

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

[1] Civil Writ Petition No.9167-CAT of 2007  
Date of Decision: March 02, 2015

Union of India and others  
.....Petitioners  
versus  
Central Administrative Tribunal, Chandigarh Bench and others  
.....Respondents

[2] Civil Writ Petition No.6854-CAT of 2008  
Ilmo Devi and another  
.....Petitioners  
versus  
Central Administrative Tribunal, Chandigarh Bench and others  
.....Respondents

[3] Civil Writ Petition No.24583 of 2013  
Union of India and others  
.....Petitioners  
versus  
Siri Krishan and others  
.....Respondents

[4] Civil Writ Petition No.5163 of 2014  
Union of India and others  
.....Petitioners  
versus  
Sushil Kumar and another  
.....Respondents

[5] Civil Writ Petition No.5165 of 2014  
Union of India and others  
.....Petitioners  
versus  
Dalbir Singh and another  
.....Respondents

[6] Civil Writ Petition No.5177 of 2014

Union of India and others

.....Petitioners

versus

Seth Pal and another

.....Respondents

[7] Civil Writ Petition No.5190 of 2014

Union of India and others

.....Petitioners

versus

Gopal and another

.....Respondents

[8] Civil Writ Petition No.5192 of 2014

Union of India and others

.....Petitioners

versus

Vinod Kumar and another

.....Respondents

[9] Civil Writ Petition No.6754 of 2014

Union of India and others

.....Petitioners

versus

Bishamber Dayal and another

.....Respondents

**CORAM:** HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE NARESH KUMAR SANGHI.

Present:Mr.Namit Kumar, Advocate, for the petitioners.

Mr.Vikas Behl, Senior Advocate with

Mr.Kawaljyot Singh, Advocate,

for the petitioners in CWP No.6854 of 2008 and  
for respondents in CWP No.9167 of 2007.

Mr.Rohit Sharma,Advocate,

Mr.Rohit Sethi, Advocate,

Mr.D.S.Nain, Advocate, for

Mr.Sunil Kumar Bhardwaj, Advocate,

for private–respondents.

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1. *Whether Reporters of Local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

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Surya Kant, J. (Oral)

This order shall dispose of CWP Nos.9167-CAT of 2007, 6854-CAT of 2008, 24583 of 2013, 5163, 5165, 5177, 5190, 5192 and 6754 of 2014 as the point in issue that arises for consideration in these cases is common in nature.

[2] The respondent-employees are working on part-time basis with the petitioner-authorities. They approached the Central Administrative Tribunal, Chandigarh Bench, seeking varied reliefs including direction for regularization of their services. The Tribunal vide the impugned orders passed on different dates, besides granting one or the other relief, has in some of the cases further directed to regularize their services as well. In the cases where the Tribunal declined the relief of regularization of services, the petitioner-authorities have been directed to advertise the posts and treat the respondent-employees eligible after granting them certain relaxations under the relevant rules. Similarly, the petitioners have been given liberty to formulate a policy in terms of the directions issued by the Hon'ble Supreme Court in Mineral Exploration Corporation Employees' Union versus Mineral Exploration Corporation Limited and another, (2006) 6 SCC 310.

[3] To avoid the multiplicity of facts and for brevity, we propose to treat CWP No.9167-CAT of 2007 as the lead case.

[4] Ilmo Devi and Babli-respondent Nos.2 & 3, respectively, are working as contingent paid part-time Safai Karamcharies (Sweepers) in the Post Office at Sector-14, Chandigarh. They belong to Schedule Caste category and their

services were engaged in the months of February, 1982 and January, 1991, respectively. They are working six days a week (except Sunday), without any break. According to the second and third respondents, their services are utilized for the whole day though they are shown to have been engaged on part-time basis. As the second and third respondents did not see any hope to secure the status of regular employees even after serving for more than 20 or 15 years, they approached the Tribunal to direct the petitioner-authorities to formulate some policy and regularize their services.

