

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(213)

RSA No. 4710 of 2016 (O&M)
Date of Decision : 22.02.2023

Municipal Corporation, Hisar

...Appellant

Versus

Satyadev

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Prateek Mahajan, Advocate and
Mr. Daanish Mahajan, Advocate for the appellant.

Mr. Shalender Mohan, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

In the present regular second appeal, the question of law, which arises is whether, an employee, who has been directed to be reinstated in service with continuity of his service, will be deemed to be in service for the period he/she remained out of service for all intents and purposes or not.

The undisputed factual position needs to be stated herein so as to appreciate the controversy in correct perspective.

The respondent-plaintiff was engaged in service as a Mali in the Municipal Corporation, Hisar on 17.05.1985. As per the allegations, in February, 1993 as the respondent-plaintiff was absent and his services were terminated by the appellant-defendant. In 1994, the respondent-plaintiff availed the remedy under the Industrial Disputes Act by serving a demand

notice upon the appellant-defendant challenging the order terminating his services. The Labour Court vide Award dated 08.06.1998, held the order terminating the services of the respondent-plaintiff as bad and directed that the respondent-plaintiff be reinstated in service with continuity but only with the grant of 50% of the back wages. The said Award was challenged by both i.e. appellant-defendant as well as respondent-plaintiff before this Court and ultimately, vide order dated 17.08.2009, both the writ petitions were dismissed and the Award of the Labour Court was upheld.

It is a conceded position that as per the Award dated 08.06.1998 of the Labour Court, the respondent-plaintiff was deemed to be in service with continuity from the year 1985 onwards but for the period he remained out of service, he was only to get 50% of the back wages. While allowing the respondent-plaintiff to join in pursuance to the Award, the benefits for which respondent-plaintiff was found entitled, was paid to him as directed by the Award of the Labour Court.

The employees, who were in service in the year 1993, were granted the benefit of regularization under the Regularization Policy of the Government of Haryana, qua the employees who had rendered 5 years service as on 31.03.1993 and those employees were held entitled for considering of regularization of their services. The said Policy dated 31.03.1993 was implemented qua the employees, who were in service but as the services of the respondent-plaintiff were terminated prior to the issuance of the said Policy and he was not in service as on 01.04.1993, no benefit of the said instruction was extended to him.

After the reinstatement, the respondent-plaintiff claimed the

benefit of regularization of his services under the said Policy of the year 1993 on the ground that as per the Award of the Labour Court, benefit of continuity of service has been granted, which benefit has already been upheld by this Court hence, for all intents and purposes, the respondent-plaintiff is to be treated in service starting from the year 1985 and as on 31.03.1993, he had more than 5 years of service, required to be considered for regularization of his services.

As the benefit was not being extended, the respondent-plaintiff filed a civil suit on 09.08.2011 claiming regularization of his services on the post of Mali as per the Regularization Policy of the year 1993. The trial court vide judgment and decree dated 24.09.2012 held that the respondent-plaintiff is entitled for consideration of his case for regularization keeping in view the Award of the Labour Court, according to which, he is deemed to be in service with continuity from the year 1985 onwards and he fulfills all the criteria as required under the Regularization Policy dated 31.03.1993. The period for which the respondent-plaintiff did not perform the actual duties, the trial court held that the said period though, will be treated as a duty period but only for the purpose of regularization and no benefit of arrears for the said period would be extended in favour of the respondent-plaintiff.

Feeling aggrieved, both the parties filed appeal before the lower appellate court. The grievance of the respondent-plaintiff was that he has been denied the arrears of salary despite holding him entitled for regularization of his services w.e.f. 01.04.1993 upto the date of reinstatement whereas, the grievance of the appellant-defendant was that

once the respondent-plaintiff has not discharged the actual duties, he was not entitled for consideration for regularization of his services under the Regularization Policy of the year 1993.

