

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(236)

RSA-4647-2016 (O&M)

Date of Decision : 02.05.2023

Mohinder Singh and others

...Appellants

Versus

State Transport Commissioner and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ramesh Goyat, Advocate for the appellants.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-12041-C-2016

Application is allowed, as prayed for.

RSA-4647-2016

1. In the present regular second appeal, challenge is to the judgment and decree of the trial court dated 06.05.2015 as well as judgment and decree of the lower appellate court dated 09.03.2016 by which, the suit filed by the appellants-plaintiffs seeking antedated regularization of their services, has been dismissed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellants-plaintiffs were appointed on daily wage basis in the year 1987 and their services were regularized starting from 01.05.1992 till 12.01.1995 prospectively and not from completion of 240 days of service. The suit was filed in the year 2012 claiming the declaration that the appellants-plaintiffs are entitled for regularization of their services upon completion of 240 days of service and the reliance was being placed upon the judgment of this Court in CWP No. 1264 of 1988 titled as ***Sant Lal and others Vs. State of Haryana***, decided on 26.09.1988.

4. The trial Court came to the conclusion that the plaintiffs filed a writ petition in the year 1988 for regularization of their services and keeping in view the policy issued by the Government, their services were regularized, which order was never impugned by them at any given point of time till the filing of the civil suit, hence, no benefit can be extended of retrospective regularization and the suit was dismissed vide judgment and decree dated 06.05.2015.

5. Aggrieved against the decision of dismissal of their suit, the appellants-plaintiffs preferred an appeal, which also came to be dismissed by the lower appellate court vide judgment and decree dated 09.03.2016, wherein, it has been held that once the services of the appellants-plaintiffs have been regularized in pursuance to the policy of the Government of Haryana, the same cannot be antedated upon completion of 240 days of service, hence, the present regular second appeal.

6. Learned counsel for the appellants-plaintiffs submits that once a benefit of regularization upon completion of 240 days has already been given to the similarly situated employees, the same benefit needs to be

extended to them also, otherwise, the same will amount to discrimination between the similarly situated employees.

7. The argument raised needs to be tested as to whether, civil suit will be maintainable as the services of the appellants-plaintiffs were regularized starting from the year 1992 onwards till 1995 and there was no challenge to the said regularization order till the filing of the suit in the year 2012. Nothing has come on record as to how, the said suit will be maintainable keeping in view the limitation provided, especially, when the order to regularize their services from prospective effect, has never been challenged by the appellants-plaintiffs at any given point of time even while filing the present civil suit, hence, the appellants-plaintiffs have not been able to show as to how the suit is maintainable in the absence of any challenge to the orders by which their services were regularized starting from the year 1992 onwards till 1995.

8. As far as the question that similarly situated employees have already been granted the similar benefit by the competent court of law, it may be noticed that as per the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 9844 of 2014, titled as *State of Uttar Pradesh Vs Arvind Kumar Srivastava*, decided on 17.10.2014, no benefit of a judgment in the case of a similarly situated employees can be extended to the fence-sitters. Once, no claim was raised by an employee, whereas similarly situated employees had raised a claim, the fence-sitters cannot claim the same benefit after a considerable delay of 09 years. Relevant paragraph of the said judgment is as under :-

“23. The legal principles which emerge from the reading of

the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all

similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see [K.C. Sharma & Ors. v. Union of India](#) (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

24. *Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.*

25. *For all the foregoing reasons, we allow the appeal and set aside the order of the High Court as well as that of the Tribunal. There shall, however, be no order as to costs.”*

9. In the present case, the civil suit was filed in the year 2012 so as to claim the antedated regularization, which orders were passed starting from the year 1992 till 1995. The judgment in ***Arvind Kumar Srivastava's case (supra)***, is fully applicable in the facts and circumstances of the present case so as to deny the claim to the similarly situated employees, who are fence-sitters, where the discrimination is being pleaded.

10. Qua the question of regularization with retrospective effect, a Division Bench of this Court in LPA No. 1662 of 2015 titled as ***Sukhbir Singh and others Vs. State of Haryana and others***, decided on 31.08.2016, declined interference where the retrospective regularization was being claimed after a considerable long time. The relevant paragraph 5 of the said judgment is as under :-

“5. We have heard learned counsel for the parties and gone through the record. There is no denial to the fact that after regularization of their services w.e.f. 01.04.1993, the appellants woke up first time in the year 2012 and raised claim for retrospective regularization. The said claim was based upon a decision of this Court dated 19.12.2011 rendered in the case of Jaimal Singh and others Vs. State of Haryana and another (CWP No.6135 of 1998) where this Court directed the State Government to identify the Depot-wise requirement of post of Ticket Verifiers and sanction the requisite posts so that their services could be regularized. The State Government undertook such exercise and the writ-petitioners in that case were made regular w.e.f. 01.04.1987.”

Keeping in view the settled principle of law cited hereinbefore,

the judgments and decrees of the courts below cannot be treated to be perverse, hence, no interference is called for by this Court in the present regular second appeal.

Dismissed.

May 02, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No