

Before Rajesh Bindal, J.

SHIV RAJ AND OTHERS—Petitioners

versus

KURUKSHETRA UNIVERSITY—Respondent

CWP No. 7363 of 2012

April 3, 2013

Constitution of India, 1950 - Art. 226 - Regularization - Services of petitioners were terminated - Labour Court ordered reinstatement - Writ of university dismissed - Persons appointed after petitioners were regularized as per policy dated 1.10.2003 - Policy withdrawn later on - Claim of petitioners not considered - Civil Writ Petition filed by petitioners seeking regularization - University contended in reply that policy was withdrawn and was not in existence - CWP allowed - Held, as petitioners were reinstated with continuity of service they shall be deemed to be in service on cut-off date - Withdrawal of policy subsequently will be of no consequence.

Held, that in terms of the notification dated 1.10.2003 issued by the Government of Haryana, which was adopted by the University, daily wage employees, who had completed three years of service on 30.9.2003

and were in service on that date, were to be regularised in case they fulfilled the qualifications and were appointed against vacant posts. The petitioners herein were appointed on 7.4.2000, 7.4.2000 and 9.7.1997, respectively. On the cut-off date fixed in the aforesaid policy, the petitioners had completed three years of service. It is not disputed that the petitioners are otherwise qualified. Their cases for regularization were not considered in terms of that policy as on that date, they were not in service having been retrenched. Ultimately their retrenchment was held to be bad and they were directed to be reinstated back in service with continuity. As a consequence, the petitioners shall be deemed to be in service on the cut-off date fixed in the policy.

(Para 9)

Further held, that in view of my aforesaid discussion, the rejection of the cases of the petitioners for regularization on the ground that they were not in service on the cut-off date, is erroneous. The same deserves to be set aside. Ordered accordingly. The cases of the petitioners deserve to be considered treating them to be in service on the cut-off date fixed in the policy dated 1.10.2003. Even withdrawal of the policy subsequently will be of no consequence as far as cases of the petitioners are concerned, as their cases could not be considered at the relevant time for no fault of their. The termination of the petitioners from service was held to be bad.

(Para 10)

R. K. Malik, Senior Advocate with Kiran Rathee, Advocate, *for the petitioners.*

Kshitij Sharma, Assistant Advocate General, Haryana.

S. C. Sibal, Senior Advocate with V. S. Rana, Advocate for the University.

RAJESH BINDAL J.

(1) This order will dispose of CWP Nos. 2169 and 9667 of 2010, and 7363 of 2012, as common questions of law and facts are involved.

(2) Prayer in the petitions is for a direction to the respondents to consider the claim of the petitioners for regularisation in the light of the policy decision dated 1.10.2003.

(3) Learned counsel for the petitioners, while referring to the facts of CWP No. 7363 of 2012, submitted that the petitioners herein were appointed on 7.4.2000 (petitioner No. 1), 7.4.2000 (petitioner No. 2) and 9.7.1997 (petitioner No. 3), respectively. Their services were terminated on 15.7.2001, 1.2.2003 and 9.10.2002, respectively. They raised industrial dispute. The matters were referred to the Labour Court, whereby they were directed to be reinstated back in service vide awards dated 21.12.2005, 6.12.2006 and 1.2.2006, respectively. CWP Nos. 3858 of 2006, 5377 of 2007 and 8562 of 2007 filed by Kurukshetra University (for short, 'the University') challenging the aforesaid awards of the Labour Court were dismissed with slight modification that the petitioners had foregone their back wages after they were taken back in service. The prayer of the petitioners is that in view of the policy dated 1.10.2003, their services deserved to be regularised. Though the persons, who were appointed after the petitioners, were regularised in terms of the aforesaid policy, but the cases of the petitioners were not considered at that time as they were out of service. With the setting aside of the termination of the petitioners and their reinstatement with continuity of service, the petitioners shall be deemed to be in service and would satisfy the condition of three years' service, as envisaged in the policy dated 1.10.2003, hence, the stand of the University in not regularising the services of the petitioners is totally illegal. Even if the policy had been withdrawn later on, the cases of the petitioners are required to be considered in terms of the policy applicable at that time when other similarly situated persons were considered in terms thereof and were regularised. In support of the arguments, reliance was placed upon *Dalip Singh and others versus State of Haryana and others (1)*, *Karamvir Singh v. State of Haryana and others*, decided on 11.1.2012 and LPA No. 1236 of 2012—*State of Haryana and others v. Krishan Singh*, decided on 28.8.2012.

