

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

R.S.A No. 3244 of 2002 (O&M)

Date of decision:- 29.05.2015

Budho Devi

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Naveen Daryal, Advocate
for the appellant.

Mr. Sidharth Sawariya, DAG, Haryana

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This regular second appeal is against the judgment and decree dated 15.04.2002 passed by learned Additional District Judge, Karnal whereby the judgment and decree dated 22.09.2001 passed by the learned Sub Judge Civil Judge (Jr. Divn.) Karnal was dismissed.

Plaintiff-Appellant (for short 'the appellant') filed a suit for declaration to the effect that she is entitled to get her services regularized as per the policy of the Government of Haryana and also she had completed more than 03 years of service as on 31.01.1996 in view of the instructions issued by the Chief Secretary to the

Government of Haryana on 07.03.1996 (modified on 18.03.1996) with consequential relief.

The appellant joined the forest department as Mali-cum-Chowkidar on 20.06.1984 on daily basis and since then she is working in Social Forestry Project Nursery Budha Khera, Mangalpur Chowk Karnal. She served for 14 years as Mali cum Chowkidar on daily wages. However, her services had been terminated without complying the provisions of Section 25-F of the Industrial Disputes Act. Thereafter, the matter was compromised and the appellant was taken back in service with continuity but with the condition that she will not be given the wages for the period she had remained out of service. The appellant fulfills the condition as per instructions issued by the State of Haryana on 31.03.1993 and 31.03.1996 for regularizing the service of an employee.

On notice, the respondents filed written statement and on merits, it was stated that the appellant was engaged as casual labourer to meet the seasonal work of the plantation of the rate fixed by the Principal Chief Conservator of Forests, Haryana, Chandigarh. The appellant was working against the contingency work whenever there is amount for specified work.

The learned trial Court after going through the evidence

led by the parties, decreed the suit of the appellant and the appellant was held entitled to get her services regularized with consequential benefits thereof w.e.f 31.01.1996. The respondents were directed to do the aforesaid job, within a period of three months.

Feeling aggrieved against the judgment dated 22.09.2004 the respondents filed an appeal, which was allowed by the Lower Appellate Court. In para 10 of the judgment, the Lower Appellate Court had dealt with the issue that whether the appellant fulfills the conditions as mentioned in the letter dated 07.03.1996 Ex P2. The instructions issued by State of Haryana (Ex P2) was further relaxed by the Government of Haryana and it was decided to regularize the service of all those work charge/casual daily rate employees who have completed three years of service on 31.01.1996 and fulfill all other conditions as laid down in Haryana Government letter dated 07.03.1996 Ex P2. The appellant had failed to produce any record relating to her period of job. DW1 Bhim Singh stated that the department has been keeping/maintaining the record of the labour daily wages only for the last three years. In cross examination, he submitted that as per the record of the muster roll, the appellant had worked for 270 days in the year 1993, 149 days in the year 1994 and 132 days in the year 1994 which shows that the appellant had not

completed continuous service of 240 days in service in each year as per the norms of the instructions contained in Ex P2. Thus, the representation filed by the appellant for regularization of her service was disposed of as she was held not entitled to be retained in service.

Learned counsel for the appellant has referred to Annexure R-4 i.e order passed by a Co-ordinate Bench of this Court in CWP No. 7363 of 2012 decided on 03.04.2013 titled as Shiv Raj and others vs. Kurukshetra University.

After going through the above said judgment, the appellant cannot be granted any benefit of the above judgment as in that case, the case for regularization of service was considered in terms of policy dated 01.10.2003 issued by Government of Haryana which had been adopted by the Kurukshetra University. The petitioner in that case had completed 03 years of service up to 13.09.2003 and was in service on that date. Thus, her case was found to be covered under the policy dated 01.10.2003.

In the present case, the appellant had not completed 03 years of service, which was required as per notification dated 07.03.1996 Ex P2. Further she had not completed 240 days in each years. As per terms and conditions of the above said notification (P-2), the service of the appellant can only be regularized only if she would

have completed three years of service, which condition the appellant has miserably failed to fulfill, as observed by the Lower Appellate Court in para 10 of the judgment.

