

CWP-4584 of 2003

2024:PHHC:143989



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

CWP-4584 of 2003

Reserved on: 25.10.2024

Pronounced on: 05.11.2024

Jai Parkash

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: - Mr. Raminder Singh Joon, Advocate,
for the petitioner.

Mr. R.D. Sharma, DAG, Haryana.

NAMIT KUMAR, J.

1. Petitioner has invoked the writ jurisdiction of this Court by filing the present petition under Article 226 of the Constitution of India, seeking a writ of *certiorari*, quashing the order dated 19.07.2002 (Annexure P-5), whereby his services have been regularised w.e.f. 01.02.1996, in the pay scale of Rs.2550-3200 with notional pay on the date of joining. Further, a writ of *mandamus* has been sought seeking arrears of salary and other allowances for the period from 01.02.1996 to 19.07.2002.

2. Brief facts, as have been pleaded in the petition, are that the petitioner who is matriculate, was appointed as Beldar in the respondent-department on 13.01.1991 on daily-wage basis and continued as such till 31.05.1993 when his services were terminated.

The said termination was challenged by the petitioner before the Labour Court and vide award dated 29.10.1998, the termination of the



petitioner was held to be illegal and was set aside and he was directed to be reinstated in service on the post held by him with continuity of service and 25% backwages. Thereafter, he was allowed to join his duties on 01.10.1999. However, his services were not regularised and he filed CWP No.18331 of 2001 claiming regularisation as per policies dated 07.03.1996 and 18.03.1996. In pursuance to Government of Haryana policy dated 07.03.1996, which was subsequently modified vide policy dated 18.03.1996, services of the petitioner were regularised vide order dated 19.07.2002 w.e.f. 01.02.1996 on notional basis during the pendency of the said writ petition. Consequently, the said writ petition was disposed of by this Court vide order dated 23.07.2002 by passing the following order: -

“As per the communication received by the Advocate General, Haryana and put on record by the Assistant Advocate General, the petitioner’s services have been regularised w.e.f. 01.02.1996. This is the petitioner’s claim. The writ petition is accordingly disposed off as infructuous.”

3. Thereafter, petitioner filed the instant petition impugning the order dated 19.07.2002 (Annexure P-5) to the extent that his services have been regularised w.e.f. 01.02.1996 in the pay scale of Rs.2550-3200 with notional pay on the date of joining without granting arrears or difference of salary from 01.02.1996 to 19.07.2002.

4. Written statement on behalf of respondents No.1 to 3 has been filed wherein the claim of the petitioner has been contested by stating as under: -



“1. That the petitioner has voluntarily forgone his right to claim the arrear as he failed to raise the issue at the time of hearing in CWP No. 18331 of 2001 filed by the petitioner in this Hon'ble Court. The legal right has been surrendered knowingly and having full knowledge of the implication of the order dated 19.07.2003. Hence this present writ petition filed by the petitioner is liable to be dismissed on this score.

x x x x x

6. That in reply to para No.6, of the petition it is submitted that the case of Shiv Kumar Beldar quoted by the petitioner for reference is not on a par with the case of the petitioner. The petitioner did not object to the order dated 19-07-2002 knowingly even after having knowledge of the repercussions of the implementation of order during the course of hearing in CWP No. 18331 of 2001. Meaning thereby the petitioner voluntarily surrendered his right to claim the arrear and hence has no legal right to approach this Hon'ble court or seek any relief at this stage. Therefore, the action of the respondents is not arbitrary and discriminatory as alleged.”

5. The only question which arises for determination by this Court is whether the petitioner is entitled for arrears of difference of salary for the period from 01.02.1996 to 19.07.2002.

6. The facts are not in dispute that petitioner joined the respondent-department as Beldar on 13.01.1991 on daily-wage basis and his services were terminated on 31.05.1993, which was challenged by him before the Labour Court and vide award dated 29.10.1998, his termination was set aside and he was ordered to be reinstated in service with continuity of service and 25% backwages. Consequently, he



per policies dated 07.03.1996 and 18.03.1996, petitioner filed CWP No.18331 of 2001, claiming regularisation w.e.f. 01.02.1996 and during the pendency of the said writ petition, services of the petitioner were regularised w.e.f. 01.02.1996 and said writ petition was disposed of as infructuous, meaning thereby that relief claimed in the said writ petition was satisfied. If the petitioner had any grievance with regard to arrears of difference of salary, he could have agitated the same in the earlier writ petition. Further, the Labour Court only awarded 25% backwages to the petitioner vide award dated 29.10.1998, meaning thereby the petitioner got 25% backwages from 01.06.1993 to 30.09.1999, the period for which he remained out of service. For this reason also, the petitioner cannot be held entitled for the arrears w.e.f. 01.02.1996.

7. In view of the above, present petition being devoid of any merit is hereby dismissed.

8. Pending application(s), if any, stand disposed of accordingly.

05.11.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No