

CM No. 21062-CWP-2023 in/and
CWP No. 6633 of 1999

2024:PHHC:024189

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101) CM No. 21062-CWP-2023 in/and
CWP No. 6633 of 1999
Date of Decision : 21.02.2024

Rajbir Singh
...Petitioner

Versus

State of Haryana and others
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajinder Goel, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-21062-CWP-2023

Present application has been filed for recalling the order dated 01.12.2023, by which, the present writ petition was dismissed for non-prosecution.

Notice of the application to the counsel opposite.

Mr. Harish Nain, Assistant Advocate General, Haryana, who is present in Court, accepts notice on behalf of the respondents. 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, the same is allowed. The order

dated 01.12.2023 is recalled and the writ petition is restored to its original number and status.

CWP-6633 of 1999

1. In the present petition, the grievance being raised by the petitioner is that he is entitled for regularization of his services under the Policy dated 07.03.1996 as amended on 18.03.1996 as he fulfilled all the requisites mentioned in the said Policy but the said benefit has not been extended to him.

2. Learned counsel for the petitioner submits that as per the Regularization Policy dated 07.03.1996 (Annexure P-4) as amended by Policy dated 18.03.1996 (Annexure P-5), an employee is required to have minimum service of three years wherein the employee should have worked for at least 240 days in each of those years and should be in service as on 31.01.1996 for the purpose of becoming eligible for regularization of his/her services as specified in the said Regularization Policy. Learned counsel for the petitioner further submits that the petitioner was in service starting from the year 1984 and had more than 12 years of service to his credit on the date when the 1996 Policy was issued but the respondents have denied the benefit of regularization to the petitioner on the ground that the said three years of service with 240 work days in each of those three years had to be those immediately prior to 31.01.1996 and in the year 1995, the petitioner had not worked for 240 days and his service was short by 09 days and that there was gap of more than one month in the said year qua the service of petitioner.

Learned counsel for the petitioner also submits that apart from this, the services of the petitioner were terminated by the respondents subsequent to coming of the said Regularization Policy in the year 1996 and the petitioner had then approached the Industrial Tribunal raising the said dispute, wherein, the respondents agreed that the petitioner will be reinstated in service and will be given the benefit of continuity in service hence, once the benefit of continuity in service was also given, the petitioner is entitled for regularization of his service in view of his long service with the respondents and the break in service, as claimed by the respondents is not the correct factual aspect and cannot be taken into account to deny benefit of regularization to the petitioner. It is further submitted that even as per the interpretation given to the said regularization policy by the respondents, as per the record the petitioner fulfils the requisite conditions for regularization of his services.

3. Learned counsel for the respondents submits that as per the Instructions/Policy under which the petitioner is claiming for regularization of his service, it has to be seen as to whether the petitioner had three years of service with 240 days of work in each year without gap of more than one month in service in the particular year and the said three years have to be those preceding the issuance of the said Instructions and as the Instructions were issued in the year 1996, the service of the petitioner from the year 1993 onwards is to be taken into account and though, the petitioner has worked for 240 days in the year 1993 and 1994 but the petitioner is short by 09 days in the year 1995 and the claim of the

petitioner of having worked in the month of March, 1995 is wrong. Learned state counsel also submits that there is break of more than one month in the service of petitioner in the year 1995 and as per the requisites of the instructions/policy an employee having gap of more than one month in service in the said three years will also not be eligible for grant of benefit of regularization , hence, the claim of the petitioner for regularization of his services under the Instructions dated 07.03.1996 has rightly not been accepted by the respondents.

4. Learned counsel for the petitioner submits that the petitioner has worked in the month of March, 1995, which fact is evident from the copy of Muster Roll (Annexure P-8), according to which, the petitioner has worked in the month of March, 1995, whereas the respondents have wrongly stated the petitioner has not worked in the said month and if the work days as shown in the said Muster Roll are counted then even as per interpretation of Regularization Policy dated 07.03.1996 (Annexure P-4) given by respondents, the petitioner will have the requisite number of 240 days of work to claim regularization of his service.

5. Learned State counsel submits that Muster Roll (Annexure P/8), which has been attached by the petitioner for the month of March, 1995 wherein, it has been mentioned that petitioner had worked for 16 days is disputed. Learned State counsel further submits that the said Muster Roll for the month of March 1995 was lost and report qua the said Muster Roll has already been attached as Annexure R-3 hence, no benefit of the said Muster Roll (Annexure P/8) can be extended to the

petitioner.

