

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2461 of 2018 (O&M)

**Reserved On: 15.09.2023
Pronounced On: 29.09.2023**

Bajrang

... Appellant(s)

Versus

The State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. B.S.Mittal, Advocate
for the appellant(s).

Ms. Vibha Tewari, Assistant Advocate General,
Haryana.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The appellant assails the correctness of the judgment and decree passed by the First Appellate Court while reversing that of the trial Court. The plaintiff's suit for the grant of decree of declaration that the order dated 09.11.2009 is wrong, illegal and against the law with the decree of declaration that he is entitled to get all the service benefits on completion of 240 days of service has been dismissed by the First Appellate Court. In

substance, the appellant prays that the date of regularization be

retroactively set.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The appellant was appointed on a temporary basis on the post of Driver w.e.f. 13.05.1982. His services were regularized w.e.f. 09.11.1986. On 26.10.2012, he filed the suit.

4. In order to substantiate his case, the appellant relied upon a communication sent by the State Transport Controller to all the General Managers, Haryana Roadways on 19.02.1979 which was exhibited on record as Ex.D3. The relevant part thereof is extracted as under:-

“It has been decided by the Government that the service of the Conductors, Drivers and Workshop staff up to the post of Mechanic (Class -III) who were appointed through Employment Exchange from time to time should be regularized from the date they have completed 240 days continuous service in the Haryana Roadways.

2. The copies of the appointment orders regularizing the services of the above said employees should be sent to the Subordinate Service Selection Board, Haryana for their information with reference to their letter No. 3953-78/6348 dated 6.12.1978 addressed to the Chief Secretary to Govt. Haryana with a copy to this office.

3. Immediate steps should be taken to implement the decision of the Government without any delay.”

5. The State of Haryana, while contesting the suit, relied upon the instructions (Ex.D1) dated 12.01.2004, which read as under:-

“Your kind attention is drawn towards headquarter letter No.9732- 9777/AS/E3 dated 30.12.2002 vide which all the instructions of the State Government regarding regularization of services of the adhoc employees, have been sent to you for information and necessary action accordingly, but it has come to the notice of the headquarter that some of the General Managers have regularized the services of the employees in their depots in contravention of the Government instructions issued from time to time.

A perusal of the instructions indicate that initially the instructions on this subject were issued vide headquarter letter No.1682-92/A3/HAR dated 19.02.1979 vide which an employee who had completed 240 days continuous service were to be regularized. Thereafter, the State Government issued instructions vide which adhoc employees who had completed 2 year continue service as on 31.12.1979 were to be regularized.

All instructions issued by the State Government on the subject are mentioned below:-

Sr. No.	Letter No. & date of the Government instructions	Criteria
1.	1682-92/43/HAR dt. 19.02.1979	on completion of 240 days continuous service as on 19.02.1979.
2.	G.S.R.3/Const./Art. 309/80 dt. 01.01.1980	On completion of 2 year continuous service as on 31.12.1979
3.	G.SR3/Const/Art.309/83 dt.19.01.1984	On completion of 2 year continuous service as on 15.09.1982.

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4.	50/22/84-5CISI 16.02.1987 6/4/90-5GST 28.04.1997	dt.	On completion of 2 year continuous service as on 01.11.1986/30.09.1988.
5.	G.S.R.3/Const./Art.309/91 dt. 28.02.1991		On completion of 2 year continuous service as on 31.12.1990.
6.	G.S.R.3/Conal 309/93.dt.01.06.1993	Art	On completion of 2 year continuous service as on 31.03.1993.
7.	6/38/95-2GSI 07.03.1996	dt.	On completion of 2 year continuous service as on 31.01.1996.

Under no circumstances, an employee appointed after issuance of a particular policy on a particular date will be entitled to be considered for regularisation in the policy issued earlier.

In order to rectify all errors/irregularities committed in this regard, you are advised to look into all such cases of regularisation right from the beginning from the year 1979 and pass the appropriate orders after giving Show Cause Notice/hearing to all concerned so that no discrepancy remains and thereafter, a seniority list of all categories way be framed accordingly.”

