

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

241

CWP-18360-2020 (O&M)

Date of Decision :10.01.2024

Shyam Singh

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.S. Randhawa, Advocate and  
Mr. Aditya Partap, Advocate for the petitioner.

Mr. Pankaj Middha, Addl. AG, Haryana.

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**Harsimran Singh Sethi, J. (Oral)**

1. In the present petition, grievance of the petitioner is that the claim of the petitioner for the grant of benefit of regularization of his services has been declined by the respondents on the ground that the petitioner was not recruited through Employment Exchange and regularization policy dated 01.10.2003 (Annexure P-13) will not be applicable upon the department of Panchayat Simiti.

2. Certain facts need to be noticed for the correct appreciation of the issue in hand.

3. The petitioner was appointed as Peon with the respondent-department in the year 1995. While working on the said post his services were terminated on 15.04.1997. Said termination of the services of the petitioner was challenged by the petitioner before the Labour Court and vide award dated 04.02.2000 passed by the Labour Court, petitioner was

reinstated in service with continuity along with 20% back wages.

4. Feeling dissatisfied on account of grant of only 20% back wages, the petitioner filed writ petition being CWP-12845-2000 and this Court vide order dated 19.04.2001 modified the grant of 20% back wages to that of 100% back wages. Against the said decision, the respondents filed an appeal before the Hon'ble Supreme Court, which appeal also came to be dismissed on 09.07.2002. Thereafter, petitioner was reinstated in service keeping in view the direction given by this Court with continuity in service and 100% back wages.

5. After reinstatement of the petitioner in service, respondents issued a policy dated 01.10.2003 (P-13) for regularization of services of the employees. Petitioner was working on Class-IV post and as per the said regularization policy, class-IV employee, who had rendered 03 years of service as on 30.09.2003 and had worked for 240 days in each year, the said employee was entitled for regularization of his/her services. The petitioner raised the claim for regularization of his services under the said policy but no such benefit was extended to him and ultimately the claim of the petitioner was rejected.

6. The petitioner then filed CWP-22782-2012, which was decided by this Court on 10.02.2014 wherein, a direction was issued to the respondents to consider the claim of the petitioner as to whether or not, he is entitled for regularization of his service under the policy dated 01.10.2003.

7. In pursuance to the said direction, the respondents have passed impugned order dated 08.07.2015 (Annexure P/8) rejecting the claim of the petitioner for regularization of his services, which order is under challenge

in the present petition.

8. Learned counsel for the petitioner argues that the ground which has been taken by the respondents while rejecting the claim of the petitioner for regularization of his service is that policy dated 01.10.2003 is not applicable upon the Zila Parishad. The second objection taken by the respondents is that petitioner was not appointed after following due procedure as envisaged under the rules governing the service hence, services of the petitioner cannot be regularized.

9. Learned counsel for the petitioner submits that reasons given by the respondents for not granting the benefit in question are incorrect. Learned counsel for the petitioner submits that once the department of Zila Parishad comes under the department of Panchayat and post on which the petitioner was working has been sanctioned by the Government itself, any policy issued by the Government *ipso-facto* will be applicable upon the petitioner. Learned counsel for the petitioner submits that there is no separate policy needed by the Zila Parishad concerned for regularization of the services of the employees.

10. Learned counsel for the petitioner argues that there is no condition in the policy that initial appointment of an employee should be done by following due procedure as envisaged under law before the same could be regularized as condition of only 03 years service upto 30.09.2003 with 240 working days in each year was required to be fulfilled by a Group-D employee for regularization of his/her services. Hence, the objection taken by the respondents while rejecting the claim of the petitioner is arbitrary and illegal to the policy in question.

11. Learned State counsel submits that once the initial appointment

of the petitioner is not in accordance with law, the same cannot be regularized hence, respondent-department was well within its right to reject the claim of the petitioner, who was appointed without advertising the post in question.

12. Learned counsel for the respondents further submits that nothing has come on record as to whether the petitioner has completed 240 days in each year or not and, hence, no benefit of the 2003 policy can be granted to him.