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

7. It is a conceded position that the petitioner was in the employment of the respondents as Mali since 1984. Even the respondents have not denied the fact that the petitioner has been working with the respondents from 1984 onwards, hence as per facts upto the date of issuance of regularization policy dated 07.03.1996 (Annexure P/4), the petitioner had 12 years of service to his credit. Keeping in view the said fact, claim of the petitioner for the grant of benefit of regularization of his services under the policy dated 07.03.1996 (Annexure P/4) is to be examined. Relevant part of the policy dated 07.03.1996 (Annexure P/4), copy of which has been appended as Annexure P/4 is as under:-

“The casual and daily rated employees, who have completed five years service on 21st January, 1996 and were in service on 31st January, 1996, shall be regularized provided they worked for a minimum period of 240 days in each year and the break in service in any year is not more than one month at a time. Such employees who have worked on different posts having different designation in the same Department shall also be regularized if they fulfill other conditions, On regularization, they shall be put 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 Government servants of the corresponding grade.”

8. It may be noticed that vide instructions dated 18.03.1996 (Annexure P/5), required period of 05 years of service was reduced to 03 years as on 31.01.1996.

9. From the above reproduction, it is clear that 03 years of

service with 240 working days in each year is required to become eligible for the benefit of regularization of services. As per the respondents, 03 years of service should be immediately preceding the regularization policy in question. The said contention of the respondents is not borne by the policy dated 07.03.1996 (Annexure P/4). The word “preceding three years” is not mentioned in the said policy. No word can be read into the said Instruction dated 07.03.1996 (Annexure P/4) by the respondents on its own accord so as to deny the benefit to an employee, who is otherwise covered under the instructions dated 07.03.1996 (Annexure P/4) to mean that 03 years of service immediately preceding the regularization policy is required to become eligible for consideration under the policy dated 07.03.1996 (Annexure P/4). Once, the petitioner is working from the year 1984 and had 12 years of service to his credit up to March, 1996 when regularization policy was issued, in case petitioner has completed more than 240 working days in any of the three years, out of those 12 years, the petitioner is entitled to be considered eligible for regularization of his services as per the terms of the said instruction/policy reproduced hereinbefore.

10. Further, even otherwise, while interpreting the instructions/policy the intention behind the same is to be seen, in respect of a regularization policy which is the present case, the intention is of giving benefit of prolonged irregular service rendered by an employee at bare minimum compensation by regularizing their services. In view of the same it cannot be said that the Instruction dated 07.03.1996 (Annexure

P/4), would only prescribe 03 years of service with 240 working days in each calendar year wherein the 3 years have to be those immediately preceding the date with which the said instructions become effective. There is no rationale to ignore the total service rendered by an employee up to the date of the issuance of regularization policy dated 07.03.1996 (Annexure P/4).

11. Further it is not the argument of respondent state that out of the cumulative service of petitioner prior to issuance of the said instructions/policy which extends to about 12 years, that the petitioner does not have total 3 years of service with 240 days of service if his prior service is seen collectively. Therefore In case argument of the respondents that only 03 years' service preceding 07.03.1996 is to be seen, is accepted, then even though an employee like petitioner, who has 12 years' service to his credit and out of those 12 years has completed 240 working days in any of the 03 years will be treated ineligible merely on the ground that in the preceding 03 years, the said employee has not completed 240 working days, whereas an employee having only 03 years' service with 240 working day, which is immediately preceding regularization policy dated 07.03.1996 (Annexure P/4) will be treated eligible. An employee having longer length of service will lose despite having more than 03 years of service and having completed 240 working days in a year more than three times hence, the interpretation being given by the respondents to the regularization policy dated 07.03.1996 (Annexure P/4) so as to take away the benefit of service which the petitioner had rendered from 1984

till 1993 is totally arbitrary and illegal and since the respondents have not disputed or raised an argument that during the service rendered by the petitioner from 1983 till 1993, he had not completed 240 working days in any of the 09 years of service, therefore it shall be deemed that the petitioner fulfils the requisite as prescribed for regularization and has completed 03 years of service with 240 work days in those three years, thereby making him eligible for regularization of his services.

12. Even otherwise, it may be noticed that as per the contention of the petitioner, even in the year 1995, the petitioner has completed 240 working days. The only dispute as raised by the respondents is qua the muster Roll for the month of March, 1995 for which month the respondent state claims that the petitioner did not work. It is to be noticed here that the respondent state itself also admits that the said muster roll has been lost by it. The petitioner is claiming that as per the copy of Muster Roll (Annexure P/8), which is for the month of March, 1995, the petitioner had rendered 16 days of service and in case same is to be taken into account then even for the year 1995, the petitioner completes 240 days so as to be eligible for regularization of his service.

