricity Board framed a policy dated 08.02.1988 bearing Memo No. CH/58/NGE/G1281/Ban-88 that there will be no work charge establishment after 01.02.1988 and every work charge employee was made regular. This question came before this High Court in LPA No. 200 of 2008 titled as *Badri Prasad v. HSEB* and it was held that since after 01.02.1988 there was no work charge staff, the employee was entitled to regularisation in terms of the policy (Annexure P-7). A number of policies were framed for regularisation of ad hoc, contractual, daily wagers and work charge employees from time to time by the State of Haryana which were adopted by the respondents but services of the petitioner were never regularised. Thereafter in view of the decision of the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka v. Uma Devi and others (2006) 4 SCC 1*, the State of Haryana withdrew the regularisation policies notified by it earlier vide notification dated 13.04.2007. Thereafter, vide notification dated 18.06.2014, an amendment to the notification dated 13.04.2017 came into effect in respect of regularization of Group C and D employees, working on ad hoc/contract/daily wages/work charge basis. The petitioner herein raised demand for regularization under notification dated 18.06.2014 contending that his services could not be regularized in terms of previous policies, even though

he was eligible and therefore, he should be considered under the said notification. As no action was taken for regularizing services of the petitioner, he approached this Court by way of instant writ petition.

6. Learned counsel appearing for the petitioner would contend that services of the petitioner ought to be regularized, as the same benefit has been given to Rajpal and Bachna Ram, who were junior to him. It is argued that his immediate junior Bachna Ram was regularized, which in turn became the basis for regularization of Rajpal and therefore, on the basis of parity, services of the petitioner ought to be regularized.

7. Per contra, learned counsel appearing on behalf of the respondents would submit that various policies that have been issued for regularization of services of ad hoc/daily wages/contract/part-time workers stood withdrawn in compliance of judgment passed by the Hon'ble Supreme Court in ***The Secretary, State of Karnataka and others Vs. Uma Devi and others (2006) 4 SCC 1***. Apart from that, petitioner would not be entitled to regularization as there was a break in his service. Services of the petitioner were terminated vide order dated 21.08.2001 on the ground that he had submitted a bogus experience certificate, however, on an appeal filed, punishment of termination was reduced to reduction in rank against any vacant post available. It is argued that the notification dated 17.01.2012, which would be applicable in the instant case, would debar the petitioner from being regularized.

8. I have heard learned counsel for the parties and have perused the paper book. The question for consideration before this Court is whether the petitioner would be entitled to regularization as claimed by him on the basis of parity with Rajpal and Bachna Ram. Admitted facts are that services of both petitioner and Rajpal were terminated on account of a finding that they had

submitted bogus experience certificate. Rajpal filed a civil suit, which was decreed and his termination order was set aside; whereas the petitioner approached this Court and order of termination was set aside by the writ court, leaving it open to the department to initiate any action against him. It is in this background, respondents herein initiated departmental proceedings, which culminated into termination of services of the petitioner. In the appeal preferred against the same, termination order was set aside and punishment of reduction in rank was awarded to him. There was a break in service of 104 days, which period is counted from the date of his termination order passed on 21.08.2001 till the date when order of termination was set aside and he was directed to be taken back in service against a vacant post, while imposing punishment of reduction in rank. As per Government of Haryana letter dated 25.01.2012, which is amendment to its notification dated 17.01.2012, an employee/worker should have continuous service for not less than ten years on 10.04.2006 against duly sanctioned vacant post but said service should not be under the orders of the Court/Tribunal. If the break in service is on account of fault of the employer, such break in service should be condoned unless it is of extraordinary longer period i.e. more than 90 days in a year. However, if the break in service is on account of fault of the employee, government may not condone the same if the period of such break is more than a period of 30 days in a year. Therefore, the question whether the petitioner would be entitled to regularization is answered in negative, considering the fact that there is a break in service for a period of more than 30/90 days in a year.

9. As far as the claim of the petitioner seeking parity with Rajpal is concerned, same cannot be taken into account, as Rajpal was taken back in service on the ground that his termination order was set aside by the Civil

Court, which decree was affirmed right upto the Hon’ble Supreme Court; whereas in the case of the petitioner herein, his services were terminated after holding a departmental enquiry, which order was set aside in appeal by taking a lenient view and punishment of reduction in rank was awarded. The petitioner was directed to be accommodated against any vacant post. There was a definite break in service in the case of the petitioner herein and therefore, he cannot claim parity with Rajpal, who was regularized only on account of the fact that his immediate junior Bachna Ram’s services were regularized. Moreover, the order of regularization of services of Rajpal was passed with clear stipulation that it would not be treated as a precedent.

10. In view of the aforesaid facts and circumstances, this Court does not find any merit in the prayer sought by the petitioner in the instant writ petition. Consequently, the same is dismissed, being devoid of merit.

(JAISHREE THAKUR)
JUDGE

May 17, 2023

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No