



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-12044-2001 (O&M)

Reserved on : 16.10.2024

Pronounced on : 29.10.2024

Baldev Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Amanpreet (A.P.) Singh, Advocate and
Ms. Samdisha Kaur, Advocate for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

NAMIT KUMAR, J.

1. The instant petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 14.06.2001 (Annexure P-5), whereby the claim of the petitioner for regularization has been rejected. Further, seeking a writ of mandamus, directing the respondents to regularize the services of the petitioner w.e.f. 31.03.1993 or any other subsequent date, with all consequential benefits.

2. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner was engaged on muster roll as daily wager in April, 1986. Thereafter, on the basis of instructions dated 27.05.1993 (Annexure P-1) which were clarified vide circular dated 18.03.1994 (Annexure P-2), the petitioner submitted representation claiming regularization and since no response was received on the said

representation, the petitioner filed *CWP No.17269 of 1994 titled as*



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'Baldev Singh Vs. State of Haryana and others' and the same was admitted and thereafter, the petitioner has received an order dated 14.06.2001, whereby his claim for regularization has been rejected mainly on the ground that there has been a break of more than 30 days and that the petitioner was not in service as on 31.03.1993.

3. Written statement on behalf of the respondents has been filed wherein the claim of the petitioner has been contested by stating that since the petitioner does not fulfill the terms and conditions of the regularization policy dated 27.05.1993 which was clarified vide circular dated 18.03.1994, therefore, his services cannot be regularized under the said policy. The relevant portion of the written statement is as under :-

“xx xx xx xx xx

2. *That as per the Haryana Government Instructions issued vide letter No.6/4/90-2 GS-I dated 27.5.1993 attached as Annexure P-1 and 18.3.1994 the petitioner has not fulfilled the terms and conditions for regularisation in service (Annexure P-1 and P-2). The terms and conditions for regularisation are reproduced hereunder :*

- (i) Have completed five years service as on 31.3.1993.*
- (ii) Was present on 31.3.1993.*
- (iii) Have worked for 240 days in each year.*
- (iv) Break should not be more than one month at a time.*

In the instant writ petition, the petitioner fulfills condition Nos.(i) and (iii) and does not fulfill condition Nos.(ii) and (iv) which runs as under :-

- (i) He was not present on 31.3.1993.*
- (ii) The break was more than one month as he was absent during the period from 1.6.1988 to 19.7.1988 as per his own accord.*



So in view of above said circumstances, the petitioner is not entitled to any relief from this Hon'ble Court and the present writ petition is liable to be dismissed on this score alone.

3. That it is further submitted that the petitioner submitted the medical certificate for the period from 1.6.1988 to 19.7.1988 on dated 21.6.2000 but the same was not accepted being submitted at a belated stage i.e. after the expiry of twelve years period and this medical certificate has been submitted by the petitioner for his self interest i.e. for getting the benefits of regularisation. Furthermore, there is no rule of the Government to accept the Medical Certificate of a person working on the Muster Rolls that too for the absent period. As such, the representation of the petitioner was rightly rejected.

xx xx xx xx xx"

4. Learned counsel for the petitioner has submitted that in terms of policy dated 27.05.1993, the claim of the petitioner for regularization was required to be considered. He further submitted that the petitioner was eligible as per the said policy as he was having more than 05 years service on 31.03.1993. He submits that the policy dated 27.05.1993 was clarified vide instructions dated 18.03.1994, wherein it was stated that the matter was under consideration with the Government as to how much break in service should be allowed during the 05 years period and whether those daily wagers who have worked on different posts under different designations and has completed the requisite conditions should be regularized or not and the Government had taken the decision that those daily wagers who have completed 240 days of service in a year without having continuous break of more than 30 days



in a year should be regularized. He further submitted that the clarificatory instructions dated 18.03.1994 is not applicable to those cases where the persons were eligible to be regularized under the original policy dated 27.05.1993. Therefore, the claim of the petitioner should have been considered by the respondents under the policy dated 27.05.1993 without applying the clarificatory instructions dated 18.03.1994. He has placed reliance upon a Division Bench judgment of this Court in ***Anand Kumar Vs. Haryana Urban Development Authority, Manimajra (U.T.), Chandigarh :1995(1) SCT 677.***

5. Per contra, learned State counsel submitted that since the petitioner has not fulfilled the requisite conditions for his regularization in service in terms of policy dated 27.05.1993 and clarificatory instructions dated 18.03.1994, therefore, he is not eligible to be regularized under the said policy. He further submits that the services of the petitioner has already been regularized in the year 2002.