Further the appellant has placed on record Annexure R-1 to R-3 i.e regularization orders of employees junior to the appellant. A perusal of the above orders shows that the Government had filed appeal against the employees junior to the appellant, but lost the battle up to Hon'ble the Supreme Court. In the case of the present appellant, the suit of the appellant was decreed by the trial Court but the Lower Appellate Court dismissed the suit by giving a well reasoned judgment on the ground that the appellant did not fulfill the conditions of the notification dated 07.03.1996 (Ex P2), as she had not completed 03 years of regular service and further had not worked for 240 days in each of the 03 years while in service.

Learned counsel for the appellant has not been able to lead any evidence, which has been misread by the Lower Appellate Court while allowing the appeal filed by State of Haryana.

During the pendency of the appeal, an affidavit has been filed by the Divisional Forest Officer, Karnal on 01.07.2014 and reference was made to notification dated 27.05.1993 for regularization of work charged/casual/daily rated employees. Thereafter, policies

dated 07.3.1996, 18.03.1996 and 01.10.2003 for regularization of work charged/casual/daily rated employees were issued. All these policies were withdrawn as per Haryana Government notification dated 13.04.2007. Now, the Haryana Government, vide notification dated 29.07.2011 (R-2) had framed a new policy for regularization, subject to the following conditions:-

“(i) That the employee/worker should have continued to work for not less than ten years as on 10.04.2006 and is still in service but under cover of the orders of the Courts or “Tribunals, against duly sanctioned vacant posts. The period of continuous break in such service should not be more than one month in a calendar year.

(ii) That the employee/worker possessed the minimum prescribed qualifications for the post on the date of appointment/engagement.

(iii) That the concerned employee should have been appointed only after either his name has been sponsored by the Employment Exchange or has been appointed/engaged on the basis of recommendations made by the Department Selection Committee by inviting applications through advertisement against duly sanctioned vacant post.

(iv) That the employee should be regularized against a sanctioned vacant post of relevant category.

(v) Such Group C and D employees/workers, who are not covered under this regularization policy but are still in service, may be given age relaxation as a one time measure, if they compete for regular appointment.”

In the affidavit it has further been explained that the regularization policies had been withdrawn on 25.04.2007 after the decision of Hon'ble the Supreme Court in ***Secretary, State of Karnataka and others vs. Uma Devi and others, 2006 (2) S.C.T 462*** and thereafter, the above policy i.e 29.07.2011 (R-2) has come into force. In compliance of letter of Principal Chief Conservator of Forests, Haryana, Panchkula, the case of the petitioner was sent to Principal Chief Conservator of Forests, Haryana, Panchkula, who returned the case of the petitioner vide letter dated 17.01.2013 (R-1) and informed the HFS that the petitioner is not entitled for regularization inservice as per advice given by Legar Rembrancer to Govt. of Haryana, Chandigarh vide letter dated 12.12.2012 and in view of the judgments of Hon'ble the Supreme Court.

The present R.S.A was admitted on 17.02.2004 and no stay was granted to the appellant. Thereafter, the appellant filed C.M. No.

6018-C of 2015 for stay and this Court vide order dated 08.07.2005 ordered to maintain status quo with regard to the service of the appellant. Thus, the appellant is in service since 08.07.2005. Thereafter, the appellant filed C.M. No. 520-C of 2014 placing on record Annexure R-1 to R-4 i.e the regularization order of the employees who are junior to her. Notice of this application was given to the counsel opposite and it was directed that D.F.O Karnal shall file an affidavit in response to that application, which was subsequently filed as mentioned above on 01.07.2014 and it was submitted that the case of the petitioner for regularization in service had been rejected. However, the regularization orders (Annexure R-1 to R-3) have not been denied.

