



CWP-11416-2019

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

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CWP-11416-2019(O&M)
Date of decision: 13.11.2024

Joginder Singh and another

...Petitioners

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Jai Shree Kaushik, Advocate, for the petitioner

Mr. Dushyant Saharan, AAG Haryana

AMAN CHAUDHARY, J. (ORAL)

1. Prayer in the present petition is for directing the respondents to consider the claim of the petitioners for regularization in the light of policy decision dated 29.07.2011.
2. The services of petitioner No.1, appointed as a Water Carrier on a part time basis on 30.10.1986, were not regularised on the ground that his name for appointment was not recommended by the Employment Exchange, rather his registration therewith was on the basis of his matriculation certificate, which had lapsed in March, 1987 and was not got renewed.
3. Learned counsel states that case of petitioner No.1 is covered by the decision rendered in **Haryana Vidyut Parsaran Nigam Ltd. and others vs. Darshan Singh and others**¹, wherein the Division Bench while considering a similar plea, observed and held thus:

¹ LPA-837-2018, decided on 19.07.2022



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“Keeping in view the directions and the view laid down in Satyadev (supra), the writ petitions were eventually allowed by noticing that the writ petitioners were working since 1995-1997 and though they had not been employed through Employment Exchange. Resultantly, directions were issued to consider their case for regularization within a period of 3 months. As noticed, the judgment has been upheld till the Apex Court. We have also referred to the table reproduced above to show the discrimination as the writ petitioners were appointed between 1993-1995 and juniors have been granted the benefit of regularization vide communication dated 05.03.2015 (Annexure P-16).

It is also a matter of record that in CWP-17998-1999, Prem Singh & others Vs. Haryana Vidyut Prasaran Nigam Ltd. & others, decided on 22.08.2002, the judgment in Satyadev (supra) was also considered and it was held that the Nigam was under an obligation to frame a policy on regularization which in essence should provide for the object to be achieved. Directions were accordingly issued to formulate and frame policy and also to consider the case for regularization of services of the writ petitioners who had been appointed as part-time Sweepers and Malis since 1987-1997 and had been working without any break.

In such circumstances, we are of the considered opinion that despite the fact that there were sanctioned posts available in both the categories of Malis and Sweepers, as noticed by the learned Single Judge in Gian Chand's case (supra) the denial on this technical issues that they were not employed against an advertisement or through an Employment Exchange, is unwarranted for. It is not disputed that all the writ petitioners continue to be in service even at this point of time and thus have almost spent 3 decades with the appellant-Nigam who still wishes to discriminate against them and not grant the benefit of regularization. It is to be noticed that in LPA-1570-2017 titled H.V.P.N.L. and others Vs. Surinder Pal, decided on 25.08.2017, costs of Rs.50,000/- were imposed. We do not feel why we should not take the same view regarding imposition of costs while dismissing the present appeal.”

4. In **Raj Pal Singh vs. State of Haryana and others**², the services of an employee, who had rendered long years of service, while working as a Water Carrier on part time basis, in the same Department as the petitioners herein, though, in a different District, were directed to be regularised and to which no challenge was made. The relevant paras of the same read thus:

² CWP-5617-2021, decided on 15.05.2024



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“8. It is conceded fact that the petitioner is working as a water Carrier with the respondents from the last 29 years on part time basis. If a person is working in a particular department for a period of 29 years, it cannot be said that he/she is working on part time basis. Once, there is a requirement of the work being done by the petitioner and the need of work is continued from the last 29 years, it cannot be said that there does not exist any post to regularize the services of the petitioner. There has to be a deemed creation of the post in question keeping in view the nature of the duties to be performed and the duration of the employment.

9. As per the judgment of the Hon'ble Supreme Court of India titled as 'Prem Singh Vs. Uttar Pradesh passed in Civil Appeal No.6798 of 2019 (@Special Leave Peititon (c) No.4371 of 2011), decided on 02.09.2019' wherein it has been held that some of the employees, who had worked for 30 to 40 years with a particular institution, their services have not been regularized though they had crossed the age of superannuation, hence, once the employee had rendered 10 years service, the same should have been regularized keeping in view the judgment in Secretary, State of Karnataka and others versus Uma Devi and others, AIR 2006 SC 1806 as a one time measure. In the case before the Hon'ble Supreme Court of India, the Hon'ble Court directed regularization of the services of employees who had rendered more than three decades of service but with the condition that no difference of salary will be paid to them. Relevant paragraph 35 of the judgment in Prem Singh's case (supra) is as under:-

“35. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the



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pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.”

10. Keeping in view the above judgment, there has to be a presumption that the work of the post on which the petitioner is discharging the duties exists and the same has to be treated as a regular post.

11. Even otherwise, the instructions regarding regularizing the services of the petitioner were issued by the respondents in the year 2011 (Annexure P-2) so as to regularize the service of the part-time employees who had completed the minimum required service.

12. With regard to the argument of the learned counsel for the respondent that at the relevant time there was no post available on which the petitioner was working, it cannot be said that in the next 13 years, no post on which the petitioner is discharging the duties from the last 29 years, came into being for regularizing the service of the petitioner, hence, any post which is vacant or by treating the post on which the petitioner is working from the last 29 years as a deemed regular post created, the respondents should have considered the claim of the petitioner for regularization of his services.

13. It may be noticed that the argument of the learned counsel for the respondents that the name of the petitioner has not been recommended by the Employment Exchange stands clarified keeping in view the appointment letter issued to the petitioner for the post in question (Annexure P-1) that his name was duly sponsored by the Employment Exchange.

14. Keeping in view the facts and circumstances of this case, the present petition is allowed and the respondents are directed to pass an appropriate order for regularizing the services of the petitioner under the instructions dated 29.07.2011 (Annexure P-2) within the period of eight weeks from the receipt of certified copy of this order.”

5. The aforesaid judgment even stands implemented vide letter dated 28.10.2024 issued by the Director General, AYUSH, Haryana, the relevant extract whereof reads thus:

“In compliance of order dated 15.05.2024 of Hon’ble Punjab and Haryana High Court in CWP No. 5617 of 2021 and the decision taken by the Haryana Government vide Notification No.GSR.9/ Const/Art.309/ 2011 dated 29.07.2011 regarding regularization of employees/workers appointed/engaged/ adhoc/ contract/ work-charged/daily-wages and part-time basis



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of Group-C & D, you are hereby regularized w.e.f. 29.07.2011 in the pay scale of Rs. 4440-7440+1300 Grade Pay plus usual allowances as sanctioned by the Haryana Government from time to time and posted at Directorate of AYUSH Haryana, Panchkula on the following terms and conditions as a one time settlement, therefore, not conferring the entitlement on others to claim it as a matter of right.”

6. Learned counsel does not press the petition on behalf of petitioner No.2, but prays for liberty to file a comprehensive representation to the respondents, which may be directed to be decided in a time bound manner.

7. Learned counsel for the respondents, despite his best efforts has not been able to controvert the factual position, insofar as petitioner No.1 is concerned and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law and has no objection to the limited prayer made on behalf of petitioner No.2.

8. In wake of the above, the present petition is disposed of qua petitioner No.1, in terms of **Raj Pal Singh** (supra). In case, petitioner No.2 submits a representation within a period of four weeks, the same shall be considered and decided expeditiously, in accordance with law.

13.11.2024
parveen kumar

(**AMAN CHAUDHARY**)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No