

Sr.No.235

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

1. CWP-12392-2013(O&M)

Hoshiar SinghPetitioner

vs.

State of Haryana and othersRespondents

2. CWP-19932-2013(O&M)

Raj KumarPetitioner

vs.

State of Haryana and othersRespondents

3. CWP-23111-2014

Date of Decision: 27.08.2015

Ram KaranPetitioner

vs.

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. Dharamveer Phour,
Mr. Rohit Ahuja, Advocates and
Mr. R.K.Malik, Sr. Advocate
with Mrs. Rimple Sohi Kadyan, Advocate for the petitioners.
Mr.G.S.Wasu, Addl. A. G. Haryana.

**

Mahesh Grover, J

By this order, I shall dispose of all the above mentioned three writ petitions as the identical question of law involves in them.

The petitioner in CWP-12392-2013 joined the service as a Beldar in the year 1992. His services were terminated on 30.10.1995. He raised an industrial dispute and the labour Court by virtue of the Award dated

06.09.2005 ordered reinstatement of the petitioner with continuity of service and 50% back wages from the date of demand notice i.e from 17.05.1999.

The petitioner in CWP-19932-2013 joined the service as a Chowkidar-cum-Beldar on 01.02.1995. His services were terminated in February 1996. He raised an industrial dispute and the labour Court by virtue of the Award dated 12.09.2003 ordered reinstatement of the petitioner with continuity of service, with all consequential service benefits along with 25% back wages from the date of his termination till reinstatement.

The petitioner in CWP-23111-2014 joined the service as a Chowkidar on 05.09.1997. His services were terminated in 30.03.2002. He raised an industrial dispute and the labour Court by virtue of the Award dated 20.04.2006 ordered reinstatement of the petitioner with continuity of service, with all consequential service benefits along with full back wages.

All the petitioners pray that their services be regularized by pleading that juniors to them who had joined services at later point of time have been regularized in terms of the policy / schemes issued by the State enabling regularization of the services of said employees. This fact has been admitted by the respondents.

The regularization has been denied to the petitioners only on the ground that they were not in service on the day when the policy came into effect in the year 2003. Reliance has been largely placed on the judgment of **Secretary, State of Karnataka and others v. Umadevi(3) and others (2006) 4 SCC 1**, to plead that they would not be entitled to any regularization on this score. The relevant observations of the Hon'ble Supreme Court in Uma Devi's case is to the following effect :-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal

appointments) as explained in S.V Narayanappa, R.N Nanjundapa and B.N Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularization or making permanent, those not duly appointed as per the constitutional scheme.”

As against this, the petitioners place reliance on number of decisions rendered by this Court and the Hon'ble Supreme Court in particular **Hari Nandan Prasad and another vs Employer I/R to Mangmt of FCI and another 2014(3) SLR 262**, and particularly para 34 thereof, which reads 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 wagger etc. may amount to backdoor entry into the service which is an anathema to Article 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 Article 14 of the Constitution.** Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.”

On due consideration of the matter, I am of the opinion that the action of the respondents cannot be justified considering the fact that the award of the Labour Court mandated the continuity of service and the fiction of law reflects that the petitioners would be deemed to be in service in the year 2003 and in which eventuality, the observations of Hari Nandan Prasad's case (supra) would be attracted to the facts of the case particularly when it is

not denied that persons similarly situated as the petitioners were granted the benefit of regularization. This Court in CWP-9873-2013 decided on 07.05.2015 has also held similarly.

Consequently all the three writ petitions are accepted and the petitioners are held entitled to regularization in terms of the prevailing policy of the State with all consequential benefits from the date when the juniors were regularised.

27.08.2015**mamta****(MAHESH GROVER)****JUDGE**