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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 24th December, 2014*

+ **W.P.(C) No.6154/2012**

RAMESHWAR SINGH & ANR. Petitioners

Represented by: Mr. Rajiv Agarwal and
Mr. Sachin Kumar, Advocates.

Versus

DELHI JAL BOARD

..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, the petitioners seek setting aside the award and order dated 31.01.2009, whereby the claims for regularization of the petitioners have been rejected.

2. The service particulars of the petitioners are as under:-

Sl. No.	Name & Father's Name	Date of Apptt.	Designation	Place of posting
1.	Shri Rameshwar Singh S/o Shri Jhari Lal Singh	01.04.1982	Chlorinator Operator	Booster Pumping Station, Mayapuri

2.	Shri Gopaljee S/o Shri Jhari Lal Singh	01.12.1981	Chlorinator Operator	Pumping Station, Mayapuri
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3. Case of the petitioners before the learned Tribunal was that the petitioners were being treated as monthly paid/muster roll workers and paid their wages as fixed and revised from time to time under the Minimum Wages Act, 1948, by the Appropriate Government for skilled workers. However, their counter-parts doing the identical work and the work of same value were being treated as regular employees and were being paid their salary in the pay scale of Rs.260-400, revised to the pay scale of Rs.950-1500, w.e.f. 01.01.1986 and re-revised to the pay scale of Rs.3050-4590 w.e.f. 01.01.1996 respectively with usual allowance as admissible under the Rules.

4. Mr. Rajiv Agarwal, learned counsel appearing for the petitioners submitted that the services of the petitioners were terminated with effect from March, 1985, without assigning any valid reason thereof. The impugned termination of services was challenged by the petitioners by raising an industrial dispute, which was decided in favour of the petitioners vide award dated 16.11.2000, whereby the termination of the services of the petitioners were held illegal and unjustified. Accordingly, they were reinstated in service with continuity of service with 40% back wages. Pursuant to award dated 16.11.2000, the petitioners were reinstated in service vide office order dated 07.04.2004.

5. Mr.Agarwal further submitted that the petitioners are entitled to be treated as regular and permanent employees from the initial dates of their joining, however, the respondent/Management has not taken any steps to regularize the services of the petitioners in proper pay scale and allowances. Being aggrieved, the petitioners sent a legal notice dated 08.09.2004 for their demands. Since there was no response from the respondent/Management, the petitioners formally raised an industrial dispute by filing a Statement of Claims before the Conciliation Officer, which was failed. Thereafter, the Appropriate Government vide order dated 10.08.2005 referred the dispute regarding regularization of services of the petitioners for adjudication with the following terms of reference:-

- “1. Whether the demand of workmen shown in Annexure ‘A’ for regularization on the post of chlorinator operator is justified from the respective dates of their initial appointment is legal and justified and if not, to what relief are they entitled and what directions are necessary in this respect?”*
- 2. Whether the non-payment of difference of salary on the principle of equal pay for equal work to the workmen shown in Annexure ‘A’ by the Management from respective dates of their initial appointment is legal and justified and if not to what relief are they entitled and what directions are necessary in this respect?”*

6. The learned Tribunal while relying upon the case of *The Secretary State of Karnataka Vs. Uma Devi & Ors., AIR 2006 SC 1800*, held that since the petitioners do not fulfill the basic and minimum qualifications prescribed under the Rules for the post of Chlorinator Operator, therefore, they cannot claim regularization. Further opined that they were appointed purely on daily wages as stop gap arrangements and even though they had put in considerable period of service, however, they cannot claim regularization on the post for which they are not eligible.

7. Mr. Agarwal submitted that the qualification has to be seen on the date of the appointments of the petitioners. They worked around 29 years and still they have not been made regularized. During this period, the Management had no complaint. The petitioners were appointed as Beldars but they continued to work as Chlorinator Operators.

8. The stand of the respondent/Management before the learned Tribunal was that the Management has framed a policy for regularization of daily wages/muster roll employees working as technical workers and as per the said regularization policy, all the daily wages/muster roll employees will be considered for regularization against the lowest rung of the Cadre, where direct recruitment is provided in the Recruitment Rules. Regularization is made subject to the fulfillment of the eligibility criteria and other guidelines as provided in the policy of regularization of daily wages/muster roll employees.

On the basis of the said policy, some of the workmen had been regularized with effect from 01.04.1989 and the workmen in the present case are concerned, they will be considered for regularization as per the policy.

9. Further stand of the Management was that for appointment of Chlorinator Operator, Recruitment Rules Ex. MW1/1 provides certain qualifications and experiences as mentioned therein. The petitioners were not engaged against regular sanctioned post of Chlorinator Operators; therefore, they cannot equate themselves with the regularly appointed Chlorinator Operators, who are having the requisite qualifications.

