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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-3253-1997 (O&M)  
Date of Decision: 23.01.2024

Brinder Pal Singh  
Vs.  
State of Punjab and others  
..... Petitioner  
..... Respondents

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CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
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Present: Mr. Priyanshu Kamra, Legal Aid Counsel  
for the petitioner.  
Ms. Shivani Sharma, DAG, Punjab.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner by way of this writ petition challenged originally the order dated 31.03.1997. The petitioner had preferred a writ petition No.CWP-3253-1997 admitted in the year 1997 wherein he prayed to direct the respondents to pay the petitioner his salary in regular pay scales of Chowkidar w.e.f. 13.10.1993 and also to direct the respondents to release the salary of the petitioner for the period from 01.01.1995 to 31.03.1995, 01.08.1995 to 26.02.1996, and from November, 1996 till the date of filing of the petition. He further prayed to quash the order dated 24.02.1997 and direct the respondents to consider the petitioner for the post of Peon.
2. After filing of the writ petition, the petitioner's services were dispensed with vide order dated 31.03.1997 and therefore he amended his writ petition to challenge the order of 31.03.1997. The services were dispensed with in terms of an order passed in another writ

petition No.3827-1997 which was challenged by the State of Punjab in SLP before the Apex Court. The Apex Court granted stay of the impugned order, and thereafter other employees whose services were also dispensed with and similarly placed as that of the petitioner, were taken back at service. The petitioner had been denied reinstatement. He therefore moved an application before this Court, and this Court vide order dated 24.03.1999 allowed the application and directed the respondents to allow the petitioner to work as chowkidar cum peon, and to pay him salary from the date of his reinstatement.

3. In compliance of the said order, the petitioner was taken back in service vide order dated 26.04.1999 and he was appointed as a chowkidar (contingency paid) w.e.f. 26.04.1999 to 28.02.2000 on temporary basis on the daily rate fixed by the Deputy Commissioner. He joined his duties and continued to perform his duties till the order was passed on 15.03.2000 dispensing his services w.e.f. 28.02.2000.
4. The act of dispensing with the services of the petitioner was challenged by the petitioner in contempt proceedings after giving a legal notice. The said contempt proceedings were permitted to be withdrawn on 03.10.2002 with liberty to move civil miscellaneous application in the writ petition.
5. Learned counsel appearing for the petitioner, through Legal Aid, submits that thereafter the application was not filed for challenging the order of termination dated 15.03.2000 and only early listing application was filed. The case remained pending and while the petitioner's services were dispensed with, other persons who were appointed and reinstated were regularized.

6. Learned counsel has taken this Court to the order passed by the Division Bench wherein in compliance of the orders passed by the Supreme Court in ***Civil Appeal No.5059-1997 in State of Punjab and others vs. Baldar Singh***, it had directed as a one time measure to regularize the other employees who were appointed before 13.06.1996 on ad hoc basis and the instructions dated 26.05.2003 issued by the State Government relating to regularization. He submits that as the petitioner was also in service as on 13.06.1996 and his termination is wrongful, he should be also considered for regularization and he should be deemed to be continuing in service.
7. Learned counsel for the respondents on the other hand submits that after the withdrawal of the contempt petition, the petitioner did not challenge the order of termination, and for last more than 20 years, the petitioner is not in service. Learned counsel submits that the other persons who were reinstated have been regularized in terms of the policy/instructions dated 26.05.2003, and as the petitioner was not in service, the instructions dated 26.05.2003 would not be applicable to the petitioner.
8. I have considered the submissions.
9. The Division Bench in ***CWP-17737-2003 in Wazir Singh and others vs. State of Punjab and others***, examined the policy issued by the State of Punjab in pursuance of the judgment passed by the Supreme Court (supra), and observed as under:

*“It is necessary to emphasise the narration in paragraph 5 of the aforesaid instruction which clarifies that the instant instructions have been issued on the basis of and in compliance with the directions issued by the Apex Court on*

