

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

RSA-3027-2015

Date of decision: 17.10.2023

GENERAL MANAGER HARYANA ROADWAYS
YAMUNA NAGAR & ORS

..Appellants

Versus

SATNAM SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Vibha Tewari, AAG, Haryana.

Mr. Garvit Mittal, Advocate
for Mr. Ravinder Malik (Ravi), Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

1. The State of Haryana has filed this regular second appeal to challenge the correctness of the judgment and decree passed by the First Appellate Court while reversing the judgment and decree passed by the trial Court. In other words, the First Appellate Court has set aside the judgment and decree passed by the trial Court. In this case, the dispute is with regard to the entitlement of the respondent (plaintiff) to the regularization on the post of driver on completion of 2 years of continuous service. The respondent was appointed as a driver on 07.12.1993. On 23.03.1998, the State of Haryana framed a policy, in which it was provided that the drivers and conductors working on a contractual basis who have completed 2 years of their service be regularized in the service on their respective posts against available vacant posts. The respondent's services were regularized with effect from 22.04.1998 as the respondent was facing disciplinary proceedings in a charge sheet issued to him. He filed the suit on 14.09.2009

claiming that he was entitled to be regularized as a driver with effect from 06.12.1995. The defendants while contesting the suit claimed that the respondent was appointed on a contractual basis and he met with an accident while driving the bus. He was issued a charge sheet followed by disciplinary inquiry, which remained pending. Ultimately, he was punished with a penalty of Rs.500/-. Thereafter, his case was taken up for regularization and his services were regularized on 24.04.1998. The trial Court dismissed the suit filed by the plaintiff, however, the First Appellate Court has reversed the judgment and decree passed by the trial Court while giving the following two reasons:-

- i. The regularization policy Ex.D-1 does not impose a condition that the services of contractual conductors and drivers shall be regularized with effect from finalization of the inquiry or charge sheet.
- ii. The respondent has been punished by imposing fine of Rs.500/- and therefore, double punishment cannot be imposed upon him by stopping his regularization.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the copy of the policy dated 23.03.1998.

3. The learned counsel representing the appellant contends that under the policy dated 23.03.1998, the respondent was entitled to be regularized after 23.03.1998. She further submits that the plaintiff's suit was filed beyond the prescribed time as his services were regularized on 22.04.1998, whereas, the suit was filed on 14.09.2009. The learned counsel

representing the appellant relies upon the judgment passed in **RSA-812-2019, titled as “State of Haryana through Collector, Kurukshetra and others Vs. Balwant Singh”, decided on 17.02.2023.**

4. On the other hand, the learned counsel representing the respondent submits that as per the policy dated 23.03.1998, the services of the contractual drivers were liable to be regularized on the completion of 2 years of continuous service. He submits that the respondent is entitled to be regularized with effect from 06.12.1995. He relies upon the judgment passed in **RSA-4483-2014, titled as “General Manager, Haryana Roadways, Yamuna Nagar Depot and others Vs. Sh. Ram Chander”, decided on 25.09.2014.**

5. First of all, the question which arises for consideration is “Whether the instructions dated 23.03.1998 are applicable with retrospective effect or not?”

6. Para 1 and 4 of the instructions dated 23.03.1998, reads as under:-

“The matter regarding the regularisation of services of the drivers and conductors working on contractual basis for the last number of years by way of different contracts and by way of different orders of appointments has been under the active consideration with the department. This was in pursuance of the agreement arrived at between the Management of Haryana Roadways and the Haryana Roadways workers union on 16.6.94 by virtue of which it was agreed upon that those drivers and conductors on contractual basis who complete two years service on contractual basis be regularised in service on their respective posts against the available vacant posts.

All those drivers and conductors working on contractual basis and having been in service and completing two years service on contractual basis during the period from 16.6.94 to 7.1.1998 the norm of 1.4 person per vehicle in their respective posts and respective

depots. Thereafter their character and antecedents be got verified from the Police Authorities.”

7. A Coordinate Bench of this Court in **Balwant Singh's case**

(supra) has interpreted the aforesaid policy instructions while concluding as under:-

“The question which arise in the present appeal is whether, keeping in view the policy dated 28.07.1994, coupled with the clarification issued dated 23.06.1997, the contractual employees are entitled for regularization of their service on completion of two years or not. The interpretation being given by the Courts below is not correct. The service period required for regularization as per the instructions dated 28.07.1994 was defined to be two years. There is no clause in the policy dated 28.07.1994 that the services of an employee are to be regularized w.e.f the date an employee completes two years of service. There is a vast different between having two years service for regularization and regularization of service w.e.f the completion of two years service. The Courts below have totally misread the instructions to come to the conclusion that as per the regularization policy dated 28.07.1994, an employee on completion of two years service is to be regularized on the date he/she completes two years. The said interpretation is totally arbitrary and illegal. The perversity in the findings can be illustrated also. It is a settled principle of law that nobody can be regularized from a date prior to the issuance of the instructions for the reason that the executive instructions operate prospectively and cannot be made to operate retrospectively under any circumstances unless and until the same is envisaged there.