The substantial question of law which arises for consideration before this Court reads as under:-

“When the services of some employees who were juniors to the appellant have been regularized, the present appellant who was appointed as Mali-cum-Chownkidar on 20.06.1984 on daily basis and has rendered 21 years of service till 08.07.2005 with the department, is entitled for regularization of her services or not?

The case of the appellant for regularization of her services has been rejected on the ground that she does not fulfill the conditions of notification/policy dated 29.07.2011 (R-2). As per first

condition of this policy, the employee/worker should have continued to work for not less than ten years as on 10.04.2006 and this period should not include the service under the cover of the orders of the Court.

It is not disputed that the appellant was appointed as Mali-cum-Chowkidar on 20.06.1984 on daily basis in the Forest Department and when the present appeal was admitted on 17.02.2004, the appellant had served the department for almost 20 years. Thereafter, the appellant filed C.M. No. 6018-C of 2015 for stay and this Court vide order dated 08.07.2005 ordered to maintain status quo with regard to the service of the appellant. Thus, the appellant is in service since 08.07.2005. Hence, excluding the period of stay i.e from 08.07.2005, the appellant w.e.f 20.06.1984 to 08.07.2005 had completed almost 21 years of service with the department. Thus, she had fulfilled the first conditions of the notification/policy dated 29.07.2011 (R-2).

With regard to the second condition that the employee/worker should possess the minimum prescribed qualifications for the post on the date of appointment/engagement, the appellant had filed C.M. No. 520-C of 2014 placing on record Annexure R-1 to R-3 i.e the regularization order of the employees who

are junior to her. A bare perusal of these regularization orders shows that the employees who were regularized in service were illiterate. Her case had not been rejected on the ground of non fulfillment of the essential qualification. The regularization orders (R-1 to R-3) have not been disputed in the affidavit filed by the Divisional Forest Officer, Karnal on 01.07.2014. Thus, the appellant fulfilled this 2nd condition as well of the notification/policy dated 29.07.2011 (R-2). Since regularization orders (R-1 to R-3) have not been disputed by the respondents, conditions No. (iii), (iv) and (v) of the notification/policy dated 29.07.2011 (R-2) cannot be applied to the appellant's case for rejection of her case for regularization of her services. Hence, for all intents and purposes, the appellant fulfilled all the conditions.

This Court in a case of ***Ved Pal and others vs. State of Haryana*** in CWP No. 1169 of 2009, decided on 10.02.2012 had allowed the writ petition wherein the services of the petitioners have not been regularized from the date their juniors service have been regularized. The regularization of service had been denied in view of the judgment of ***Secretary, State of Karnataka and others vs. Uma Devi and others, 2006 (2) S.C.T 462***

The case of the appellant for regularization of her services has simply been rejected on the ground that she did not fulfill the

conditions of the notifications issued by State of Haryana from time to time. However, the respondents have not disputed that she was appointed in the year 1984 and as per the policy of 29.07.2011 (R-2), she had completed 22 years of service as on 10.04.2006, which was the first condition for regularization of the service of an employee. As per the 1st condition, the employee/worker should have continued to work for not less than ten years as on 10.04.2006.

The present appeal was admitted on 17.02.2004 and stay was granted in favour of the appellant on 08.07.2005 and since then she is doing the service and has completed almost 31 years of service till today. ***The essential condition as per policy dated 29.07.2011 (R-2) was that an employee should have continued to work for not less than ten years as on 10.04.2006*** and in the present case, the appellant had rendered 31 years of service as daily wage worker.

Pursuant to the policy/notification dated 29.07.2011 (R-2), the respondents can only take the ground that the appellant should have been in service as on 10.04.2006 but the appellant should not have been denied the regularization of her services on account of stay ground by this Court on 08.07.2005 as this aspect has been considered by this Court in ***Shiv Raj and others vs. Kurukshetra University, passed in CWP No. 7363 of 2012, decided on 03.04.2013 (R-4)***

wherein the petitioners were claiming regularization of their service in the light of the policy decision dated 01.10.2003. The case of the petitioners for regularization of their services was rejected on the ground that they were not in the service on the cut-off-date. Referring to the judgment of ***Dalip Singh and others vs. State of Haryana and others, 1999(1) RSJ 722***, the University was directed to consider the case of the petitioners against any available group D post for which they are eligible and regularize their service from the date the service of any person junior to the petitioners were regularized.

