IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 16425 of 2018 (O&M)
Reserved on : 17.12.2021
Date of decision: 31.01.2022

Jagdish …Petitioner

Versus

State of Haryana and others …Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Jagdish Manchanda, Advocate, for the petitioner.
Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

ARUN MONGA, J.

Petitioner is before this Court yet again in what is his third foray, having been compelled to repeatedly litigate with the unrelenting respondents. It seems that at every step the petitioner was to seek benefits despite the same having been found admissible by the Court below as upheld by this Court, his requests were met with resistance by the respondents and their adamant attitude continues to be so as the facts of the case would reveal the same.

2. Succinctly put the facts narrative first. Services of the petitioner were first hired on or around 01.01.1988 as Watchman though he claims that having got a driving license, his services are also used as a driver as and when required. Petitioner states that his services have throughout been appreciated by his superiors and there is no complaint against him, atleast none conveyed to him. Notwithstanding, his services were summarily terminated on 30.03.2003. To be noted that he had put in 15 years unblemished service with

work experience until then. Petitioner raised industrial dispute under Section 10 of the Industrial Disputes Act leading to the reference before the Labour Court and eventually the Labour Court's award was pronounced in favour of the workman/ petitioner herein. The Labour Court vide award dated 12.01.2015 (Annexure P-1) held that services of the petitioner were indeed terminated illegally and resultantly he was held entitled to reinstatement with continuity of service and 50% back wages with effect from the date when the demand notice was first raised by the workman i.e. 31.01.2006.

3. Not to be out done, the management/ respondents assailed the Labour Court award vide CWP No. 12781 of 2015 *inter alia* taking the same defence which was taken before the Labour Court that the petitioner had not completed 240 days and had worked only upto October, 1992 and thereafter left the job on his own volition, and therefore award was passed erroneously without appreciation of the facts of the case. It is pertinent to note here that in support of the facts pleaded by the management/ respondents, neither any record was produced before the Labour Court nor appended in this Court along with the writ petition. To be fair to the management/ respondents, this Court in course of the proceedings in CWP No. 12781 of 2015 assailing the Labour Court award yet again deemed it appropriate to afford them one more opportunity to do the needful as is borne out from the order dated 29.08.2017 passed therein.

4. In terms of the aforesaid order, on the resumed hearing before this Court, no record was produced on 06.10.2017. Matter was then adjourned to 31.10.2017 and the management/ respondents naturally had one more opportunity thereafter to do the needful on 31.10.2017. Needful was not done, compelling this court to observe that since the petitioner had not complied the order dated 29.08.2017, therefore, no inference was called for. Accordingly,

award passed by the Labour Court dated 12.01.2015 was upheld and CWP stood dismissed by my learned brother P.B. Bajanthri, J. (as he then was in this Court). For ready reference, said final order dated 31.10.2017 is reproduced below:-

> *"In the instant writ petition, petitioner has challenged the award passed by the Labour Court dated 12.01.2015 (Annexure P-1). The respondent No.1 is stated to have been appointed as Chowkidar on 01.12.1988. His services were terminated on 30.03.2003. The respondent raised demand notice on 31.01.2006. The labor court proceeded to pass award in favour of the respondent on the score that the petitioner failed to produce any material to show that there is compliance to Section 25F of the Industrial Disputes Act. Thus, Labour Court has drawn inference to the extent that there is violation of Section 25F of the Industrial Disputes Act. Petitioner aggrieved by the award passed by the Labour Court, presented this petition.*
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> *Learned counsel for the petitioner submitted that Labour Court has proceeded to draw inference that there is violation of Section 25F of the Industrial Disputes Act. Except muster roll other records are available to show that respondent has not discharged the duties of the post. On 29.08.2017 following order was passed:*
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> > *"Learned counsel for the petitioner disputed the service of the respondent-workman from October 1992 to 30.03.2003 stating that he has not worked in the office of the Provincial Division, PWD B&R Branch, Jhajjar. The Executive Engineer of the Provincial Division, Jhajjar is hereby directed to produce the complete records relating to attendance register maintained by the office so also payments made to the respondent-workman, if any, between November 1992 to March 2003. He is also directed to furnish the details of the other co-workers, if any, who are working with the respondent-workman.*
> >
> > *List this matter on 6.10.2017."*
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> *Since the petitioner has not complied the order dated 29.08.2017 therefore, no inference is called for.*
>
> *Accordingly, award passed by the Labour Court dated 12.01.2015 (Annexure P-1) is upheld. CWP stands dismissed."*

5. The above said final order/ judgment dated 31.10.2017 has since attained finality as neither any intra Court Appeal was filed before this Court nor the same was otherwise challenged before the Apex Court. Petitioner was thus reinstated on 03.03.2015 in compliance of the Labour Court award

and has been working uninterruptedly since then. He was though reinstated but was not given full benefits as per the award which needless to say had attained finality. Resultantly the petitioner was again compelled to serve a legal notice dated 22.01.2018 through his counsel seeking all the consequential benefits arising out of his reinstatement pursuant to the award dated 12.01.2015 the petitioner specifically put the respondent to notice as to why he has not been accorded the benefit of regularization as well as regular pay scale and 50% backwages despite the award having been passed more than 3 years ago i.e. 12.01.2015. As before, the respondents remained unmoved and yet again petitioner approached this Court vide second round of writ petition i.e. CWP No. 6942 of 2018, which was disposed of vide order dated 20.03.2018 directing the respondents to decide the legal notice by passing the speaking order within three months. Much to the chagrin of the petitioner vide impugned speaking order dated 04.06.2018 (Annexure P-5) which was eventually passed he was merely given part benefit to the extent of payment of 50% of back wages. As regards the consequential benefits, continuity of service i.e. regularization, the same were denied to him ostensibly for not being entitled as per the regularization policy. It was stated that the petitioner is not fulfilling the requisite conditions enumerated at serial No. 7 & 8 of the policy. The relevant part of the speaking order is reproduced hereunder:

> *"On perusal of the aforesaid policy, issued by Govt. of Haryana we redress to inform you that your services cannot be regularized as you does not complied the conditions enumerated at serial No. 7 & 8 of the said policy as your services were engaged as Chowkidar in temporary store, which was constructed at the site/ field of construction as well as your name was neither sponsored by the Employment Exchange nor your services has been engaged on the basis of recommendation made by the departmental selection committee by inviting applications through advertisement against duly sanctioned vacant post. Moreover, your services also cannot be regularized in view of the mandate of the constitutional*

judgment passed in the matter of "Secretary, State of Karnataka and others Vs. Umadevi & Ors," (2006) 4 SCC 1.

It is further stated that you cannot claim any right to regularize your services as the services rendered by you were totally temporarily/ daily wages/ on muster roll. More so, in view of the judgment of the Division Bench of the Hon'ble Punjab & Haryana High Court at Chandigarh in CWP No. 17206 of 2014 in which all the policies of regularization have been scrapped with immediate effect.

In view of above facts, your case is not covered under any of the regularization policy mentioned above. Hence your services as Chowkidar cannot be regularized. There for the legal notice dated 22.01.2018 is without any merits, hence the same is rejected."

6. In view of the aforesaid rejection vide impugned order dated 04.06.2018 as per the reasons contained therein, the petitioner is yet again before this Court assailing the same.

7. I have heard the rival contentions of learned counsel for the parties, perused the record appended with the writ petition and the return filed thereto and shall proceed to render my judgment and the reasons thereof.

8. First and foremost, intriguingly neither the petitioner has appended the regularization policy dated 18.06.2014, which seems to be the ground of rejection of his claim of regularization as per the impugned speaking order nor even the respondents have appended the same with their return or produced the same with the pleadings, though they have given a bold recital thereof in the speaking order as well as in the reply filed to the writ petition. Be that as it may, knowing fully well the petitioner has been reinstated with continuity of service, the onus was on the respondents to show why he was not entitled to get the benefit of continuity of service and as a natural consequence thereof he would also be entitled to the benefit of regularization. Yet, the respondents have failed to discharge the same and acted in a most lackadaisical manner. Ordinarily, such conduct itself should suffice for this Court to draw an

adverse inference and allow the claim of the petitioner for regularization without any further adumbration.

9. Nevertheless, let us test the reasons contained in the speaking order. It is stated in the impugned order dated 04.06.2018 that the services of the petitioner were engaged on temporary basis for a store to be constructed and neither his name was sponsored by Employment Exchange nor he was engaged on the recommendations made by the Departmental Selection Committee pursuant to any advertisement issued against sanctioned post. He is therefore not entitled to regularization. To say the least, it does not lie in the mouth of the respondent to take the stand that the services of the petitioner were temporary after he had rendered more than 30 years, particularly when the same defence of the respondents was rejected by the Labour Court in an earlier round of litigation and upheld by this Court leading to reinstatement of the petitioner. As regards, not hiring the services of the petitioner without involvement of the Employment Exchange and/ or his name not being recommended by the Departmental Selection Committee to be engaged on the post, the same also flies on the face of sheer length of service of the petitioner given that he was reinstated with continuity of his service and, therefore, his entire service is deemed to be without any break. The department cannot be allowed to take advantage of its own wrong folly for not hiring the services, if at all it is so, on hiring the services without involvement of Employment Exchange and/ or recommendations of the selection committee. In any case, the said defence is liable to be rejected for non production of any records despite ample opportunities having been given. However, it is not to be misunderstood that if the record had been produced the same would have been a sustainable defence. As already observed it is too belated to take a stand that petitioner's name was not sponsored by the Employment Exchange or that was

not engaged on the recommendation of the Selection Committee. As regards, defence taken in the speaking order relying on judgment of Apex Court in ***Secretary, State of Karnataka and others Vs. Umadevi and others*** **–** **(**2006) 4 SCC 1, the same also flies on the face of the fact that the petitioner has rendered 30 years service and the Apex Court in the aforesaid judgment itself held that the State would do well in according the benefit of regularization to frame appropriate policy for regularization of service of those daily wagers, who had completed 10 years in service. In the case of the petitioner, as on today, he has completed around 33 years of service since he was first engaged in 1988 and yet he has not been accorded the benefits of regularization.

10. In certain cases, the arrears is restricted to 38 months from the date of filing of writ petition seeking regularization. However, in the instant case the petitioner has been running from pillar to post from the date his services were terminated, though later he was reinstated but yet not accorded consequential benefits and compelling him to multiple rounds of litigation, I am, therefore, of the opinion that it is a fit case where the petitioner should get benefit of interest for the relevant period all throughout.

11. In the aforesaid premise, seen from any angle, none of the defences put forth by the respondents is legally sustainable. The writ petition is allowed with all consequential benefits. The petitioner shall be accorded benefit of regularization with effect from the date his juniors were given and consequential monetary benefits along with interest @ 7% per annum from the due date till payment.

31.01.2022 **(Arun Monga)**
vs Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No