(4) On the other hand, learned counsel for the University submitted that regularisation of services of the petitioners can be considered only against some vacant posts. The petitioners were appointed as daily wage labourers. There is no post of labourer in the University. They were not appointed against a vacant post. They never worked as Peon. The writ petition is belated as they have filed the same almost six years after the

decision of the writ petition, where the award of the Labour Court was under challenge. The judgments sought to be relied upon by learned counsel for the petitioners are not applicable in the facts of the case. The persons, who were regularised in terms of the policy dated 1.10.2003 were working against some vacant posts, hence, the petitioners are not entitled to be regularised.

(5) In response to the contentions raised by learned counsel for the University, learned counsel for the petitioners submitted that the argument now being raised by learned counsel for the University runs contrary to its pleaded case as the stand in the reply is that there being no policy now and the policy dated 1.10.2003 having been withdrawn, the petitioners cannot be regularised.

(6) Heard learned counsel for the parties and perused the paper book.

(7) The undisputed facts on record are that the petitioners were appointed on 7.4.2000 (petitioner No. 1), 7.4.2000 (petitioner No. 2) and 9.7.1997 (petitioner No. 3), respectively. Their services were terminated on 15.7.2001, 1.2.2003 and 9.10.2002, respectively. They raised industrial dispute. The matters were referred to the Labour Court, whereby they were directed to be reinstated back in service vide awards dated 21.12.2005, 6.12.2006 and 1.2.2006, respectively. CWP Nos. 3858 of 2006, 5377 of 2007 and 8562 of 2007 filed by the University challenging the aforesaid awards of the Labour Court were dismissed with slight modification that the petitioners had foregone their back wages after they were taken back in service.

(8) As is evident from the order passed by this court, the awards of the Labour Court directing reinstatement of the petitioners back in service with continuity were upheld. As the petitioners consented to forego the back wages, only that part of awards of the Labour Court was modified. Ever since then the petitioners are working.

(9) In terms of the notification dated 1.10.2003 issued by the Government of Haryana, which was adopted by the University, daily wage

employees, who had completed three years of service on 30.9.2003 and were in service on that date, were to be regularised in case they fulfilled the qualifications and were appointed against vacant posts. The petitioners herein were appointed on 7.4.2000, 7.4.2000 and 9.7.1997, respectively. On the cut-off date fixed in the aforesaid policy, the petitioners had completed three years of service. It is not disputed that the petitioners are otherwise qualified. Their cases for regularisation were not considered in terms of that policy as on that date, they were not in service having been retrenched. Ultimately their retrenchment was held to be bad and they were directed to be reinstated back in service with continuity. As a consequence, the petitioners shall be deemed to be in service on the cut-off date fixed in the policy. It was so held by this court in Dalip Singh's and Krishan Singh's cases (supra). It is also not in dispute that certain person, who were appointed after the appointment of the petitioners on daily wages, were regularised as they had completed three years of service on the cut-off date and were in service on that date. The petitioners certainly have a right to be treated equally as they shall be deemed to be in service on that date in terms of the awards of the Labour Court passed in their favour, which were upheld by this Court.

(10) In view of my aforesaid discussion, the rejection of the cases of the petitioners for regularisation on the ground that they were not in service on the cut-off date, is erroneous. The same deserves to be set aside. Ordered accordingly. The cases of the petitioners deserve to be considered treating them to be in service on the cut-off date fixed in the policy dated 1.10.2003. Even withdrawal of the policy subsequently will be of no consequence as far as cases of the petitioners are concerned, as their cases could not be considered at the relevant time for no fault of their. The termination of the petitioners from service was held to be bad.

(11) This court is not going into the issue sought to be raised by learned counsel for the University that the petitioners are not working as Peon, rather, only as daily wage labourers. As the stand of the petitioners is that they had been working as such in different branches, the fact remains

that the petitioners are working ever since they were employed and for the period they remained out of service in terms of the awards of the Labour Court they have been granted continuity of service even for that period. Accordingly, the University is directed to consider the cases of the petitioners against any available group 'D' post for which they are eligible and regularise their services from the date the services of any person junior to the petitioners were regularised. It is made clear that payment of any monetary benefit accruing to the petitioners as a consequence of the aforesaid order shall be restricted to 38 months only from the date of filing of the writ petitions.

(12) The writ petitions stand disposed of.

J.S. Mehndiratta