



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

**CWP-20771-2014
Date of Decision:14.11.2024**

DALJIT SINGH Petitioner
Versus
DIVISIONAL MANAGER AND ANR. Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. G.S. Bal, Sr. Advocate with
Ms. Gurneet Kaur, Advocate for the petitioner.

Ms. Madhu Dayal, Advocate for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 27.02.2013 (Annexure P-8) whereby Labour Court has answered the reference against him.

2. The petitioner is an Ex-serviceman. He, on temporary basis, joined respondent-Chandigarh Transport Undertaking in December' 1998. His appointment was for 89 days. He came to be relieved in July' 1999. He filed an application before Central Administrative Tribunal (for short 'CAT') seeking reinstatement and regularization. Vide interim order dated 02.09.1999, CAT ordered to reinstate him. The said application came to be disposed of by CAT vide order dated 24.08.2000 whereby it was held that applicant may be replaced by regular employee. He continued to work, as process of regular selection, though had commenced in 1999, yet was not completed till 2001. He filed second application before CAT seeking regularization. CAT vide order dated 19.07.2001 directed the respondent to decide his representation within 3



months. The respondent vide order dated 08.10.2001 rejected his representation. The petitioner filed 3rd application before CAT in 2001 and 4th application in 2003. Prayer in both the applications was to regularize him and permit to continue. The respondent advertised regular post in 2003 as well as in 2006. The petitioner participated in selection process of 1999 to 2001 as well as 2003 and 2006. The petitioner could not achieve benchmark in all the three selection processes, thus, he was not selected against a regular post. CAT vide order dated 24.12.2003 disposed of his 3rd and 4th application seeking regularization.

3. The Tribunal rejected application of the petitioner in 2003, however he continued to work with respondent because no regular appointment was made during 2004-2006. The respondent in 2006 advertised 45 regular posts. The selection process completed in 2007 wherein petitioner though participated but was not selected as he could not achieve benchmark. The respondent on account of selection of regular employees relieved him on 30.05.2007. It is apt to notice here that it was not only petitioner who was appointed on temporary basis but also there were a number of Drivers who were appointed on temporary basis and pursuing their remedies for regularization. Apart from petitioner 11 more workers were relieved on 30.05.2007. The petitioner as well as other relieved workers approached the Labour Court which passed impugned order against the petitioner but allowed reference of other workers. Hence this petition.

4. Mr. G.S. Bal, Sr. Advocate for the petitioner submits that petitioner was similarly situated with 11 other Drivers. The Labour Court has wrongly declined claim of the petitioner whereas other Drivers have



been ordered to be reinstated with 50% back wages. The claim of petitioner as well as others was rejected by CAT. The Labour Court has misinterpreted order of CAT *qua* the petitioner. CAT had permitted petitioner as well as other workers to continue till regular appointment. On 30.05.2007, 12 posts were lying vacant, thus, petitioner could be adjusted like other 11 workers.

5. Per contra, Ms. Madhu Dayal, Advocate for the respondents submits that application of petitioner was dismissed by CAT on 24.12.2003 wherein it was observed that there is no bar to replace him by duly selected candidate against a regular post. The respondent made regular selection in 2007, thus, he was relieved. There was compliance of directions of CAT. The other similarly situated employees were permitted to continue after order of CAT passed on 24.05.2006. The similarly situated employees were also relieved on 30.05.2007. There were 12 vacant posts on 30.05.2007. The Labour Court has ordered to reinstate 11 persons because posts were lying vacant on 30.05.2007. There were 30 Drivers who were contesting before CAT. 29 persons had filed joint application and petitioner herein had filed separate application. The application of petitioner was disposed of by Tribunal in 2003 and application of 29 persons was disposed of on 24.05.2006. Out of total 30 persons, at the most 12 persons could be adjusted because on 30.05.2007, 12 posts were lying vacant. The petitioner was not entitled to reinstatement because his claim was not only rejected by CAT but also his writ petition was dismissed by this Court vide order dated 18.02.2009.

