



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.1918 of 2000 (O&M)
Reserved on: 11.09.2024
Pronounced on: 18.09.2024

Lachman Dass
.....Petitioner
Versus
The State of Haryana and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Prarthana Duggal, Advocate
for Mr. Namit Khurana, Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR J. (Oral)

1. The petitioner has invoked the jurisdiction of this Court by filing the instant petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 20.01.1998 (Annexure P-5), whereby the claim of the petitioner for regularization of his services w.e.f. 31.01.1996, has been rejected. Further a writ of mandamus has been sought for directing the respondents to regularize the services of the petitioner w.e.f. 31.01.1996, in view of Haryana Government Instructions dated 07.03.1996 (Annexure P-1) and dated 19.03.1996 (Annexure P-2).
2. The brief facts as have been pleaded in the present petition are that the petitioner joined the respondent – Department as Beldar on



daily wage basis in the month of November, 1987. It is the case of the petitioner that he continued in service for more than 12 years, however, his services were not regularized in terms of Haryana Government Instructions dated 07.03.1996 and 19.03.1996 (Annexures P-1 and P-2), which provided that those daily wage employees, who have completed three years continuous service on 31.01.1996, and have completed 240 days in each year and have no break in service in any year for more than one month at a time and were in service as on 31.01.1996, were to be regularized, whereas various similarly situated employees were regularized but the services of the petitioner were not regularized, despite submitting representation by the petitioner along with other employees in the month of August, 1997 (Annexure P-3) but to no avail. The petitioner filed CWP No.15874 of 1997, directing the respondents to regularize the services of the petitioner. The said writ petition was disposed of by this Court vide order dated 22.10.1997, with a direction to respondent No.3 i.e. Executive Engineer, PWD (B&R), Yamuna Nagar, to consider and decide the said representation, by passing a speaking order. In compliance with the said order, a speaking order dated 20.01.1998 (Annexure P-5), has been passed by the respondents whereby the claim of the petitioner has been rejected on the ground that there are two breaks of more than one month at a time, during the year 1994 i.e. from 11.02.1994 to 01.05.1994, total 80 days and from 07.09.1994 to 08.11.1994, total 63 days. It has further been stated that during the said period, there was a blanket ban imposed by the State



Government vide letter dated 15.07.1994 to the effect that no daily wage employee be retained in service and in pursuance to the said order, the services of the petitioner along with other daily wage employees were terminated and thereafter, the matter was again reviewed and it was clarified vide letter dated 17.08.1994 that daily wagers, who were employed on muster-roll before 01.01.1993 and have been continuously on muster-rolls since then may be retained on muster-roll basis, however, the petitioner was not allowed to join immediately and it was only on 08.11.1994 that the petitioner joined back, which resulted in a break of 63 days and the same is not due to the fault of the petitioner and so far as the second break period i.e. 11.0.2.1994 to 01.05.1994, is concerned it was due to the injuries and sickness of the petitioner, for which he was on medical leave. Thereafter, the petitioner filed CWP No.10335 of 1999, impugning the speaking order dated 20.01.1998 (Annexure P-5), however, the same was withdrawn on 29.07.1999 and thereafter, the petitioner served a legal notice dated 26.11.1999, which has been replied by the respondents vide letter dated 14.12.1999, whereby the petitioner was informed that since he had not fulfilled the eligibility criteria for regularization as per government policy, therefore, his services cannot be regularized and thereafter, the present petition has been filed impugning the order dated 20.01.1998 (Annexure P-5), and for issuance of direction to respondents to regularize the services of the petitioner w.e.f. 31.01.1996.

3. On issuance of notice of motion, a detailed written



statement has been filed by the respondents wherein preliminary objection has been taken with regard to maintainability of the present writ petition as earlier, the petition filed by the petitioner was withdrawn and neither any liberty to file a fresh writ petition was sought nor the same was granted by the Court and therefore, the present petition suffers from the vice of res judicata. On merits, it has been stated as under:-

“4. That in reply to the Para No. 4 of the civil writ petition, the services of those beldars were regularised, who were fulfilling the requisite conditions as laid down in Govt. instructions. It is on evident from the detail of the working of the petitioner that he is not covered under the policy/instructions of the Govt. for regularisation as Annexure P-1 and P-2. Hence, the petitioner was not regularised. Details of the working of the petitioner is shown as under:-

Name of Beldar	Year	Working days	Remarks
Sh. Lachhman Dass s/o Sh. Amar Singh.	1993-94	280 ½	
	1994-95	145	
	1995-96	306 ½	

Sr. No.	Years	Period of break	Remarks
1.	1994-95	11.02.1994 to 01.05.1994 = 80 days	
2.	1994-95	07.09.1994 to 08.11.1994 = 63 days	

XXXX XXXX XXXX XXXX XXXX

6. That in reply to para No.6 of the civil writ petition, it is submitted that speaking orders on the representation of the petitioner were passed as P-5. The petitioner was not regularised as he was not fulfilling the conditions as laid down in the policy/instructions. The petitioner was not having 240 days in the year 1994-95 and was having breaks more than one month in the



year 1994-95. The petitioner remained willfull absent from duty. The services of only those persons have been regularised who were fulfilling the conditions as laid down in Govt. policy/instructions. Rest of the para is denied.

