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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.19969 of 2002 (O&M)
Reserved on: 04.09.2024
Pronounced on: 16.09.2024

Shamsher Singh
.....Petitioner
Versus
State of Haryana and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Amit Prashar, Advocate
for the petitioner.

Mr. Ravi Dutt Sharma, DAG, Haryana.

NAMIT KUMAR J. (Oral)

1. Prayer in this writ petition filed by the petitioner under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of certiorari, quashing the order dated 25.10.2002 (wrongly mentioned as 09.09.2002 in the headnote), whereby the claim of the petitioner for regularization has been rejected. Further a writ of mandamus has been sought for directing the respondents to regularize the services of the petitioner under the regularization policy dated 07.03.1996 and 18.03.1996 (Annexures P-2 and P-3).
2. Brief facts as have been pleaded in the petition are that the petitioner was engaged on daily wage basis in the year 1989 as Beldar and has completed more than 240 days in each year and as per policy dated 07.03.1996 and 18.03.1996 (Annexures P-2 and P-3), he was

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eligible to be regularized and since no action was taken by the respondents in regularizing the services of the petitioner, therefore, he approached this Court by way of filing a petition i.e. CWP No.4473 of 1998, which was disposed of vide order dated 02.08.2002, with a direction to the respondents to consider the case of the petitioner. Thereafter, the petitioner submitted representation dated 09.09.2002 along with copy of the order dated 02.08.2002 and vide impugned order dated 25.10.2002, the claim of the petitioner has been rejected on the ground that there are four number of breaks for more than 30 days from the period from 01.02.1993 to 31.01.1996.

3. On issuance of notice of motion, written statement on behalf of respondents No.1 to 3 has been filed wherein the rejection order qua claim of the petitioner for regularization has been justified by stating that while considering the claim of the petitioner, it has been found that there are four number of breaks for more than 30 days and, therefore, the services of the petitioner cannot be regularized. The details of working days/breaks along with break period for more than 30 days during the last three years of service from 01.02.1993 to 31.01.1996, has been given in the tabulated form in Annexure R-1.

4. Learned counsel for the petitioner submits that the petitioner has been continuously working in the department since 1989, without any break and he has fulfilled the condition of three years of regular satisfactory service much prior to the cut off date of notification. He has further submitted that the services of the petitioner have been

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regularized in the year 2003 and he has been retired from service from the post of Work Supervisor on 31.05.2020.

5. Per contra, learned State counsel fervently and vehemently opposed the prayer made in the petition and submits that the petitioner has not fulfilled the requisite conditions for his regularization in service and, therefore, prayed for dismissal of the petition on merits.

6. I have heard learned counsel for the parties perused the paperbook.

7. The claim of the petitioner for regularization has been examined by respondent – Department in terms of policy dated 07.03.1996 (Annexure P-2), which provides as under:-

“CASUAL/DAILY RATED EMPLOYEES:

The casual and daily rated employees who have completed five years service on 31st January, 1996, shall be regularized provided they have 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 designations in the same department shall also be regularized if they fulfill other conditions. On regularization they shall be put in the time scale of pay applicable to the lowest group D cadre in the Govt and they would be entitled to all other allowances and benefits available to regular govt servants of the corresponding grade.”

8. The said Notification was supplemented vide Instructions dated 18.03.1996 (Annexure P-3) whereby the requirement of five years service as on 31.01.1996, has been reduced to three years. The same

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reads as follows:-

“XXXX XXXX XXXX XXXX

2. This matter has further been considered and after careful consideration it has now been decided to regularize the services of all those work-charged/casual/daily rated employees who have completed three years services on 31st Jan, 1996 and fulfill the other conditions laid down in Haryana Govt letter of even number dated 7th March, 1996.

3. Accordingly, Government instructions issued vide letter of even number dated 7th March, 1996 should be considered as modified to the extent that the work charged/casual/daily rated employees with 3 years service on 31st Jan,1996 instead of 5 years service on 31st Jan, 1996 shall be eligible for regularization.

XXXX XXXX XXXX XXXX”

9. The claim of the petitioner for regularization has been considered by the respondent/department and the same has been rejected vide impugned order dated 25.10.2002, by stating as under:-

“The record of this office consulted after receipt of your representation. It was seen from the record that there are four No. breaks for more than 30 days from the period from 01.02.1993 to 31.01.1996 as per detail given below:-

- | | | | |
|----|-----------|----|-----------|
| 1. | 8.4.1993 | to | 13.5.1993 |
| 2. | 1.8.1994 | to | 31.8.1994 |
| 3. | 5.9.1994 | to | 9.11.1994 |
| 4. | 12.8.1995 | to | 5.10.1995 |

Accordingly you were given personal hearing by the undersigned and these breaks were shown to you. You were further given a chance to make any representation against these breaks vide this office No.3709 dated 18.10.2022.

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Out of the above 4 No. breaks, one break for the period from 1.8.1994 to 31.8.1994 is attributable to the Deptt and remaining 3 Nos. breaks are attributable to you. You have not been able to prove even in your representation dated 22.10.2002 that these breaks are not attributable to you. In light of the above 3 Nos. breaks attributable to you, your services cannot be regularized. Your representation dated 9.9.2002 and 22.10.2002 is hereby rejected.”

10. The claim of the petitioner has mainly been rejected on the ground that while considering the case of the petitioner, it has been found that four number of breaks for more than 30 days in a year has been noticed, the details of which is given in Annexure R-1 and one break is attributable to the respondent/department i.e. from 01.08.1994 to 31.08.1994 and the other three breaks are attributable to the petitioner.

11. Similar issue came up for hearing before the 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.

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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 ?”

12. After considering the matter at depth, the 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

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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.”

13. Since there are four number of breaks for more than 30 days i.e. from 08.04.1993 to 05.10.1995, therefore, the claim of the petitioner has rightly been rejected for regularization vide impugned order dated 25.10.2002 and the same is in consonance with the law laid

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down by Hon’ble Full Bench of this Court in Tek Chand’s case (supra).
It may also be noticed that during the pendency of the present petition, the services of the petitioner have already been regularized in the year 2003 and he has superannuated as Work Supervisor on 31.05.2020.

14. In view of the above, finding no merit, the instant writ petition is dismissed.

16.09.2024
yakub

(NAMIT KUMAR)
JUDGE

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