6. I have heard the arguments of learned counsel for the parties and perused the record.



7. The conceded position emerging from the record is that the petitioner and 29 persons joined respondent on temporary basis as Drivers. They time to time approached CAT seeking regularization. The Tribunal dismissed their application seeking regularization, however, permitted them to continue till selection of regular Drivers. The respondent made appointment of regular employees in 2001, 2003 and 2006. The petitioner and other temporary Drivers participated in selection process, however, very few of them could achieve the benchmark and came to be selected. The application of petitioner was dismissed by CAT on 24.12.2003 whereas application of other Drivers was disposed of on 24.05.2006. In the case of other workers, the application was not dismissed and they were allowed to continue till regular selection. On account of said order, they continued to work till 30.05.2006. They were relieved on 30.05.2007, though, 12 posts were lying vacant on 30.05.2007. The Labour Court has ordered to reinstate 11 persons who were relieved on 30.05.2007.

8. The respondent is claiming that they have reinstated 12 persons because 12 posts were lying vacant. In the case of petitioner, there was no positive direction by CAT and his writ petition was also dismissed by this Court, thus, he was bound to be ignored in comparison of other Drivers.

9. The petitioner seeking regularization preferred O.A No.1079/CH/2001 and O.A No.703/CH/2003 before CAT. Both the applications were dismissed vide order dated 24.12.2003. The operative portion of order dated 24.12.2003 is reproduced as below:

“9. After hearing both the counsel, we are convinced that the applicant has no claim to be



regularized against the regular vacancies for which selection has been made twice and applicant had appeared in both the selections but had failed to make the mark. He is, therefore, not entitled for regular appointment against the regular post. In so far as his contractual appointment is concerned, he is continuing against this post on account of the relief given by this Tribunal but, there is no bar upon his being removed if he is replaced by duly selected candidate against a regular post. The judgments cited by him are not relevant in the case as he was appointed on contract basis for a limited period and he had joined the post with open eyes. Besides the above, he has participated in the selection for the regular post in which he has failed. He has, therefore, no legal right to claim regularization against the regular post.

10. In view of the above facts, we find no merit in both the O.As and the same are dismissed without any order as to costs.”

10. From the perusal of above quoted order, it is evident that both O.As of the petitioner were dismissed and it was observed that there is no bar to remove him if he is replaced by duly selected candidate against a regular post.

11. In view of aforesaid observation of Tribunal, the petitioner was not relieved in 2003 and he continued to work till 2007. Selection process commenced in 2006 and petitioner participated in the said process. He could not achieve benchmark, thus, he was not selected. He preferred CWP No.7558 of 2009-CAT of 2004 before this Court which was dismissed vide order dated 18.02.2009. The operative portion of order dated 18.02.2009 is reproduced as below:



“A perusal of the case file shows that the petitioner was engaged on purely contractual basis as is clear from his appointment letter (Annexure P-2). The appointment was made in order to meet the emergent situation which had arisen because of the threat of strike given by the Drivers and Conductors of Chandigarh Transport Undertaking. The requisition which was sent to the Employment Exchange was also to the effect that names of only those persons be sent who are willing to work on contractual basis. The petitioner had accepted the terms and conditions of his appointment and had agreed to work on contractual basis of 89 days on consolidated salary of Rs. 2462/- per month and hence now he cannot claim that he be appointed on regular basis.

Apart from the above, the petitioner also participated in the selection for regular post twice, but he failed to achieve the requisite merit for regular appointment. As the petitioner was unsuccessful in regular selection, therefore, now he cannot turn around and claim regularization.

In view of the above, we are of the considered opinion that the petitioner is bound by the terms and conditions of his appointment letter according to which he was appointed on purely contractual basis on a consolidated salary. We find infirmity in the order passed by the Tribunal and accordingly, the writ petition is dismissed.”