6. I have heard learned counsel for the parties and perused the relevant documents.

7. Admittedly, the petitioner was engaged on muster roll as daily wager in April, 1986. The State Government issued instructions dated 27.05.1993 regarding regularization of the services of work charged/casual/daily rated employees. As per the said instructions, the casual/daily rated employees, who have completed 05 years service on 31.03.1993 and were in service on 31.03.1993, shall be considered for regularization. The said instructions have been clarified vide instructions dated 18.03.1994 which provides that those daily wagers



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who have completed 240 days of service in a year without having continuous break of more than 30 days in a year should be regularized. The relevant portion from instructions dated 27.05.1993 and 18.03.1994 are as under :-

Instructions dated 27.05.1993 :-

“xx xx xx xx xx

CASUAL/DAILY RATED EMPLOYEES

The Casual and Daily rated employees who have completed 5 year's service on 31st March, 1993 and were in service on 31st March, 1993, shall be regularized. On regularization, they shall be put in the time scale of pay applicable to the lowest Group 'D' cadre in the Government and they would be entitled to all other allowances and benefits available to regular Govt. servants of the corresponding grade.

xx xx xx xx xx”

Clarificatory instructions dated 18.03.1994 :-

“I have been directed to draw your attention to circular No.6/4/90-2GS-I dated 27.5.1993 by which those daily wagers who had completed 5 years on 31.03.1993 were directed to be regularized. For some time it was under consideration by the Government as to how much break in service should be allowed during this 5 years period and whether those daily wagers who have worked on different posts or under different designations and have completed the requisite conditions should be regularized or not. Now the Government after consideration has decided that those daily wagers who have completed 240 days of service in a year without having a continuous break of more than 30 days in a year should be regularized. With regard to the regularization of those daily wagers who



have worked in different posts under different designations, the Government has decided that those daily wagers who have worked on different posts under different designations but complete the other requisite conditions would be regularized if they have worked in the same department.”

8. From a perusal of the abovesaid instructions, it is clear that a daily wager, who has completed 05 years service as on 31.03.1993 is eligible to be considered for regularization and further clarified that he must have completed 240 days of service in a year without having a continuous break of more than 30 days in a year. In the present case, there is a break of more than 30 days and the petitioner was not in service on 31.03.1993. Since the petitioner does not fulfill the requisite conditions of the abovesaid policy, therefore, he cannot claim regularization under the said policy.

9. Similar issue came up for hearing before the Hon’ble Full Bench of this Court in ***Tek Chand vs State of Haryana : 2002(1) SCT 308***, wherein the following questions were framed:-

“Can the State or its instrumentalities refuse to regularise the services of an employee on the ground that there is a break of more than a month despite the fact that the employee was not to blame or the fact that the absence was for reasons entirely beyond his control ? This question has been answered in favour of the employee by different benches of this Court. The correctness of the view has been doubted. Thus, these petitions were admitted for hearing before a Full Bench.

2. *The issue arises in the context of the instructions issued by the State Government in March, 1996. After*



hearing the counsel for the parties, we find that the following questions arise :-

- 1. Can the competent authority refuse to regularise the services of a daily wager merely because there was a break of more than a month even when the employer had caused the interruption in service ?*
- 2. Can the employer refuse to regularise the services of an employee who has remained absent from duty for a continuous period of more than a month for reasons entirely beyond his control ?*
- 3. Does the absence of the employee on January 31, 1996 disentitle him to claim regularisation in service despite the fact that he had remained in service prior to and after the date ?*
- 4. Can this court not go into these matters in proceedings under Article 226 of the Constitution ?”*

10. After considering the matter at depth, the Hon’ble Full Bench has answered the said questions as under:-

“34. In view of the above, we hold that :-

(i) The condition that the break in service should not be more than one month at a time is reasonable. However, the benefit of regularisation can be denied only in a case where the break is attributable to the employee and not in a case where the employer has caused the break.

(ii) The instructions do not require that the employee should have attended to the duties on January 31, 1996. The only requirement is that his services should not have been terminated and that he should be in service on that day.



(iii) *While hearing a petition under Article 226 of the Constitution, the court can adopt such procedure as it considers reasonable in the circumstances of the case. It can even record evidence.*

35. *As a result of the above, we hold that the view taken by a bench of this Court in Anand Kumar's case to the effect that benefit of regularisation cannot be denied even in a case where the employee remains absent for reasons not attributable to the employer, is not correct. However, the view in so far as the break on account of the reasons attributable to the employer is concerned, embodies the correct statement of law.*

36. *The writ petitions are disposed of in the above terms. The respondents shall now consider the claims of the petitioners in the light of the above decision within three months from the date of receipt of a certified copy of this order. If it is found that they fulfill the requirements of the instructions, their services shall be duly regularized. However, in cases where the petitioners have not performed their duties for certain durations of time, then they will not be entitled to the arrears of salary. In the circumstances, we make no order as to costs.*

Petitions disposed of."

