

CWP-4810-2018 (O&M) & -1- 2024:PHHC:068533
connected cases

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

216 (03 cases) CWP-4810-2018 (O&M)
Date of Decision :06.05.2024

Joginder Singh ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP-10791-2018 (O&M)

Bansi Lal ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP-11174-2018 (O&M)

Ganga Dhar ...Petitioner

Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajay Redhu, Advocate for the petitioner
in CWP-4810-2018.

Mr. Jagbir Malik, Advocate for the petitioners
in CWPs-10791 & 11174-2018.

Ms. Vibha Tewari, AAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

1. By this common order, above mentioned three writ petitions are being disposed of as all the writ petitions involve the same question of law on similar facts.
2. For the purpose of this order, facts are being taken from CWP-4810-2018.
3. In the present petitions, prayer of the petitioners is for the grant of benefit of regularization of their services w.e.f. 01.01.1996.
4. Certain facts need to be noticed for the correct appreciation of the issue in hand.
5. There was a strike by the employees of the Haryana Transport Department in the year 1993 and in order to cope-up with the said issue, certain conductors were recruited by the department concerned and in that process, the petitioner came to be recruited on 14.12.1993 at Bhiwani Depot and as the strike was over, services of the petitioner were terminated on 21.12.1993. The petitioner worked only for a period of seven days with the respondent-department.
6. Thereafter, the petitioner approached this Court by way of filing CWP-14688-2003 claiming the benefit of appointment as the petitioner had worked during the strike period. Keeping in view the direction given by this Court, the legal notice served by the petitioner was decided by the respondent-department and the petitioner was appointed on the post of

conductor on contract basis on 29.07.2004 and he started working on the said post at Rohtak Depot as such and ultimately, his services were regularized on 25.08.2010.

7. Before proceeding further, it may be noticed that similar is the case of the other petitioners in the connected writ petitions.

8. In CWP-11174-2018, petitioner had worked on the post of Conductor for a period of one and a half months during strike period when his services were terminated on 01.02.1994 and he was engaged afresh on contract basis on 27.05.2004 and ultimately his services were regularized on 30.07.2008.

9. With regard to the petitioner in CWP-10791-2018, he had also worked as a conductor during strike period for a period of one and a half months when his services were terminated on 02.02.1994 and he was also reengaged in service on contract basis on 27.05.2004 and ultimately on 30.07.2008 his services were regularized w.e.f. 27.05.2004.

10. Prayer of the petitioners is that as the similarly situated employees, who were in service, their services have been regularized w.e.f. 01.01.1996 hence, the said benefit should also be granted to the petitioners.

11. Upon notice of motion, the respondents have filed reply wherein, it has been stated that on the date from which the petitioners are seeking benefit of regularization of their services, none of the petitioners was in service and once, the petitioners were appointed in the year 2004 after which date, their services have already been regularized starting from year 2008 onwards upto 2010, no grievance can be raised by the petitioners

for retrospective regularization of their service w.e.f. 01.01.1996.

12. Learned counsel for the respondents further submits that after a period of more than 08 to 10 years, present petitions have been filed, which are otherwise not maintainable.

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

14. The benefit of regularization of services can only be given in case, an employee is in service and his appointment is irregular. In the present case, all the petitioners had worked only during the strike period and that too for a period ranging from 07 days to one and a half months. It is also a conceded fact that from the year 1994, for another period of 10 years, the petitioners were not in service of the respondent-department. In the year 2004, the petitioners were again appointed on contract/adhoc basis which service has already been regularized starting from year 2008 to 2010. The petitioners accepted the said claim and did not raise any issue for a period of 08 to 10 years and the present petitions have been filed claiming the benefit of regularization from 01.01.1996.

15. Now the question which arises is, whether the services of an employee can be regularized when concededly, he was not in service. As on 01.01.1996, none of the petitioner was in service hence, no regularization policy can be made applicable upon them so as to grant them benefit of retrospective regularization.

16. Even otherwise, services of the petitioners have already been regularized starting from year 2008 to 2010 and for a period of 10 years, no

grievance was raised by the petitioners and ultimately present petitions have been filed seeking regularization of service from 01.01.1996.

17. As per the judgment of the Division Bench of this Court in *Sukhbir Singh and others vs. State of Haryana and others in LPA No.1662-2015 decided on 31.08.2016*, no benefit of antedated regularization can be claimed after a period of more than 5 to 10 years. Relevant paragraph of the said judgment is as under:-

“7. The fact that the appellants took no steps to claim the benefit of Government policy of 1979 for over 12 years is not in dispute. They cannot take the benefit of Jaimal Singh's case (supra) as the writ petitioners in that case had approached this Court in the year 1998 while the appellants remained fence-sitters. Even as per *Jaimal Singh's case*, there was no cutoff date for the purpose of regularization of services. Much was to depend upon as to how many posts were sanctioned in a depot. All the writ petitioners of that case were not made regular w.e.f. 01.04.1987.

8. Assuming that the appellants are similarly placed yet they lost their right as neither such claim was put up before the competent authority nor they approached any other forum within a reasonable period. In this view of the matter, the rejection of their claim by learned Single Judge on the ground of delay and laches calls for no interference by this Court.”

18. Learned counsel for the petitioners has not been able to explain as to why, once, the benefit of regularization was already extended to the petitioners, which was also accepted by them, after a period of 08 to 10 years, present petitions have been filed hence, claim of the petitioners for the

grant of regularization of their service w.e.f. 01.01.1996 is contrary to the

settled principle of law settled by the Division Bench of this Court in *Sukhbir Singh (supra)*.

19. Learned counsel for the petitioner in CWP-11174-2018 submits that the petitioner had approached the Labour Court wherein, a direction was given to regularize the services of the petitioner w.e.f. 01.01.1996.

20. It may be noticed that the said order was passed by the Labour Court on the basis of the statement given by one of the employee. The Labour Court though, had given the jurisdiction to the department concerned to decide the said claim of the petitioners and the department has already rejected the said claim by passing an appropriate speaking order. Even otherwise, no direction could have been given by the Labour Court to regularize the services of the petitioner concerned especially, when the said petitioner was not in service on the said date. No regularization of service can take place once, an employee was not in job on a particular date. In the present case, concededly the petitioners were not in service from 1994 and they remained out of service for a period of 10 years and nothing has come on record that the petitioners have been appointed with retrospective effect so as to grant them the benefit of continuity from the initial date of appointment.

21. Keeping in view the facts and circumstances recorded hereinbefore, no ground for the grant of antedated regularization of service to the petitioners is made out and the present petitions are accordingly dismissed.

22. Civil miscellaneous application pending, if any is also disposed

of.

23. A photocopy of this order be placed on the file of connected cases.

May 06, 2024 (HARSIMRAN SINGH SETHI)

aarti JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No