

RSA-2186 of 2024 (O&M)

2024:PHHC:114522



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

RSA-2186 of 2024 (O&M)
Date of decision: 02.09.2024

State of Haryana and others

.....Appellants

Versus

Kamal Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

CM-8915-C of 2024

1. This application has been filed by the applicants-appellants under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 35 days in filing the appeal.

2. In view of the averments made in the application, which is supported by an affidavit, same is allowed. Delay of 35 days in filing the appeal is condoned.

RSA-2186 of 2024

1. This Regular Second Appeal is directed against the judgment and decree dated 30.08.2022, passed by the Court of learned Civil Judge (Junior Division), Rohtak, whereby suit filed by the respondent-plaintiff for declaration and mandatory injunction was decreed as well as against the judgment and decree dated 25.04.2024, passed by the Court of learned District Judge, Rohtak, vide which the



appeal filed by the appellants-defendants against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, plaintiff was appointed as Baildar by the defendants on daily wages in the month of January, 1990. His service was terminated on 01.01.1997 verbally without assigning any reason. The plaintiff approached the Labour Court, Rohtak, and an Award dated 03.11.2003 was passed in his favour and he was reinstated with 50% back wages from the date of demand notice i.e. 16.01.1997 and accordingly, the plaintiff joined his duties, in compliance of the Award. Civil Writ Petition No.10894/2005 against the said Award preferred by the defendants was dismissed on 21.07.2005. Special Leave Petition preferred before the Hon'ble Supreme Court was also dismissed. It has further been stated by the plaintiff that he came to know that the services of the junior employee, namely, Satyawar son of Tek Ram, who was appointed on 23.10.1992, have been regularised w.e.f 01.10.2003 on the same post. However, the service of the plaintiff was regularized w.e.f. 28.05.2014. He requested the defendants to regularize his service w.e.f. the date when the service of the Satyawar was regularised but they did not pay any heed to his request. A legal notice dated 09.10.2017 was also served upon the defendants but to no effect. With these pleadings, the plaintiff filed the present suit for declaration to the effect that his services are liable to be regularised w.e.f. 01.10.2003, when the service of his junior employee was regularised, instead of 28.05.2014. The plaintiff also sought a



decree for mandatory injunction directing the defendants to regularise his services w.e.f 01.10.2003, when the services of his junior employee were regularised and also to pay the consequential benefits. Defendants contested the suit by filing their written statement.

3. The trial Court after hearing learned counsel for the parties and appreciating the evidence on record decreed the suit of the plaintiff vide judgment and decree dated 30.08.2022. Aggrieved against the judgment and decree of the trial Court, defendants preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 25.04.2024. Hence, this Regular Second Appeal.

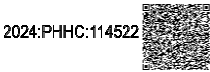
4. Learned counsel for the appellants-State has contended that the judgments and decrees passed by the Courts below are contrary to the evidence on record. Learned counsel further contended that both the Courts below have failed to appreciate that the services of the respondent-plaintiff were regularized on 28.05.2014 and he never raised any objection regarding his regularization. He further submits that regularization policy of 2003 has already been withdrawn by the State Government in terms of judgment rendered by the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka and others V. Umadevi and others, 2006(2) S.C.T. 462*. He further submits that thereafter regularization/revised policy of the year 2014 framed by the State Government has been set aside by the Division Bench of this Court in *Yogesh Tyagi and another v. State of Haryana and others, CWP No.17206 of 2014 decided on 31.05.2018*. SLP (C)-31566 of



2018 has been filed against the abovesaid order wherein *status quo* has been ordered to be maintained qua the services of the employees regularised under the 2014 policy, which is pending before the Hon'ble Supreme Court. He further submitted that no employee can be regularized after setting aside the regularization policy of 2003 and 2014.

5. I have heard learned State counsel and perused the record.

6. Admittedly, respondent-plaintiff was working as Baildar with the appellants-defendants on daily wages since January, 1990. His services were terminated on 01.01.1997. The respondent-plaintiff had challenged the said order before Labour Court and vide Award dated 03.11.2003 (Ex.P7) passed by the Labour Court, he was ordered to be reinstated with continuity of service on his previous post and 50% back wages. Said Award was upheld upto the Hon'ble Supreme Court. Further, it is not in dispute that Satyawar is junior to the respondent-plaintiff and his services were regularised w.e.f. 01.10.2003, whereas services of the respondent-plaintiff were regularised w.e.f. 28.05.2014. The lower appellate court has rightly observed that the only stance taken by the appellants-defendants for not regularizing the services of the respondent-plaintiff w.e.f. 01.10.2003, the date when services of his junior Satyawar were regularized is that the services of Satyawar were regularized in compliance of order dated 13.03.2015 passed by the Hon'ble Supreme Court. However, the appellants-defendants have not produced any such order on the record whereas it was incumbent upon the appellants-defendants to prove that the case of the respondent-



plaintiff is on different footings than his junior Satyawar or how he is not entitled for regularisation. Appellants have failed to produce any cogent evidence in this regard as to what was the reason not to regularize the services of the respondent-plaintiff at least with effect from the date the services of his juniors has been regularized. When the benefit of policy of 2003 has been given to the similarly situated employee, the respondent-plaintiff cannot be discriminated against else it will be a case of invidious discrimination.

7. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellants has failed to show that the same are perverse or based on misreading, non-reading or mis-appreciation of the material evidence on record.

8. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

9. In view of the above, present appeal is dismissed.

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

02.09.2024
R.S.

(NAMIT KUMAR)
JUDGE

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