

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(209)

RSA No. 1539 of 2014 (O&M)

Date of Decision : 05.04.2024

Vinod Kumar

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagjeet Beniwal, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. In the present appeal, the challenge is to the judgment and decree of the lower appellate court dated 12.09.2013 by which the judgment and decree of the trial court dated 30.03.2009 has been set-aside and the suit filed by the appellant-plaintiff claiming regularization under the Policy dated 01.10.2003 has been dismissed.

2. As per the facts, which have come on record, the appellant-plaintiff was appointed as a Helper with the Haryana Roadways on 01.08.1995. His services were terminated on 01.06.1996, which action was challenged by him before the Labour Court-cum-Industrial Tribunal and while deciding the Reference No. 435 of 1997, the order of termination was set-aside and the appellant-plaintiff was directed to be reinstated in service with continuity along with 40% back wages.

3. Thereafter, the Government of Haryana issued a Notification/Policy dated 01.10.2003, according to which, an employee who has rendered 03 years service as on 30.09.2003 and in all the years of service, the employee has rendered 240 days service in three years and was in service, was eligible for regularization of his/her services under the 2003 Policy. The claim of the appellant-plaintiff was considered under the said Policy and his services were regularised w.e.f. 01.05.2005. Feeling dis-satisfied, the appellant-plaintiff claims that his services should be regularized w.e.f. 01.10.2003 keeping in view the 2003 Policy.

4. As the benefit was not being extended, the appellant-plaintiff filed a civil suit, which was decreed by the trial court vide judgment and decree dated 30.03.2009, keeping in view the facts and evidence, which had come on record. Feeling aggrieved against the judgment and decree of the trial court dated 30.03.2009, the respondents-defendants filed an appeal before the lower appellate court, which came to be decided on 12.09.2013. The lower appellate court set-aside the judgment and decree of the trial court dated 30.03.2009 and dismissed the suit filed by the appellant-plaintiff, hence, the present regular second appeal.

5. Learned counsel for the appellant-plaintiff argues that the only reason given by the lower appellate court for setting-aside the judgment and decree of the trial court and to dismissing the suit is that there was no regular post available for regularizing the services of the appellant-plaintiff, whereas once, the appellant-plaintiff was fulfilling all the requisites of the Policy dated 01.10.2003, the respondents-defendants

were under obligation to grant the benefit of regularization from the date due i.e. 01.10.2003.

6. Learned counsel for the respondents-defendants, on the other hand, submits that not only there were no posts, which were available for regularization of the services of the appellant-plaintiff at the relevant time but the appellant-plaintiff's services had already been regularized w.e.f. 01.05.2005 and that too by considering the claim of the appellant-plaintiff under the Policy dated 01.10.2003 as and when the sanctioned post became available, hence, no antedated regularization could have been granted.

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

8. The only question, which arises is whether, once the services of the appellant-plaintiff has been regularized under the Policy dated 01.10.2003, whether the same were to be given effect to from 01.10.2003 or from 01.05.2005. It may be noticed that the appellant-plaintiff was already working as a Helper with the respondents-defendants and had approximately 08 years of service upto the date of the Policy.

9. Once, the appellant-plaintiff was working continuously with the respondents-defendants and had 08 years of service to his credit, it cannot be said that there was no post available for regularization of services of the appellant-plaintiff. Once, it is not denied that work of the post on which the appellant-plaintiff was working, existed and he had 08 years of service upto 30.09.2003, it is deemed that post on which the

appellant-plaintiff was working exist in a regular mode so as to regularize the services of the appellant-plaintiff.

10. Even otherwise, the respondents-defendants had taken a decision on 21.12.2018 at the level of the Chief Secretary of the Government of Haryana that in order to regularize the services of the employee under the Policy dated 01.10.2003 even if there are no posts, the same be created. The relevant portion of the letter is as under :-

“MOST URGENT

Subject Creation of posts for persons regularized under the regularization policies of year 2003-2004.

Will the Additional Chief Secretary to Government, Haryana, Finance Department kindly refer to the subject noted above?

2. It is intimated that vide Government notification No.0.5.R. 13/Const/Art.309/2007, dated 13.4.2007. the regularization policies No G.S.R.41/Const./Art. 309/97, G.S.R 101/Const/Art. 309/99, GSR.24/Const/Art 309/2003 and G.S.R. 5/Const/An 309/2004, dated 17.6.1997, 5.11.1999, 1.10.2003 and 10.2.2004 respectively were rescinded. Thereafter, these policies were revived vide Notification No.6/7/2014-IGSI, dated 18.6.2014 by Government.

3. Further in pursuance of Hon'ble High Court interim order dated 6.4.2018 in CWP No. 15887 of 2018 - Purushotam Das Vs State of Haryana wherein matter of creation of diminishing cadre post for persons regularized under 2003-2004 policies No G.S.R.24/Const/Art. 309/2003 dated 1.10.2003 and 10.2.2004 was under consideration with the State Government.

4. The State Government has considered the matter and decided that wherever the Administrative Department / Boards / Corporations / Autonomous Units are regularizing

persons under the above mentioned regularization policies, the Administrative Department, with approval of Finance Department, may create some posts of diminishing nature to adjust such employees.

5. *The Finance Department is hereby advised to give concurrence for creation of posts of diminishing cadre as and when any Department/Board/Corporation/Autonomous Unit submits a case for creating a post for any employee proposed to be regularized under the regularization policies of 2003 and 2004.*

6. *The same practice would also be applicable in respect of regularization policies dated 17.6.1997 and 5.11.1999. However, payment of the arrears of regular pay scale may be restricted to 38 months prior to the date of actual regularization order and other benefits may be granted to the employees.*

Sdir Superintendent, General Services-I for Chief Secretary to Government Haryana.

The Additional Chief Secretary to Government Haryana, Finance Department.

U.O. No. 6/20/2018-IGSI

Dated, Chandigarh the 21 Dec., 2018

A copy is forwarded to the following for information and necessary action.”

11. It may be noticed that on the basis of the same letter, the benefit has already been extended by this Court to the similarly situated employees while passing order in CWP No. 2158 of 2020 titled as **Ashish Sharma and others Vs. State of Haryana and others** and other connected cases, decided on 13.03.2024.

12. That being so, once the respondents themselves had decided that qua the Policy dated 01.10.2003, the post will be created in case, there is none, the benefit of the same has to be extended to the appellant-plaintiff also, hence, the present regular second appeal is allowed and the suit filed by the appellant-plaintiff is disposed of in terms of the order passed by this Court in CWP No. 2158 of 2020 titled as ***Ashish Sharma and others Vs. State of Haryana and others*** and other connected cases, decided on 13.03.2024, so as to examine the case of the appellant-plaintiff whether, he fulfills all the conditions mentioned in the Policy dated 01.10.2003 and qua the availability of post, the respondents-defendants will be bound by the decision dated 21.12.2018, which has been reproduced here-in-before.

13. Let appropriate order be passed within a period of eight weeks from the date of receipt of copy of this order.

Any miscellaneous application, if pending, stands disposed of.

April 5th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No