The appellant in the present case had put in almost 21 years of service before 08.07.2005 when this Court directed to maintain status quo with regard to the service of the appellant and her case could not be rejected on the ground that she was not in service on 10.04.2006 as on earlier occasion the policy of regularization had been withdrawn vide government order dated 25.04.2007.

Reference at this stage can also be made to a judgment of Hon'ble the Supreme Court in a case of ***Hari Nandan Prasad and another vs. Employer I/r to Mangmt. of FCI and another, 2014 (2) SCT 234*** wherein Hon'ble the Supreme Court had considered a case of an employee whose services were not regularized when his junior's

services had been regularized by the Employer. It was held that non-regularization of the left over workers itself would amount to invidious discrimination qua them in each cases and would be violative of Article 14 of the Constitution. In para 34, it has been observed as under:-

“34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself

under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.”

In the present case, the notification dated 29.07.2011 (R-2) was issued by State of Haryana after the judgment in ***Uma Devi's case (supra)*** on humanitarian ground. The object of issuing notification was that the part time/adhoc employees who had not put in 10 years of service with the State authorities could not be left high and dry and their services should be secured.

Vide government order dated 25.04.2007, the policies for regularization of services of adhoc/contractual/daily wages and part time workers were withdrawn. Hence, an attempt was made by the State Authority on humanitarian ground to regularize the service of adhoc/part time employee, subject to fulfilling conditions of eligibility, as per policy dated 29.07.2011 (R-2). Hence, the ad hoc employees

who had completed 10 years of service as on 10.04.2006, were eligible for regularization of their services whereas the present appellant who had put in 31 years of service, had a right on humanitarian ground to be considered for regularization of her service after being appointed in the year 1984. Her case on the date of filing of suit on 21.05.2002 was covered by the judgment of **Dharam Pal vs. State of Haryana, 2002 (2) RSJ 631** and till the revocation of the regularization policy vide government order dated 25.04.2007, it was the State authorities who chose not to consider the case of the appellant for regularization of her service and pass appropriate orders

In ***Dharam Pal's case (supra)***, the petitioners were engaged as Chowkidar-cum-Water Carrier, Sweeper Mali etc as part time workers in the year 1987 onwards, the State was directed to regularize their services when availability of work was very much there

In similar circumstances, this Court in **Block Education Officer & others v. Kamla Devi** passed in R.S.A No. 4929 of 2009 decided on 06.05.2015 had examined a case of an employee who had rendered 27 years of service and had retired on 31.05.2010 and held that she had a right on humanitarian ground to be considered for regularization of her service after being appointed in the year 1983. The appeal filed by the State was dismissed and direction is being

given to the State to pass appropriate considering the case of the respondent, in view of ***Dharam Pal's case (supra)*** for regularization without insisting on the condition that she must have the knowledge to read and write Hindi language.

In the present case, the appellant fulfills all the conditions of the notification/policy dated 29.07.2011 (R-2) and had put in almost 21 years of service till 08.07.2005 when the stay was granted by this Court and further service of some employees junior to the appellant had been regularized. Till date, the appellant had served the department for 31 years w.e.f 20.06.1984

Accordingly, the present appeal is allowed and direction is being given to the respondents to regularize the service of the appellant, as she fulfills all the conditions mentioned in notification dated 29.07.2011 (R-2) and further the services of juniors to her have been regularized by the department as per Annexure R-1 to R-3. However, the arrears of salary shall be restricted to 38 months from the date of regularization of her services. This process shall be completed within a period of four months from the passing of this order and compliance report be sent to this Court thereafter.

29.05.2015

G Arora

(***RITU BAHRI***)
JUDGE

GAURAV
2015.06.29 12:01
I attest to the accuracy and
integrity of this document