11. The Hon'ble supreme Court in ***Managing Director, Ajmer Vidhyut Vitran Nigam Ltd., Ajmer and another Vs. Chiggan Lal and others : 2022(2) S.C.T. 176*** has held as under :-

"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.

10. *This Court in **Jodhpur Vidyut Vitran Nigam Ltd. v. Nanu Ram and Others, (2006) 12 SCC 494**, has held that the employer is required to examine the question as to how many workmen could be regularized keeping in mind, the budget provisions, availability of the posts, the number of muster roll workers engaged in construction work without their being existence of any vacant sanctioned posts and the manner in which these muster roll workers were initially recruited i.e. whether with or without the approval of the management, thereafter examining the above, the employer has to recommend their absorption in regular service on the basis of eligibility as determined by the Screening Committee. It was held that mere completion of two years is not the only criterion and that the State is not under an obligation to constitute Screening Committee at the end of each year. Constitution of the Screening Committee is within the discretion of the State Government dependent upon the aforesaid factors. Applying the above principles, it was held in that case that:*

“9. ...Even in the award dated 31-5-1978 read with award dated 15-6-1979 the fixation in the regular pay scale was only for those employees who were recruited with the approval of the management and in accordance with law. Even under the awards, as they then stood, the Screening Committee had to examine the performance of the workmen before granting them the regular pay scale. Granting of pay scale simpliciter is different from grant of permanency. While granting permanency, the State



has to consider the number of posts falling vacant, those posts should exist as and by way of regular vacancy, the financial burden of granting permanency and, therefore, in our view, the High Court has failed to keep in mind the difference between the concept of grant of pay scale as distinct from grant of permanency. The State was not under an obligation to constitute Screening Committee at the end of each year. Constitution of the Screening Committee was within the discretion of the State Government dependent upon the above factors. Therefore, there was no question of comparing the case of the present respondents with the case of the workmen who got regularised prior to 31-3-1982. Each exercise by the Screening Committee has to be seen in the light of the above factors. In a given exercise, the State may have sufficient number of vacant posts to accommodate certain number of workers. However, that may not be the case in the subsequent years. Therefore, there is no question of any discrimination in the matter of regularisation or in the matter of grant of permanency.”

11. This Court, in ***The Rajasthan Rajya Vidyut Utpadan Nigam Limited, Kota v. Shri Karam Singh – Civil Appeal No(s).8807-8808 of 2016***, reiterated the above principles as under:

“7. In the face of the aforesaid view taken by this Court in Civil Appeal No.1042 of 2006, we do not see how the Division Bench of the High Court could have found the workman entitled to regular pay scale from 1st April, 1983 though he was found entitled to regularization with effect from 1st April, 1989. While it is correct that the workman may have



been entitled to regular pay scale from 1st April, 1983 grant of the same would have to be linked to the availability of a post carrying that pay-scale. As the same became available from 1 st April, 1989, from which date regularization was granted, the High Court, according to us, could not have granted the benefit of regular pay-scale from 1st April, 1983. In that view of the matter, we interfere with the order of the High Court insofar as grant of regular pay scale is concerned and hold that the respondent workman is entitled to the benefit of regular pay-scale as well as regularization with effect from 1st April, 1989.”

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. Therefore, the High Court was not justified in directing payment of arrears and in fixing the grant of regular pay-scale w.e.f. 01.04.1983. The appeal is accordingly allowed and the judgment and order of the Division Bench of the High Court dated 04.01.2017 in D.B. Special Appeal Writ No.117/2006 and the order of the learned Single Judge dated 06.05.2005 in S.B. Civil Writ Petition No.5326/1990 are set aside.”

12. It may be stated here that the earlier writ petition bearing CWP No.17269 of 1994 titled as ‘Baldev Singh Vs. State of Haryana and others’ filed by the petitioner for claiming regularization has been dismissed by this Court vide order dated 05.07.2010 by passing the following order :-

“The present petition is filed seeking regularization



of services of the petitioner as Beldar.

In view of the dictum of the Apex Court in the matter of Secretary, State of Karnataka Vs. Uma Devi and others, 2006(4) SCC 1, this writ petition is dismissed.

Dismissed.”

13. Moreover, the services of the petitioner already stood regularized in the year 2002 in terms of the prevalent policy.
14. The judgment cited by learned counsel for the petitioner is not applicable to the facts of the present case as the said case relates to de-regularization of the services of the petitioner without issuance of any show cause notice and compliance of the principles of natural justice.
15. For the forgoing reasons and in view of the law laid down by the Hon’ble Full Bench of this Court in *Tek Chand’s case (supra)* and Hon’ble Supreme Court in *Chiggan Lal and others case (supra)*, the services of the petitioner cannot be regularized w.e.f. 31.03.1993 and the present petition is dismissed, accordingly.

29.10.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No