The lower appellate court vide judgment dated 23.03.2016 dismissed both the appeals preferred. Feeling satisfied with the judgment of the lower appellate court, the respondent-plaintiff has not preferred any appeal accepting that the arrears admissible to him will only be from the date he was reinstated in service upon the regularization of his services and not from a prior date. Whereas, the appellant-defendant has preferred the present appeal raising the grievance qua the direction given by both the courts below that the respondent-plaintiff needs to be regularized in service as per the Policy of the year 1993.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The first argument, which has been raised by the learned counsel for the appellant-defendant is that though, there was a Policy in the year 1993 for regularization of the services of the irregular employees but keeping in view the judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos. 3595-3612 of 1999 titled as ***Secretary, State of Karnataka and others Vs. Umadevi and others***, decided on 10.04.2006, wherein the Regularization Policy in operation, were held to be bad, no benefit of the Regularization Policy dated 31.03.1993 can be extended hence, the claim of regularization by the respondent-plaintiff in the year 2011 after being reinstated in service is not permissible as per the judgment of the Hon'ble Supreme Court of India in ***Umadevi's case (supra)***. The

said argument cannot be accepted. The Hon'ble Supreme Court of India in *Umadevi's case (supra)*, only held that the Regularization Policies issued by the respondent-State were bad but in one of the paragraph held that, whosoever has rendered 10 years service, will be entitled for benefit of regularization as a one time measure. Concededly upto the date of the judgment of the Hon'ble Supreme Court of India in the year 2006, the respondent-plaintiff had more than 10 years of service keeping in view the Award of the Labour Court, according to which, he was reinstated in service with continuity from the year 1985 hence, keeping in view the exception carved out by the Hon'ble Supreme Court of India in *Umadevi's case (supra)* qua the employees, who had 10 years of service in their credit, will be entitled for regularization, the argument being raised by the appellant-defendant that in view of the judgment in *Umadevi's case (supra)*, no regularization can be ordered in favour of respondent-plaintiff, cannot be accepted.

Learned counsel for the appellant-defendant argues that once the respondent-plaintiff has not worked actually from 1993 till the year 2009, the said period cannot be taken into account for any purpose much less for regularization of services of the respondent-plaintiff, which fact has been ignored by the courts below while passing orders in favour of the respondent-plaintiff. The said argument is fallacious. Once, a deeming fiction has been given by the Labour Court, which deeming fiction has already been upheld by this Court that the respondent-plaintiff is to be treated in service with continuity, the same continuity in service has to be considered for all intents and purposes. The employer cannot raise the same

question again for consideration. Once, the grant of benefit of continuity of service has been upheld by this Court while dismissing the writ petition filed by the appellant-defendant-Corporation upholding the Award of the Labour Court.

Even otherwise, it is a conceded position that 50% of the back wages for the said period when respondent-plaintiff was out of service, has been given in favour of the respondent-plaintiff. In case, without actual working, the benefit of wages has been extended in favour of the respondent-plaintiff, the deeming fiction that the respondent-plaintiff remains in service with continuity, has to be accepted without there being any condition hence, the said argument being raised by the learned counsel for the appellant-defendant is not accepted and is rejected.

Learned counsel for the respondent-plaintiff submits that the Division Bench in LPA No. 688 of 2021 has already considered the same fact and have held that even if an employee was not in service but has been granted continuity of service by a competent court of law, the said employee is to be treated in service for all intents and purposes.

Learned counsel for the respondent-plaintiff submits that the said order is already under challenge before the Hon'ble Supreme Court of India though, the factum of passing of order by the Division Bench in LPA No. 688 of 2021 stands conceded. Keeping in view the said fact, as of now, the view being taken by this Court is also supported by the judgment of the Division Bench in LPA No. 688 of 2021 titled as ***State of Haryana and others Vs. Balwinder Singh and others.***

No other argument has been raised.

Keeping in view the above, the appeal filed by the appellant-defendant is dismissed. It may be noticed herein that the respondent-plaintiff will be entitled for regularization of his services w.e.f. 01.04.1993, which benefit has already been given by the appellant-defendant vide order dated 03.07.2017. The only question, which remains is the grant of arrears as directed by the trial court and upheld by the lower appellate court. It may be reiterated that though, the salary of the respondent-plaintiff will be fixed in the regular pay scale from 01.04.1993 but the actual arrears will only be disbursed from the date, he was reinstated in service i.e. from 01.01.2010 onwards, keeping in view the order passed by the lower appellate court in the appeal preferred by the respondent-plaintiff dated 23.03.2016.

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As the main regular second appeal has been dismissed, the present application also stands disposed of.

February 22, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No