*8.4.2003 in Civil Appeal No. 5059 of 1997- State of Punjab and others Vs. Baldar Singh. It is pointed out by learned counsel for the petitioners that the Apex Court in its directions only stipulated induction into service prior to a cut-off date i.e. 13.6.1996 and that it nowhere envisage that persons who had a break in service were not to be regularized as a one time measure envisaged in the aforesaid observations of the Apex Court. It is, therefore, the contention of the learned counsel for the petitioners that paragraph 1 must be read in conjunction with paragraph 5 so as to determine whether the term without break expressed in paragraph 1 was justified in terms of the order passed by the Apex Court.*

*We have examined the totality of the facts and circumstances of this case in conjunction with the observations made by the Apex Court in its order dated 8.4.2003. We are satisfied that the intent of the order passed by the Apex Court was to regularize all employees appointed on or before 13.6.1996 as a one time measure who were continuing in service on the date of issuance of the policy instructions dated 26.5.2003. The petitioners clearly satisfy the aforesaid condition. The petitioners also satisfy all other conditions. It was nowhere envisaged in the observation of the Apex Court that the said service should be without any break. Learned counsel for the respondents has invited our attention to the averment in paragraph 4 of the written statement wherein break in service in respect of each of the petitioners have been expressed. Undoubtedly, there have been breaks in the employment of the petitioners but even in terms of the guidelines expressed in the instructions dated 26.5.2003 they were irrelevant for the issue of regularization in furtherance of the directions of the Apex Court. We are, therefore, satisfied specifically on account of the fact that paragraphs 2 to 7 which record the essential requirements before an order of regularization can be passed in favour of an employee that the words without break expressed in paragraph 1 of the policy instructions are clearly a surplusage and not intended to be read as a pre-requisite for regularization under the said policy instructions. Since the petitioners undisputedly fulfill all the terms and conditions expressed in paragraphs 2 to 7 of the policy instructions dated 26.5.2003, we*

*direct the respondents to issue regularization orders in favour of the petitioners within a period of 3 months from today. The petitioners will also be entitled to all consequential benefits.”*

10. So far as the petitioner is concerned, admittedly he was working as a chowkidar since September, 1993. He had originally filed writ petition claiming his appointment and promotion on the post of Peon whereafter his services were dispensed with by the respondents, and this Court directed the respondents to allow the petitioner to work as chowkidar cum peon and pay his salary from the date of his reinstatement. He was reinstated on 26.04.1999 but again his services were dispensed with on 28.02.2000. Thus, there are breaks in his services.
11. So far as his termination of 1997 is concerned, there was no occasion to terminate his services as similarly situated all the other persons were working. The order of termination of 1997 challenged by the petitioner therefore is found to be without basis, and the order dispensing the services of the petitioner having been passed wrongfully is quashed and set aside.
12. The consequence of the above quashing of the order of 1997 would result in reinstatement of the petitioner from the said date and he would be deemed to be continuing in service. The interregnum orders passed in compliance of the orders passed by the Court would not therefore take away the right of the petitioner for continuity of service. He would be deemed to be continuing in service from 1997 onwards.
13. Accordingly, in terms of the judgment passed by the Division Bench in *Wazir Singh* (supra), he would be entitled for consideration for

regularization in terms of the policy issued by the State of Punjab on 26.05.2003 which was made only for those persons who were working on temporary/ ad hoc/ daily wage basis as on 13.06.1996. The respondents will therefore conduct an exercise and pass necessary orders of regularization of the petitioner.

- 14. The orders have been passed more so as similarly situated other persons namely Tarsem Lal, Makhan Singh, Parmjit Singh have been regularized.
- 15. The petitioner would be entitled to consequential benefits and the services which he deemed to have performed notionally, with actual benefits of pay fixation from the date the order was passed by the Division Bench in the case of *Wazir Singh* (supra). The entire period of service from 1993 would be considered notionally for the purpose of qualifying service for pension. The benefits shall be calculated. The petitioner shall be reinstated. Necessary orders shall be passed within a period of three months from today.
- 16. Writ Petition stands *allowed* as above.
- 17. All interims orders stand vacated.
- 18. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)  
JUDGE

January 23, 2024  
*Mohit goyal*

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable?        | Yes/No |