[5] The Tribunal vide order dated 17.01.2007 though took notice of the long length of service and the fact that the respondents have been working uninterruptedly to the entire satisfaction of the authorities, nevertheless, the Tribunal held that keeping in view the dictum in State of Karnataka & others versus Uma Devi & others, 2006 (4) SCC 1, no direction for regularization of their services could be issued. The Tribunal further held it imperative upon the petitioner-authorities to advertise the posts and consider the claim of respondent Nos.2 & 3 also after granting them relaxation under the rules.

[6] In some of the connected cases, the Tribunal has issued directions for regularization of services, following a judgment of Hon'ble Andhara Pradesh High Court, which, according to the petitioner-department, is distinguishable on facts.

[7] We have heard learned counsel for the parties at some length and gone through the record of these cases.

[8] The respondents in all these cases have worked for more than 10 to 20 years as contingent employees and some of them (like in the lead case) have served for about 30 years

also. A few of them are obviously nearing retirement age as prescribed under the Central/State Service Rules.

[9] It is true that these employees are working on 'part-time basis' only. The ground realities of which a Court can take judicial notice, leave no room to doubt that once the respondents come to their respective work place to perform duties, may be for 4 to 5 hours, it is nearly impossible for them to secure another job for the rest of the day. The petitioner-authorities cannot be oblivious of the fact that where supply of manual labour is more than the demand, the market forces won't permit the private-respondents to have the choice of getting another and alternative employment for the remainder of the day after they are relieved of their duties by the postal authorities.

[10] At this stage, it deserves mention that the petitioner-authorities had earlier taken a policy decision whereunder the contingent paid staff like the respondents who had completed 240 days as on 01.09.1993 was conferred 'temporary' status and thereafter, their services were to be regularized in accordance with the Recruitment Rules, 2002, now replaced by 2010 Rules. The private respondents, however, were not conferred the 'temporary status' under that policy though respondent No.2-Ilma Devi was engaged in February, 1982 and is still a part-time employee. Similar is the case of respondent No.3 as she too was engaged in January, 1991. The only reason to deny 'temporary' status to respondent Nos.2 & 3 appears to be that their nomenclature was that of part-time employees.

[11] We see no rationale or logic in formulation of a policy if it fails to address the evil, sought to be cured. If the

postal authorities have been continuously engaging the staff only on part-time contingent basis then its policy-formulation must respond to the situation created due to such engagement.

[12] It is no doubt true that a 'part-time' employee cannot seek parity with a 'full time' worker but then the petitioner-authorities can also draw no mileage out of their undue favour shown to those who are engaged for 7 to 8 hours and total neglect of the others who are 'part-time' due to 4 to 5 hours engagement. It appears to us that whatever benefits authorities decide to confer on the full-timers, the same can be extended to part-timers as well, of course, on such additional and stringent conditions like double the length of contingent service and/or other reasonable and fair conditions which the authorities may deem fit.

[13] While we refrain from suggesting any policy module as such an exercise falls within the domain of the Executive only, the authorities ought to be cautioned that the policy, so framed, must reflect the due application of mind as well as their conscious decision to reject or accept the claim of any class or category of contractual employees.

[14] The department of Post, for the reasons best known to it, had earlier taken no policy decision, notwithstanding the directions given by the Hon'ble Supreme Court in Uma Devi & others' case (supra), decided on 10.4.2006. In the absence of its own policy decision, there was no justification whatsoever as to why the Department did not follow the guidelines/circular dated 11.12.2006 issued by the Department of Personnel and Training.

[15] Be that as it may, now the Department of Postal and Ministry of Communication and I.T. has issued a policy circular dated 30.06.2014 for the welfare of casual labourers. The above-stated policy is said to have been issued in compliance to the directions issued in Uma Devi's case (supra). The salient feature of the aforesaid policy are to the following effect.

