

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP No.40337 of 2018

Judgment reserved on:24.01.2023

Date of pronouncement:28.02.2023

Makhan Singh

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ravinder Pal Singh (Ravi), Advocate
for the petitioner.

Mr. Pankaj Middha, Addl.A.G.Haryana.

SUVIR SEHGAL J.

Petitioner has approached this Court *inter alia* seeking issuance of a writ in the nature of certiorari for quashing impugned order dated 03.03.2016 (Annexure P-7) passed by respondent No.3, whereby, the claim of the petitioner for regularization w.e.f. 01.02.1996 has been rejected.

In nutshell, facts leading to filing of the petition are that the petitioner was working on daily wages/Muster Roll as Mali-cum-Chowkidar since 1993. On the basis of Govt. instructions dated 07.03.1996 (Annexure P-1), which were modified on 18.03.1996 (Annexure P-2), petitioner claims that he deserves to be regularized in service w.e.f. February, 1996. He submits that when the respondents did not take any step to regularize his services, he served a representation and approached this Court by way of CWP No.23262 of 2015. By order dated 02.11.2015, this Court disposed of the writ petition with a direction to the respondents to

decide the representation by passing a speaking order. Consequently, the impugned order (Annexure P-7) came to be passed.

Counsel for the petitioner submits that the petitioner fulfilled all the requisite eligibility conditions as laid down in the Circulars, Annexures P-1 and P-2 and was, therefore, eligible for regularization on completion of three years service on 31.01.1996. Reliance has been placed by him upon judgments (Annexures P-3 and P-4) and on office order, Annexure P-5, whereby, similarly placed employees have been regularized.

Per contra, State counsel has opposed the petition. He submits that the petitioner was regularized w.e.f. 01.10.2003, when he fulfilled the eligibility conditions. By placing reliance upon the judgment of the Hon'ble Supreme Court in **Managing Director, Ajmer Vidhyut Nigam Ltd. Ajmer and another Vs. Chiggan Lal and others 2022(2) SCT 176**, he urges that there can be no parity in the matter of regularization.

I have considered the submissions made by counsel for the parties and have gone through the paper-book.

Although response has not been filed by the respondents, but their stand is discernible from the impugned order, relevant extract of which is reproduced hereunder:-

“Sh. Makhan Singh, S/o Rattan Singh was given the opportunity of hearing as per directions of the Hon'ble Court in CWP No.23262 of 2015.

The claim/representation of Sh. Makhan Singh s/o Sh. Rattan Singh working as Pump Attendant who was engaged

w.e.f. 01.06.1993 was also considered on these lines, but he has continuous break in service during 1/1995, 2/1995 and 7/1995 (during the year 1995) though he was in service on 31.01.1996 does not fall under the above policy. Photo copy of Service book (page 7 and 9) are enclosed herewith. As such he does not fulfill the criteria of regularization that there should not be a break of more than one month. Hence the representation of Sh. Makhan Singh son of Sh. Rattan Singh is hereby considered and rejected.

The representation of Sh. Makhan Singh s/o Sh. Rattan Singh whose case is not covered under the above policy has been considered and rejected.”

Perusal of the paper-book shows that neither any material has been brought on record nor it could be referred to show that the petitioner was discharging duties during the months of January, February and July, 1995. Furthermore, xerox copy of service book which formed the part of impugned order has not been appended with the paper book. It is a settled principle of law that regularization is not a matter of right. Rather it is a back door entry into service. Petitioner has not been found to be eligible in terms of the Circulars, Annexures P-1 and P-2, he, therefore, cannot claim any parity with the other employees who do not face any such disqualification.

At this stage, reference also deserves to be made to the judgment of the Apex Court in **Chigga Lal's case (supra)**, relevant extract of which is reproduced hereunder:-

“9. It is the settled position that the date from which regularization

is to be granted is a matter to be decided by the employer keeping in view a number of factors like the nature of the work, number of posts lying vacant, the financial condition of the employer, the additional financial burden caused, the suitability of the workmen for the job, the manner and reason for which the initial appointments were made etc. The said decision will depend upon the facts of each year and no parity can be claimed based on regularization made in respect of the earlier years.

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12. *In view of the above, it is clear that the date of regularization and grant of pay scale is a prerogative of the employer/screening committee and no parity can be claimed in the matter of regularization in different years.....”*

In view of the above, petitioner is not entitled to any relief.

Petition being bereft of merit is hereby dismissed.

(SUVIR SEHGAL)
JUDGE

February 28, 2023
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes