

CM-15419-CWP-2023 in/and
CWP-35242-2019

2023:PHHC:142387

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

CM-15419-CWP-2023 in/and
CWP-35242-2019
Date of Decision : 08.11.2023

Naval Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. G.C. Shahpuri, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-15419-CWP-2023

Present application has been filed for recalling the order dated 05.09.2023, by which, the present writ petition was dismissed for non-prosecution.

Notice of the application to the counsel opposite.

Mr. Pankaj Middha, learned Additional Advocate General, Haryana, accepts notice on behalf of the respondent-State. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which is duly supported by an affidavit, coupled with the fact that learned counsel for the respondents has not objected to the relief as prayed in the

present application, the same is allowed. The order dated 05.09.2023 is recalled and the appeal is restored to its original number and status.

CWP-35242-2019

In the present petition, the grievance which is being raised by the petitioner is that his claim for regularization of his services has wrongly been declined by the impugned order dated 11.01.2019, a copy of which has been appended as Annexure P-7.

Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.

The petitioner had joined the respondents on daily wage basis on 01.05.1995 and he worked upto 05.10.2004 as Mali-cum-Chowkidar. In the year 2004, the services of the petitioner were terminated but the petitioner did not challenge the said termination but the similar orders passed were challenged by the other similarly situated employees by filing CWP No. 8284 of 2004, wherein, the order terminating their services was stayed.

Thereafter, the petitioner filed the writ petition being CWP No. 14906 of 2009 for the very first time challenging the order dated 13.05.2004 terminating the services of the petitioner, a copy of which has been appended as Annexure P-1. The said writ petition was withdrawn with liberty to approach the Labour Court. An industrial dispute was raised by the petitioner challenging the order of retrenchment dated 13.05.2004 (Annexure P-1). By the Award dated 10.03.2015, the claim of the petitioner was declined by the Labour Court, which Award of the

Labour Court was challenged by the petitioner by filing CWP No. 14038 of 2018. The said writ petition was dismissed by the Co-ordinate Bench of this Court, which order was challenged by the petitioner in LPA No. 1539 of 2015. Vide order dated 20.02.2018 (Annexure P-6), the LPA filed by the petitioner was allowed and a direction was issued to the respondents to reinstate the petitioner but without any back wages. Further direction was given that in case, any of the persons who were appointed along with the petitioner, have been regularized in service, the claim of the petitioner with regard to regularization of services should also be considered. Thereafter, the petitioner was reinstated in service and is discharging the duties as of now but the claim of the petitioner for regularization of his services has been declined by the respondents by the impugned order dated 11.01.2019 (Annexure P-7). The said order is under challenge in the present writ petition.

Learned counsel for the petitioner argues that the petitioner is entitled for regularization of his services as per the Regularization Policy issued by the Government of Haryana dated 01.10.2003 (Annexure P-10). Learned counsel argues that despite the fact that petitioner fulfilled all the requisite of the said Policy but, his claim has been rejected by the respondents in an arbitrary manner, hence the impugned order dated 11.01.2019 (Annexure P-7) is liable to be set-aside with further direction to the respondents to regularize the services of the petitioner as similarly situated employees have already been granted the said benefit.

After notice of motion, the respondents have filed the reply in which they have resisted the claim of the petitioner on the ground that as per the terms and conditions of the Regularization Policy dated 01.10.2003 (Annexure P-10), an employee should have worked for three years upto 30.09.2023 and in each year, should have worked for more than 240 days in order to be eligible for regularization of services but, the petitioner has failed to fulfill the said terms and conditions as in none of the year in which the petitioner worked with the respondent-department, he had completed 240 days except in one year, hence, the petitioner does not fulfill the requisite terms and conditions of the Regularization Policy dated 01.10.2003 (Annexure P-10), hence, his claim has rightly been rejected by the authorities concerned.

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

It is a settled principle of law that in case, any benefit is being sought by an employee under any Policy, the employee has to fulfill the terms and conditions mentioned in the said Policy. It is a conceded position that as per the Regularization Policy dated 01.10.2003 (Annexure P-10), an employee should be in service as on 30.09.2003 and further should have completed minimum three years of service as on 30.09.2003. The further condition is that in each year when an employee has worked, he should have completed minimum service of 240 days.

Learned counsel for the petitioner has not been able to satisfy this Court that the petitioner has completed 240 days in each year

when he had discharged the duties with the respondents, hence, the petitioner does not fulfill the terms and conditions of the Regularization Policy dated 01.10.2003 (Annexure P-10).

The other argument, which has been raised by the learned counsel for the petitioner is that the services of similarly situated employees, who were appointed with the petitioner, have been regularized. It goes without saying that once an employee is working on daily wage basis, two employees appointed on the same day, might have discharged the duties for different number of days in a particular year. That being so, any employee, who might have been appointed with the petitioner but has completed 240 days in each completed year and has requisite service of three years as on 30.09.2003, is entitled for regularization of his/her services, hence, the discrimination, which is being claimed by the petitioner is not proved before this Court keeping in view the facts, which have come on record.

Keeping in view the facts and circumstances mentioned here-in-before, no interference is called for by this Court with the impugned order dated 11.01.2019 (Annexure P-7).

Dismissed.

November 8th, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No