In the present case, it is a conceded position that the instructions dated 28.07.1994 are to be implemented prospectively. In case the interpretation as being extended by the learned counsel for the respondent-plaintiff is accepted that the employees are to be regularized w.e.f the date they complete two years service then an employee who might be in service from the year 1990 and completes two years service in the year 1992, will claim a benefit of regularization under the policy dated 28.07.1994 from a date which is much prior to even the instructions, which interpretation cannot be given under any circumstances. Hence, the interpretation being given by the learned counsel for the respondent to the policy dated 28.07.1994, cannot be accepted that w.e.f the date

an employee completes two years of service, he/she was entitled for regularization from the same date.”

8. With regard to the requirement of filing the suit within a period of 3 years, the Coordinate Bench in **Balwant Singh’s case (supra)** has held as under:-

“Even otherwise, the order regularizing the service of the respondent-plaintiff was passed in the year 1998, he remained silent till the year 2015 i.e. for a period of 17 years and thereafter filed a petition for the change of the date of his regularization.

Learned counsel for the appellants submits that the suit was totally time barred, which fact has totally been ignored by the Courts below while allowing the suit.

Learned counsel for the respondent-plaintiff submits that there were representations submitted by the respondent-plaintiff for claiming the benefit as per his entitlement though he conceded that the civil suit was filed after a period of 17 years of passing of the order of regularizing the services of the respondent-plaintiff w.e.f 08.01.1998.

The above mentioned stated facts are not in dispute. From the plain reading of the facts itself shows that the cause of action if any arose to the respondent-plaintiff in the year 1998 when his services were regularized w.e.f. 08.01.1998. Nothing has come on record as to how, the suit filed in the year 2015 was within the limitation. The findings which have been recorded by the Courts below on the said issue are totally perverse and without going through the actual facts and evidences on record.

The reason being extended by the learned counsel for the respondent-plaintiff that he had filed representations, cannot be taken into consideration as it is a settled principle of law that repeated representations does not condone the delay in any manner, hence, even otherwise the suit filed by the respondent-plaintiff was much beyond the limitation prescribed for the redressal of the grievance as raised in the suit.”

9. On the other hand, in **Ram Chander’s case (supra)**, the Court has taken a view that if the post is available, the services of the driver is required to be regularized on completion of 2 years of service irrespective of the date on which 2 years is completed.

10. On a careful reading of para 4 of the instructions dated 23.03.1998, it is evident that if the drivers or the conductors working on the contractual basis are facing disciplinary action, their services cannot be considered for regularization till their cases are finalized. Also, it is nowhere provided in the instructions that once the cases are finalized, the drivers and conductors shall be entitled to be regularized from the date they have completed 2 years of their service. Moreover, the reasoning given by the Court in **Balwant Singh's case (supra)** appears to be more logical.

11. On completion of 2 years of service, the employee becomes eligible for regularization, however, it is nowhere provided that the employee is entitled to be regularized immediately on the completion of 2 years. This is the distinction drawn in **Balwant Singh's case (supra)**. Moreover, in this case, the plaintiff came to the Court after a period of 11 years. Even if the objection with regard to the limitation has not been taken before the Courts below, however, there is no bar in taking objection regarding limitation at any stage. Evidently, there is no sufficient cause for not filing the suit for a period of more than 11 years. The respondent's services were regularized on 22.04.1998, whereas, for the first time, he came to the Court on 14.09.2009 i.e. after a period of 11 years and 5 months. Thus, evidently, it can be concluded that the suit filed by the plaintiff is hopelessly time barred.

12. The First Appellate Court has also erred while observing that double punishment cannot be imposed upon the respondent by stopping his regularization when fine of Rs.500/- has already been levied upon him. This is not a case of double punishment per se. The respondent becomes entitled

to be considered for the regularization of service only after finalization of the disciplinary proceedings against him. It is well settled that the right to consider for regularization is available as per the government instructions. The Court cannot substitute its opinion, which may result in modifying the policy instructions.

13. Keeping in view the aforesaid facts, there is no ground to change the date of regularization of the respondent from 22.04.1998 to 06.12.1995 and that also after a period of 11 and a half years.

14. Keeping in view the aforesaid facts, the appeal is allowed.

15. The judgment passed by the First Appellate Court is set aside, whereas, that of the trial Court is restored.

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

October 17th, 2023

(ANIL KSHETARPAL)
JUDGE

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