10. Similar issue came up before this Court in the case bearing W.P.(C) No. 8200/2011, titled as '**Rajender Singh Vs. UOI**', decided on 11.12.2014, wherein the petitioner joined the services of the respondent/Management with effect from 03.04.1984 as daily wager, however, his services were not regularized on the post of Beldar from his initial date of joining and vide award dated 07.07.2000, his services were continued with all attendant benefits.

11. In the case in hand, the petitioner No.1 joined on 01.04.1982 and the petitioner No.2 joined on 01.12.1981. Their services were terminated in the month of March, 1985, which was held illegal and unjustified vide award dated 16.11.2000, accordingly, the petitioners

were reinstated in service with continuity of service and 40% back wages.

12. Admittedly, the petitioners joined as Beldars, however, both are working as Chlorinator Operators at Booster Pumping Station, Mayapuri, Delhi. Both of them have completed more than 30 years in service. However, both the petitioners do not have the requisite qualification as per the Recruitment Rules for the said post. Despite, the respondent/Management has been taking work from them as Chlorinator Operators. Thus, for whole life they cannot be kept as Muster Roll workers, however, required to be regularized in service.

13. The learned Tribunal has wrongly relied upon the case of *Uma Devi (supra)*, wherein held that the employees will not lose their rights to be considered for regularization merely because one-time exercise was completed without considering their cases or because six months period mentioned thereof has been expired. One-time exercise should consider all daily wages/ad-hoc/those employees who had put 10 years of continuous service as on 10.04.2006 without availing the protection of any interim orders of courts or tribunals. The object behind the said direction was to ensure that those who have put more than 10 years of continuous service without protection of any interim orders of courts or tribunal were rendered/are considered for regularization in view of their long service. Accordingly, the right to be considered for regularization

in terms of directions in *Uma Devi's* case (*supra*) was one-time measure.

14. In the case of *Chief Conservator of Forest and Anr, etc. etc. v. Jagannath Maruti Kondhare an Anr. etc. etc.* (1996) 2 SCC 93, the Full Bench of the Supreme Court held as under:

“18. This takes us to the second main question as to whether on the facts of the present case could it be held that the appellants were guilty of adopting unfair labour practice. As already pointed out, the respondents alleged the aforesaid art by relying on what has been stated under item 6 of Schedule IV of the State Act which reads as below:

To employ employee as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

19. The Industrial Court has found the appellants as having taken recourse to unfair labour practice in the present cases because the respondents-workmen who had approached the Court had admittedly been in the employment of the State for 5 to 6 years and in each year had worked for period ranging from 100 to 330 days. Ms. Jaising draws our attention in this context to the statement filed by the appellants themselves before the Industrial Court, a copy of which is at pages 75 to 76 or C.A. No. 4375/90. A perusal of the same shows that some of the respondents had worked for a few days only in 1977 and 1978, though subsequently they themselves had worked for longer period, which in case of Gitaji Baban Kadam, whose name is at serial No. 4 went upto 322 in

1982, though in 1978 he had worked for 4-1/2 days. (Similar is the position qua some other respondents).

21. Shri Dholakia would not agree to this submission as, according to him, the item in question having not stopped merely by stating about the employment of persons as casuals for years being sufficient to describe the same as unfair labour practice, which is apparent from what has been in the second part of the item, it was the burden of the workmen to establish that the object of continuing them for years was to deprive them of the status and privileges of permanent employees. Ms. Jaising answers this by contending that it would be difficult for any workmen to establish what object an employer in such a matter has, as that would be in the realm of his subjective satisfaction known only to him. She submits that we may not fasten a workman with such a burden which he cannot discharge.

22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of

no other possible object as, it may be remembered that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants.”

15. The fact remains that vide first award dated 16.11.2000, petitioners were reinstated in service with continuity of service and 40% back wages, however, they have not been made regularized. The petitioners have been continuously working with respondent for the last more than 30 years, thus the claim of the respondent that the petitioners do not fulfil the requisite qualification has no bearing.

16. Moreover, the present case is not for the promotion of the petitioners, however, is a case for regularization. An employee cannot be kept temporary throughout his life if the nature of work is perennial. Therefore, keeping in mind the fact that the petitioners are working since long in the same post, they deserve to be regularized in the said post.

17. In view of the discussion above, the impugned award and order dated 31.01.2009 is hereby set aside. The respondent/Management is directed to regularize the petitioners in service from the date when their

juniors were regularized with back wages.

18. Accordingly, the present petition is allowed with above observations.

**SURESH KAIT
(JUDGE)**

DECEMBER 24, 2014

sb/RS