12. The similarly situated employees preferred joint application before CAT which was allowed vide order dated 24.05.2006. The applicants therein were permitted to continue to work as Driver against available posts till regular candidates join. The operative portion of order dated 24.05.2006 passed in the case of similarly situated employee is



reproduced as below:

“20. The service of a Govt. employee can be terminated after following the due procedure, if his work and conduct is not found satisfactory. Considering the circumstances of this case, parking of bus by the petitioner outside the bus stand or a little away therefrom, cannot be said to be 'unsatisfactory performance' particularly, when the authorities themselves have recognized the authority faced by the Drivers in parking of buses at night at the bus stands, which are smaller in areas, and issued directions vide letter dated June 8, 2005 for parking of vehicles of the roadside. Jawalaji bus stand is mentioned as one such spot, which does not have adequate parking area. Thus, the respondent should not have terminated the services of the petitioner on this ground, which was otherwise not available to him. Otherwise also, since this court had directed the respondents to continue the applicant till regular incumbents are appointed, no such order could be passed, without approaching this court for modification of the above order or getting appropriate directions. In the interest of justice, it is, therefore, directed that while maintaining the status quo ante, the petitioner be reinstated in service with all consequential benefits and be continued, till a regularly selected hand joins on the post held by him.

21. In the given facts and circumstances of this case, we do not find that it was a willful disobedience of the courts orders. No ground is made out for initiating contempt proceedings against the respondent. Hence, the notice issued to him is discharged. Contempt petition stands disposed of accordingly.

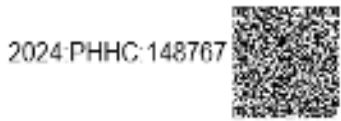
22. For the foregoing reason, applicants pray for regularization is rejected. The applicants in OA No.



1159/CH-04 are allowed to continue to work as Driver against available posts till regular candidates join. OA 455/CH/2005 filed by Kaka Singh stands allowed in terms of the directions given in para 16 above, while quashing the impugned order, dated 13-1-2005.”

13. From the perusal of orders passed by Tribunal in the case of petitioner as well as other employees, it is evident that application of petitioner was dismissed by CAT whereas application of other employees was allowed and they were specifically permitted to continue. The petitioner and other employees after their discharge on 30.05.2007, approached Labour Court despite earlier orders passed by CAT. This Court has reservation about procedure adopted by petitioner and other employees. They had remedy to approach CAT which they availed in the previous round of litigation. They as per doctrine of selection could approach Labour Court, however, in view of previous orders passed by Tribunal and orders passed by this Court should have approached CAT instead of Labour Court. Nevertheless, they approached Labour Court which has passed orders without considering question of alternative remedy. There seems no reason, at this stage, to pass any order *qua* jurisdiction because Labour Court in the instant case has dismissed application of the petitioner.

14. The Labour Court has rejected claim of petitioner because CAT had dismissed his application in 2003. There was specific observation to the effect that there is no bar to relieve him as soon as a regular employee is appointed. Posts were lying vacant, thus, petitioner was permitted to continue till 30.05.2007. The petitioner participated in selection process of 2006, however, he could not achieve benchmark. He



was relieved on 30.05.2007. At that point of time, 12 posts despite regular selection were lying vacant. The respondent has categorically stated that in view of orders passed by Labour Court, all the vacant posts have been filled up from those candidates who were selected as temporary. There was no other vacant post, thus, petitioner could not be permitted to continue after appointment of regular employees.

15. No post on 30.05.2007 was lying vacant and regular appointed candidates joined, thus, petitioner could not be accommodated. He was relieved in 2007 and a period of 17 years has passed away. Any favourable order passed by this Court would amount to continuation of petitioner for an indefinite period who was never selected against a regular post and following regular selection process. Direction of this Court to allow him to continue would amount to regular selection and it would be in the teeth of judgment of Constitution Bench in ‘*Secretary, State of Karnataka Vs. Uma Devi*’, (2006) 4 SCC 1. It is worth mentioning that his claim for regularization has been turned down by CAT as well as this Court.

16. In the wake of above discussion and findings, this Court is of the considered opinion that there is no jurisdictional error or factual infirmity in the impugned order dated 27.02.2013 warranting interference.

17. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

14.11.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No