13. It may be noticed that the petitioner is continuously working since 1984. Even as per the reply filed by the respondents to the legal notice Annexure P/7, the respondents have given details of the muster roll for the years 1993, 1994 and 1995, wherein the respondents have also mentioned the months in which the petitioner has not worked and therein the respondents the petitioner did not work for the month of March, 1995,

whereas for the months of January and February 1995, as per the details given neither the respondents have mentioned the number of days petitioner rendered work in those months nor does the details signify that the petitioner did not work in the said months, as is signified by the respondents in case of month of march 1995.

14. A bare perusal of the said details as furnished by the respondents themselves to the petitioner, will show that the month where the petitioner did not work has been kept blank therefore, it is to be presumed that the petitioner was working in the month of January and February, 1995 as the columns against the said months have not been left blank. It is further conceded that petitioner worked from April to November, 1995. Further the onus to maintain the muster rolls is on the employer and an employee cannot be made to suffer as a result of the employer's lapse in performing its duties. As muster roll for the month of March, 1995 has been lost by the respondents, it is to be presumed that the petitioner had worked in the month of March, 1995. The argument that the respondent state got a complaint registered qua misplacing of the muster roll is not sufficient to discharge the respondent state from its responsibility of maintaining the muster rolls, especially when a muster roll for the period in question i.e. Annexure P-8 with the petition has been attached, which basis the signature of the authority concerned.

15. Even otherwise, nothing has come on record qua the non-working of the petitioner in the month of March, 1995. The respondents have only placed reliance upon the affidavit of one Swatantar Kumar,

Forest Guard. The said affidavit has been given much after the filing of the petition and once the petitioner has raised a grievance for not granting him the benefit of working days for the month of March, 1995 so as to decline the benefit of regularization of service, affidavit of Swatantar Kumar, Forest Guard cannot be given any weightage so as to deny the benefit of regularization of service to the petitioner. The presumption has to go in favour of the petitioner and any affidavit, which has been given after the claim was raised by the petitioner cannot inspire confidence so as to accept the same at the cost of the petitioner, who is continuously working since 1984 with the respondents.

16. The last argument which has been raised by the respondents is that there is a gap of more than one month in the service of the petitioner.

17. With regard to the said argument, it may be noticed that the said argument has been raised on the ground that petitioner had not worked from 15.02.1995 till 01.04.1995. It may be noticed that respondents have lost the muster roll for the month of March, 1995. Once, the said muster roll has been lost, the period of the said month cannot be taken to have an adverse impact on the petitioner. In case, the period of 30 days of the month of March, 1995 is taken out, the gap in the service rendered by the petitioner is not more than one month hence, the said argument that there is a gap in service of petitioner for more than one month starting from 15.02.1995 till 01.04.1995 so as to deny the benefit of regularization of service to the petitioner, cannot be accepted.

18. Keeping in view the above, as the petitioner has 12 years of service to his credit starting from 1984 up to March, 1996 and the respondents have not been able to show to this Court that in those 12 years of service, the petitioner has not completed 240 working days in any 3 years, the petitioner is to be treated eligible for regularization of his service under the regularization policy dated 07.03.1996 as he fulfils all the requisite of the said regularization policy.

19. Learned counsel for the petitioner submits that he has instructions to state before this Court that in case, claim of the petitioner for regularization of his services under the policy dated 07.03.1996 (Annexure P/4) is accepted by the respondents and his services are regularized, the petitioner will not claim any arrears of pay up to the date of passing of the order. Learned counsel for the petitioner further submits that salary of the petitioner be fixed notionally up to the date of his retirement and his pensionary benefits be computed and the petitioner be given pensionary benefits along with arrears of pensionary benefits including pension.

20. Keeping in view the undertaking given by the learned counsel for the petitioner, the respondents are directed that the services of the petitioner be regularized under the policy dated 07.03.1996 (Annexure P/4) and he be treated as a regular employee of the department till the date of his retirement and his pay be fixed notionally. As undertaken by the learned counsel for the petitioner, the petitioner will not be entitled for any arrears of salary up to the date of his retirement and the petitioner will

be allowed pensionary benefits keeping in view the notional salary, which will be fixed by the respondents as on the date of retirement of the petitioner and the pension and arrears of pensionary benefits will be released to petitioner within a period of 08 weeks from the date of receipt of copy of this order.

21.. The present petition is allowed in above terms.

February 21st 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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