7. That in reply to para No.7 of the writ petition, it is submitted that there are no such rules wherein medical leave can be granted to daily wagers. It is also submitted that the medical certificate as Annexure P-7 has never been received by the office of the Answering Respondent from petitioner as per office record. The petitioner has managed this medical certificate Annexure P-7 with a malice motivation to get his wilfull absence period approved from the Competent Authority. The petitioner did not get the medical certificate till the filing of the present writ petition. This medical certificate Annexure P-7 first time comes to the notice of the Answering Respondent with this present writ petition filed by the petitioner. From the face of the medical certificate, it appears to be invalid and illegal as in the certificate Annexure P-7 no serial No. has mentioned on this. In fact the medical practitioner who has issued this certificate be kindly summoned and the validity off this certificate be kindly put to evidence.”

4. During the course of arguments, learned State counsel has informed that during the pendency of the present petition, the services of the petitioner have been regularized w.e.f. 30.09.2003, in view of subsequent policy/instructions of the State Government and the said fact was recorded in the order dated 04.09.2024.

5. Learned counsel for the petitioner submits that the claim of the petitioner for regularization in service w.e.f. 31.01.1996, has wrongly been rejected by the respondents vide impugned order dated



20.01.1998 (Annexure P-5), as the break in service is not attributable to the petitioner as the first break from 11.02.1994 to 01.05.1994 has occurred due to total ban imposed by the State Government and the second break from 07.09.1994 to 08.11.1994, has occurred due to the injuries and sickness of the petitioner, for which he took medical leave, therefore, the services of the petitioner is liable to be regularized w.e.f. 31.01.1996 instead of 30.09.2003.

6. Per contra, learned State counsel submits that the present petition is liable to be dismissed on account of res judicata as earlier the writ petition was withdrawn by the petitioner without seeking any liberty for filing a fresh petition on the same cause of action. He further submits that in pursuance to the direction issued by this Court vide order dated 22.10.1997, passed in CWP No.15874 of 1997, the claim of the petitioner was duly considered and the same was rejected as there were two breaks in service in the year 1994 for a total period of 143 days, whereas if an employee has a break of more than 30 days in a particular year, he was not eligible for regularization and, therefore, the claim of the petitioner was rightly rejected and when he became eligible for regularization, his services have already been regularized w.e.f. 30.09.2003.

7. I have heard the learned counsel for the parties and perused the paperbook with their able assistance.

8. Firstly dealing with the preliminary objection of learned State counsel with regard to maintainability of the present petition, it



may be stated that the petitioner had earlier filed CWP No.10335 of 1999, titled as “Lachman Dass vs State of Haryana and others”, impugning the order dated 20.01.1998 (Annexure P-5). The said writ petition was withdrawn by the petitioner vide order dated 29.07.1999, which reads as under:-

“After arguing for some time, the ld. counsel for petitioner prays for permission to withdraw the writ petition.

Permission granted.

The writ petition is dismissed as withdrawn.”

9. A perusal of the order shows that after arguing the case for some time, learned counsel for the petitioner withdrew the writ petition and no liberty for filing a fresh writ petition on the same cause of action was granted by this Court, therefore, the present petition suffers from the vice of res judicata and is not maintainable. The claim of the petitioner is that after withdrawal of the said writ petition, a legal notice dated 26.11.1999, was given to the respondents which has been replied by the respondents vide letter dated 14.12.1999, whereby the petitioner was informed that since he had not fulfilled the eligibility criteria for regularization as per government policy, therefore, his services cannot be regularized. To my mind, once the claim of the petitioner was rejected by the respondents vide order dated 20.01.1998 (Annexure P-5), and the said order was challenged by the petitioner before this Court in CWP No.10335 of 1999, wherein after arguing the case, the petition was withdrawn, therefore, there was no occasion to serve legal



notice upon the respondents, after the withdrawal of the writ petition as the same will not give any fresh cause of action to the petitioner to file the instant writ petition.

10. Since the matter remained admitted for considerable years, therefore, it would be appropriate to consider the present case on merits also.

