IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-18646-2024 (O&M)
Date of decision: 05.08.2024

Raj Kumar

....Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present:- Ms. Vini Mahajan, Advocate for
Mr. Nipun Vashist, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

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AMAN CHAUDHARY. J. (ORAL)

1. Prayer made in the present petition is for directing the respondents to consider the claim of the petitioner for regularization of his services as he has been working continuously for the last 32 years as daily wagers while similarly situated persons have been granted in terms of the Policy dated 01.10.2003. Reliance is placed on the judgment of this Court in a bunch of petitions allowed on 13.03.2024 titled as **Ashish Sharma and Others vs. State of Haryana and Others** in CWP-2158-2020, by taking into account submissions of either side and relying on the aforesaid judgment, relevant paras whereof read thus:

> " xx xx xx
> 25. Hence, the objections being raised by the respondents-State that the petitioners were not appointed against the regular sanctioned post or, there does not exist any regular post so as to regularize the services of the petitioners, is contrary to their own decision dated 21.12.2018 and cannot be accepted so as to deny the petitioners benefit of regularization of their services from the date services of employees junior to them have been regularized.
> 26. Even otherwise, once an employee has worked for more than a decade and the work of the said post exists, it is the duty of the respondents to create a post so as to allow the said employee to continue in service. Being a welfare State, the State has to take care

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of its employees rather than taking all kinds of objections so as to defeat the claim of the employees which is otherwise covered under the applicable regularization policy issued by the State itself. Hence, the objections that there is no regular sanctioned post so as to regularize the services of the petitioners cannot be accepted.

27. Further, the said objection of the respondents-State with regard to the ground that there is no regular sanctioned post cannot also be accepted on the ground that in case any junior of the petitioners, has been regularized in service under the same regularization policy, the senior employee will ipso facto become entitled for regularization of his/her services from the date the services of his/her junior stood regularized subject to fulfillment of conditions as mentioned in the applicable regularization policy. Hence, once, in **Balwinder Singh' case** (Supra) it has already come on record that services of large number of employees who were junior to their colleagues, were regularized in a pick and choose manner and directions were given to regularize the services of senior employees on that ground itself by this Hon'ble Court while deciding the said case which judgment has attained finality, the respondents now cannot take a plea that the senior employees cannot be regularized in service on the ground of nonavailability of the sanctioned post. Once, the services of junior have been regularized the senior employee will ipso facto get the right for regularization of his/her services even if the said benefit has to be extended by creating a post for the very purpose.

28. The last objection which has been raised by the learned counsel for respondent-State is that after the judgment passed in **Uma Devi' s case** (Supra), no benefit of regularization can be claimed.

29. It may be noticed that once, the Hon'ble Supreme Court of India in **Prem Singh' s case** (supra) after having noticed the position of lawsettled in **Uma Devi' s case** (Supra) has carved out an exception so as to give directions to regularize services of employees who had continued to work for a period of more than 10 years and the said judgment has been brought into operation so as to give benefits of regularization to employees who have even superannuated without getting their services regularized, therefore, in the light of the same, the contention of the respondents that the benefit of regularization cannot be given in view of the judgment passed in Uma Devi' s case (supra) cannot be sustained and is accordingly rejected, moreover, it is a conceded fact that all the petitioners who are seeking regularization of their services have more than 10 years of service to their credit.

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31. With regard to the judgment passed in **Vibhuti Shankar Pandey's case** (Supra), which has been relied by the respondent-State herein above, the same cannot be made applicable in the present case. In the Judgment passed in **Vibhuti Shankar Pandey's case** (Supra), there were no such claim that the similarly situated employees have been regularized in services, as, in **Vibhuti Shankar Pandey' s case** (Supra), the claim of regularization was made despite

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the fact that the employees did not fulfill the qualification required for appointment on the post in question, which fact is missing in the present case. Also as per conceded facts, in the present case for the purpose of regularizing services of employees who are similarly situated to the petitioners, directions have been given by co-ordinate bench of this Court in **Balwinder Singh' s case** (Supra), and the said directions have already been upheld up to the Hon'ble Supreme Court of India. Rather some of the similarly situated employees have been granted the benefit of regularization of their services from the date services of employees junior to them were regularized even before the said SLP was dismissed by Hon'ble Supreme Court of India which fact is clear from the order dated 09.01.2024 passed by the Hon'ble Supreme Court of India.

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33. With respect to the argument of learned counsel for the respondent-State pertaining to the claim of petitioners being barred on account of delay, it may be noticed that the case of the similarly situated employees have already been allowed by the Coordinate Bench of this Court in **Balwinder Singh (supra)**, which judgment has already been upheld by the Division Bench of this Court and even the SLP has been dismissed on 09.01.2024. Once, the actual benefit to the similarly situated employees is yet to be extended by the respondents in terms of **Balwinder Singh' s case** (Supra), it cannot be said that similar claim raised by the petitioners is time barred.

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36. With respect to the condition of having three years of service with 240 days of work in each year as on the date an employee shall become eligible to claim regularization of his/her services in terms of the regularization policy dated 01.10.2003 or any other regularization policy, the services of the employee from the date of his/her initial appointment shall be considered for the purpose of qualifying the said condition. In case, the petitioners has worked for 240 days in any of the 3 years upto the date of regularization policy, said petitioners will be considered eligible under the policy in which the benefit has been claimed.

37. Further, in case, any employee junior to the petitioners, has been regularized in service, which fact in case is established before the respondent authorities by the petitioners, the said petitioners will get the right of regularization of their services from the date when the services of the employee junior to them has been regularized if the said petitioners fulfills all the requisite of relevant regularization policy and respondent-State shall fix the date of regularization of such employee from the date his/her junior was regularized in service as has been directed in the case of **Balwinder Singh** (Supra).

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40. At this stage, learned counsel for the petitioners has raised a plea that in some cases on the ground that the petitioners have been appointed prior to 1996, their claims has been rejected which condition has already been set aside by a co-ordinate bench of this

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Hon'ble Court in CWP No.1582 of 2018 titled as '**Gobind v. State of Haryana and others'**, decided on 13.03.2019.

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42. Let consideration as directed herein above be completed within the period of four months from the date of receipt of certified copy of this order.

43. In view of the above, the writ petitions are disposed of in the terms and conditions mentioned herein before. Let the respondent-State pass appropriate speaking order as directed herein before. In case, any of the petitioner is found entitled for regularization/retrospective regularization of services from the date employees junior to him/her has been regularized, they will be granted the said date of regularization otherwise due reasons be mentioned in the speaking order keeping in mind the directions given by the Court herein before so as to decide the eligibility of each petitioners qua their respective claims. Further in case any of the petitioners is found entitled for regularization of his services retrospectively the said benefit shall be given notionally, no arrears will be granted to the petitioners up to the date of filing of the respective petitions. The petitioners will be entitled for fixing of their salaries from the date of regularization notionally and the arrears will only be extended from the date of filing of their respective petitions before this Court and if any of the petitioners has already retired, his/her pensionary benefits will also be fixed/revised and arrears will also be extended from the date of filing the petition by the said petitioner."

2. Learned State counsel despite his best efforts, has been unable to controvert the submissions made on behalf of the petitioner and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

3. In wake of the above, the present petition is disposed of in terms of the judgment passed in **Ashish Sharma and Others**(supra).

(AMAN CHAUDHARY)
JUDGE

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

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