- “(i) Regularization of all the casual Labourers, who have been irregularly appointed, but are duly qualified persons in terms of statutory recruitment rules for the post and was engaged against a sanctioned post, shall be done if they worked for 10 years or more but not under the covers of orders of courts or tribunals as on the date of Hon'ble Apex Court's ibid judgment i.e. 10.04.2006 (Secretary State of Karnataka and others versus Uma Devi and others in Civil Appeal No.3595-3612/1999).
- (ii) A Temporary, Contractual, Casual or Daily wage worker shall not have a legal right to be made permanent unless he/she fulfills the above criteria.
- (iii) A casual Labourer engaged without following the due process or the rules relating to appointment and does not meet the above criteria shall not be considered for their absorption, regularization, permanency in the Department.
- (iv) If a casual Labourer was engaged in Infraction of the rules or if his engagement is in violation

of the provision of the Constitution, the said  
illegal engagement shall not be regularized....”

(emphasis applied)

[16] Having regard to the new policy circular that this Court on August 06, 2014 directed the petitioner-authorities to re-consider the claim of private respondents in the lead case as per new policy.

[17] In purported compliance thereto, the authorities have mechanically rejected the claim vide the order dated 11.09.2014 for the reasons that; (i) there are no sanctioned posts and (ii) employees have not completed 10 years of service as on 10.04.2006, namely, the date of decision of the Hon’ble Supreme Court in Uma Devi’s case (supra).

[18] We have given our thoughtful consideration to both the reasons assigned by the petitioner-authorities, who have further stated that as of now, fresh engagements on contingent or daily wage basis have been completely stopped. If that is so, it can be safely inferred that only a small group of daily wage part-time employees engaged before 10.04.2006 are still working. If their eligibility of 10 years daily wage service is determined in the year 2014-15 on the basis of cut off date of 10.04.2006, such a policy would be an exercise in futility. The petitioners themselves have taken more than 8 years in giving effect to one of the directions in Uma Devi's case (supra), hence, they cannot reject the claim of daily-wage employees with an ante-date cut off date as the compliance of such an eligibility condition is nearly impossible. This would render the policy totally ineffective and a brutum fulmen without percolating even a drop of benefit to those for whom it has been formulated.

[19] It is not the case of petitioner-authorities that the respondents have been retained in service due to the orders of Courts or Tribunal in their favour. They were engaged voluntarily and are serving at the sweet will of the authorities. It simply suggests that there is enough work of perennial nature available to engage the private-respondents. If the work load justifies the retention of private-respondents as daily wagers or contingent paid staff for such a long period, does it not amount to their exploitation only because the social and economic conditions do not permit the respondents to bargain with the petitioners?

[20] Surely, the respondents cannot be made regular in the absence of sanctioned posts, but then what is the public purpose sought to be achieved through the policy dated 30.06.2014? The Executive who has authored the policy is also competent to create or sanction the posts. Depending upon the total expenditure now being incurred on the retention of respondents, we have no reason to doubt that the petitioners can rationalize their resources and sanction some regular posts every year so that the respondents can be adjusted on regular basis without any unbearable additional financial burden on the Department, but before they leave the department on attaining the age of superannuation.

[21] The petitioners might have incurred huge expenditure in defending multiple litigation initiated by contractual employees who are now a diminishing cadre. This is for the petitioners to take a pragmatic view and divert this unproductive expenditure towards sanctioning the posts in a phased manner for adjusting the respondents.

[22] We, thus, direct the petitioner-authorities to re-visit the whole issue in its right perspective and complete the exercise to re-formulate their policy and take a decision to sanction the posts in phased manner within a specified time-schedule. Let such a decision be taken within a period of six months from the date of receiving a certified copy of this order.

[23] Till the exercise as directed above, is undertaken, the respondents shall continue in service with their current status but those of them who have completed 20 years as part-time daily wagers, shall be granted 'minimum' basic pay of Group 'D' post(s) w.e.f. 1.4.2015 and/or the date of completion of 20 years contractual service, whichever is later.

[24] The order(s) passed by the Tribunal stands modified to the extent above and the writ petitions are disposed of accordingly.

[SURYA KANT]  
JUDGE

*March 02, 2015*  
*Mohinder*

[NARESH KUMAR SANGHI]  
JUDGE