11. Admittedly, the petitioner joined the services as Beldar on daily wage basis in the month of November, 1987. The State Government issued instructions dated 07.03.1996 (Annexure P-1), regarding regularization of services of work-charged/casual/daily rated employees. As per the said instructions, casual and daily rated employees, who have completed five years of service (later on, reduced to three years vide Instructions dated 19.03.1996) as on 31.01.1996, shall be regularized, provided they have worked for a minimum period of 240 days in each year and break in service in any year is not more than one month at a time.

12. The claim of the petitioner for regularization was considered by the respondents and the same was rejected vide impugned order dated 20.01.1998 (Annexure P-5), by recording the following findings:-

*“Diary No.200
Dated: 20.1.1998*

Office Order No.26

Dated: 20.1.1998

*It is hereby ordered that the services of Sh. Lachman
Dass S/o Sh. Amar Singh C/o S.D.E. Provl. Sub-Divn.*



No.III Ynr daily wagers cannot be made regular in view of the instructions issued by the Haryana Government vide F.D. letter No.6/38/25-2GSI dated 7.3.1996 and dated 19.3.1996. As per the instructions, the daily wager employees who have completed three years service as on 31.1.1996 and completing the following service conditions were to be brought on regular cadre:-

- 1. Who was present on 31.1.1996.
- 2. Who had worked for more than 240 days in a year.
- 3. Who had no break of more than one month at a time.

In light of the above Govt. instructions, the record of this daily wager Beldar has gone through at length and it was revealed that Sh. Lachman Dass daily wager Beldar has worked in this division as per detail given below:-

Year	Remarks
1. Sh. Lachman Dass S/o Sh. Amar Singh	
1993-94	280-1/2
1994-95	145
1995-96	306-1/2

Further there is break of more than one month during the year 1994 as under:-

Sr. No.	Year	Period of Break	Remarks
1.	1994	11.2.94 to 1.5.94 = 80 days	
2.	1994	7.9.94 to 8.11.94 = 63 days	

From the above, it is evidently clear that this daily wager Beldar was not fulfilling the required conditions to bring him on regular cadre.

Accordingly, I, B.M. Sharma, Executive Engineer, Jagadhri Provl. Divn., PWD B&R, Yamuna Nagar, therefore, order that the services of Sh. Lachman Dass S/o

2024:PHHC:120616



Sh. Amar Singh cannot be regularised in the light of above instructions. The speaking orders have been issued in view of the instructions issued by the Hon'ble Punjab and Haryana High Court, Chandigarh vide CWP No.15874 of 1997.

*Sd/- Executive Engineer
Jag. Provl. Divn. PWD B&R
Yamuna Nagar.”*

13. Although the petitioner was in service as on 31.01.1996, however, he was not fulfilling the other two conditions i.e. completion of 240 days in a year and break of more than one month at a time. In the year 1994, the total break period of the petitioner is 143 days and the petitioner has only completed 145 days of service in the year 1994 and two breaks of 80 days and 63 days each were there in the year 1994, therefore, in this view of the matter, the petitioner cannot be made to be regularized w.e.f. 31.01.1996, in terms of policy instructions dated 07.03.1996 and 19.03.1996 (Annexures P-1 and P-2) as he was not fulfilling the conditions enumerated therein. So far as the claim of the petitioner that break in service was not attributable to him is concerned, it may be stated that the first break of 80 days is from 11.02.1994 to 01.05.1994, which is prior to the issuance of letter dated 17.08.1994 (Annexure P-6), on which reliance has been placed by the petitioner to state that earlier there was a complete ban imposed by the State Government vide letter dated 15.07.1994 and on the representation of the petitioner and others, the letter dated 17.08.1994, was issued wherein it was clarified that daily wagers, who employed on muster-roll



before 01.01.1993, and have been continuously on the muster-roll since then, may be retained on muster-roll basis. The second break of 63 days from 07.09.1994 to 08.11.1994, for which the explanation of the petitioner is that the same was due to the injuries and sickness, cannot be accepted in view of the stand taken by the respondents in the written statement wherein it has been stated that there is no rule whereby the medical leave can be granted to the daily wagers and the medical certificate was never received by the respondents from the petitioner and the petitioner might have managed the said certificate later, as for the first time, the same has been attached with the writ petition and further said certificate does not bear any serial number.

14. 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 ?”

15. 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.”

16. For the foregoing reasons and in view of the law laid down by the Hon’ble Full Bench of this Court in **Tek Chand’s case (supra)**, the services of the petitioner cannot be regularized w.e.f. 31.01.1996 and the present petition is dismissed, accordingly.

18.09.2024
yakub

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No