

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

(241)

CWP-17993-2021

Date of Decision : April 29, 2024

Shakuntla

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajay Chaudhary, Advocate, for the petitioner.

Mr. Pankaj Middha, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 11.03.2020 (Annexure P-6) by which, the claim of the petitioner for regularization of her services under the regularization policy dated 01.10.2003 has been declined by the respondents.

2. Learned counsel for the petitioner submits that the petitioner was appointed as Daily Wager Labourer and working with the respondents since the year 1990 and her services were terminated by the respondents on 16.07.1999. The said termination of the services of the petitioner was challenged before the Labour Court and the Labour Court by an Award dated 22.05.2003 (Annexure P-1), held the termination of service was bad and directed the reinstatement of the petitioner with continuity with full back wages from the date of demand notice. The said order has already

attained finality and the petitioner has been given back wages starting from 08.09.1999 till 22.05.2003.

3. Learned counsel for the petitioner further submits that by the time, the petitioner was reinstated in service, the respondents had issued a policy regularizing the services of an employee who had completed three years of service as on 30.09.2003 and had completed 240 days in three years and as the petitioner fulfills the said requisite, the respondents were under an obligation to grant the petitioner the benefit of regularization of her services.

4. Learned counsel for the petitioner further submits that the petitioner claimed regularization of her services by filing CWP No.35792 of 2019, which writ petition was disposed of on 16.12.2019 (Annexure P-5) by this Court by directing the respondents to consider the claim of the petitioner and pass an appropriate speaking order and as per the directions given, the respondents have passed the impugned order dated 11.03.2020 (Annexure P-6) declining the claim of the petitioner on the ground that the petitioner is not entitled for the said benefit without giving any cogent reason, which order is under challenge in the present writ petition.

5. Learned counsel for the respondents submits that the petitioner was appointed as a Labourer on daily wage basis in the year 1995 and as per the record, the petitioner did not had 240 days of working in three years prior to 01.10.2003 hence, the petitioner cannot claim the benefit of regularization of her services.

6. As per the respondents, the petitioner completed 240 days in the year 1995, 342 days in the year 1996 and 224 days in the year 1997.

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

8. The only dispute in the present writ petition is whether the claim of the petitioner is covered under the policy dated 01.10.2003. As per the requirement of the regularization policy dated 01.10.2003, an employee should be in service and should have completed three years of service as on 30.09.2003 and should have worked for 240 days in the three years preceding the consideration of his/her claim.

9. The respondents are denying the petitioner the benefit of regularization of her services by considering her record from 1995 till 2000 wherein, in two years i.e. in the year 1995 and 1996, the petitioner has completed 240 days and in the year 1997, she has completed 224 days. The respondents are ignoring a material fact that the Labour Court vide Award dated 22.05.2003 (Annexure P-1) had reinstated the petitioner with continuity of service with full back wages and from the year 1999 till 2000, the petitioner has been paid full salary for the said period, which fact proves that petitioner has worked for more than 240 days in each year starting from the year 1999 till 2003. The said completion of 240 days in the year 1999 to 2003 is being ignored by the respondents while considering her claim for regularization of her services. Once the petitioner is deemed to be in service starting from the year 1999 till 2003 and has been given salary for 365 days in each of those years, it cannot be said that the petitioner has not completed 240 days starting from the year 1999 till 2003 for the period salary has been paid, it cannot be said that petitioner has not worked in the said period. The consideration being given to the claim of the petitioner is on wrong factual assessment.

10. Keeping in view the above, the impugned order dated 11.03.2020 (Annexure P-6) is set aside. The respondents are directed to reconsider the claim of the petitioner by taking her services starting from

the year 1995 onwards by giving her the said benefit from the year 1999 till the year 2003, she is deemed to be in service and has been paid full salary for 365 days in each of those years and she has been treated having worked for 240 days from the year 1999 till 2003.

11. With regard to the grant of sanction post, the said issue has already been decided by this Court in ***CWP No.2158 of 2020 titled as Ashish Sharma and others vs. State of Haryana and others, decided on 13.03.2024***, the benefit of which direction will also be available to the petitioner wherein, the respondents have themselves mentioned that for regularizing the service of an employee, in case there is no regular post, the same will be created as a personal measure to them. The benefit of the said judgment should also be given to the petitioner qua the existence of post.

12. Learned counsel for the respondents submits that the petitioner was working with the Contractor.

13. It may be noticed that when the services of the petitioner were terminated, which dispute was raised before the Labour Court, no such assertion that the petitioner was working with a Contractor was raised. In case, the petitioner was working with Contractor, then why, the petitioner has been paid the arrears by the Department from 1999 till 2003. Nothing has come before this Court to show that the assertion that the petitioner was working with the respondent-State, is incorrect and nothing has been brought on record as to under which Contractor the petitioner was working and for what period. In the absence of any such material, coupled with the Award which has attained finality, the petitioner is to be treated as employee of the respondent-State and not of the Contractor.

14. In view of the above, the respondents are directed to pass an appropriate order qua the regularization of the services of the petitioner

under the policy dated 01.10.2003 within a period of eight weeks of the receipt of copy of this order by keeping in view the directions given hereinbefore and in case the petitioner is found entitled for any benefit, the same will also be released to her otherwise due reasons will be mentioned in the speaking order for not accepting the claim of the petitioner in case those reasons are not covered by the directions mentioned hereinbefore.

15. The present writ petition is disposed of in above terms.

April 29, 2024*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No