13. Learned counsel for the respondents further submits that impugned order has been passed in the year 2015 and the present writ petition has been filed by the petitioner in the year 2020, hence, present writ petition is liable to be dismissed on the ground of delay and laches.

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

15. The first objection which has been taken by the respondents to deny the claim of the petitioner for regularization of his services is that policy dated 01.10.2003 will not be applicable upon the Zila Parishad, where the petitioner is working.

16. In this regard, it may be noticed that Zila Parishad comes under the department of Rural Development and Gram Panchayat, which is a Government department. It has also come on record that the post on which the petitioner is working, has not been sanctioned by the Zila Parishad but was sanctioned by the Government. As per the Haryana Panchayati Raj Act, Government has supervisory control over the Zila Parishad and Gram Panchayat as a supervisory authority. That being the factual position, it cannot be said that any instructions/policy issued by the Government of

Haryana will not be applicable upon the Zila Parishad concerned so as to contend that claim of the petitioner for regularization of his service under the policy dated 01.10.2003 is not applicable upon the Gram Panchayat.

17. The second objection which has been taken by the learned counsel for the respondents to deny the claim of the petitioner is that appointment of the petitioner was not done by following due process of law as envisaged under the rules governing the service, hence, the services of the petitioner cannot be regularized.

18. It may be noticed that regularization of service is to be done as per the terms and conditions of the policy. On being asked to show the terms and conditions of the policy dated 01.10.2003, where it has been mentioned that only adhoc/temporary employees, who have been appointed through advertisement or through employment exchange are entitled for the benefit of policy dated 01.10.2003, learned counsel for the respondents has not been able to place on record any such term and condition.

19. Further, terms and conditions of the policy of regularization of Group-D employee has been mentioned in the policy dated 01.10.2003.

Relevant para of the policy is as under:-

*“3.Daily Wage employee (Group-D):-*

*Only such daily wage employee who have completed three years service on Group-D post(s) on 30<sup>th</sup> September, 2003 and were in service on 30<sup>th</sup> September, 2003 shall be regularized against the respective Group-D posts provided they fulfill the requisite qualification and were originally appointed against vacant post. Provided further that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee(s) has been caused for no fault attributable to him, such break period should be condoned unless, it is of an extraordinary longer period. However,, if the break in service has been cause due to fault of the employee like abandonment of employment, the Government may condone the same if the period of such break is more than period of*

*30 days.”*

20. A bare perusal of the above would show that only requirement for regularization of service is that Group-D employee, who has completed 03 years of service as on 30.09.2003 and has worked 240 days in each year, is entitled for consideration for regularization of his/her services.

21. In the present case, it is a conceded position that the petitioner was appointed in the year 1995, that being the factual position, it cannot be said that the petitioner does not have 03 years experience as required under the policy dated 01.10.2003.

22. The last objection which has been taken by the learned counsel for the respondents is that nothing has come on record that petitioner has completed 240 days in each year, the said argument cannot be accepted for the reason that in the year 1997 services of the petitioner were terminated and the petitioner was reinstated in service in 2003. The petitioner has been given full back wages for the period he remained out of service, which means that for the period for which petitioner remained out of service, the petitioner is to be treated in service. Once, the petitioner has been paid 100% back wages for the period he remained out of service, it cannot be said that petitioner has not completed 240 days in service in any of the 03 years preceding 01.10.2003. Once the respondents themselves paid the 100% back wages to the petitioner, it will be deemed that petitioner has worked for 240 days in each year, which is a requirement as per the policy dated 01.10.2003.

23. Keeping in view the facts and circumstances recorded hereinbefore, present petition is allowed. Impugned order dated 08.07.2015

(Annexure P-8) being contrary to the factual position cannot sustain in the

eyes of law and is accordingly set aside. Respondents are directed to reconsider the claim of the petitioner and pass an appropriate order qua the regularization of his services under the policy dated 01.10.2003, keeping in view the observations recorded in the order.

24. Let the said order be passed by the respondents within a period of 02 months from the date of receipt of copy of this order.

January 10, 2024

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No