6. The trial Court, while relying upon the instructions dated 19.02.1979, held that the service of the appellant is liable to be regularized from the date he completes 240 days of service. However, in appeal filed by the State of Haryana, the judgment and decree passed by the trial Court was reversed.

7. Heard the learned counsel representing the parties, at length and

With their able assistance, perused the paper-book.

8. The learned counsel representing the appellant submitted that as per the policy decision (Ex.D3) dated 19.02.1979, the appellant was entitled to be regularized on the completion of 240 days of service. On the other hand, the learned State counsel, while contesting the appeal, has submitted that the instructions dated 19.02.1979 were superseded and there was another set of instructions issued on 01.01.1980. As per the aforesaid instructions, the services of the temporary employees could be considered for regularization on the completion of 2 years of continuous service as on 31.12.1979. She further submits that on 19.01.1989, a fresh set of instructions was issued which provided that on the completion of two years of continuous service as on 15.09.1982, the services of the temporary employee were to be considered for regularization. She submits that the appellant's services were regularized as per the instructions dated 16.02.1987, which was reiterated in the instructions dated 28.04.1997. She submits that on the completion of two years of continuous service as on 01.01.1986, the services of the temporary employees were regularized. While drawing the attention of the Court to Ex.D1 which has already been extracted above, the learned counsel submits that the previous instructions could not be relied upon to regularize the services of the appellant.

9. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties. In fact, a Division Bench of this Court in *Piara Singh v. State of Haryana 1989(1) PLR 396*, issued directions to grant the regular status to all the temporary daily wage employees who have completed 240 days of continuous service. However,

the Hon'ble Supreme Court in *State of Haryana v. Piara Singh (1992) 4*

SCC 118, held that the Court cannot encroach upon the jurisdiction of the Executive and it is the exclusive domain of the government to frame a particular policy for regularization. It is not within the jurisdiction of the Court to order regularization beyond what is being provided under the instructions passed by the competent authority. The judgment passed by the High Court was specifically reversed by the Apex Court.

10. Moreover, a Five Judges Bench in *Secretary, State of Karnataka and Others vs. Uma Devi and Others (2006) 4 SCC 1* has held that a public post can be filled only by inviting the applications and by giving the opportunities to all the interested candidates who are interested in competing. In such circumstances, the Five Judges Bench has held that such policies are not in consonance with the Constitutional scheme. As a one time measure, the Supreme Court permitted the various States to frame a policy for the employees who had continuously worked for a period of ten years.

11. On the careful reading of Ex.D3, it is evident that this is only a letter written by the State Transport Controller to all the General Managers of the Haryana Roadways to forward the required information of the Conductors, Drivers and the Workshop Staff who have completed the 240 days continuous service in the Haryana Roadways.

12. It is not provided in the aforesaid letter that all the temporary/adhoc/work-charge employees will be entitled to the regularization as and when they complete 240 days of continuous service. In fact, the policy decision of the government has not been produced. This Court has not been apprised of the terms and conditions of the aforesaid policy decision. The appellant was appointed in the year 1982. It is evident from the document

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(Ex.D1) that the instructions dated 19.02.1979, were superseded by the instructions dated 01.01.1980. Thus, the appellant cannot take benefit of the instructions dated 19.02.1979. The appellant is also not entitled to the benefit of the instructions dated 19.01.1984, because he did not complete two years continuous service as on 15.09.1982. Moreover, it is clearly stipulated in the aforesaid policy instructions that under no circumstances, an employee appointed after the issuance of a particular policy on a particular date will be entitled to be considered for regularization in the policy issued earlier.

13. Keeping in view the aforesaid position, there is no substance in the argument of the learned counsel representing the appellant that the appellant is entitled to claim regularization on the completion of 240 days continuous service after taking into account his temporary service w.e.f. 13.05.1982. The appellant is not entitled to claim the benefit of the instructions dated 19.02.1979.

14. In view view of the aforesaid discussions, finding no merits, the present appeal is dismissed.

15. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 29, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No