

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

CWP No.22944 of 2011

Date of Decision: 06.07.2015

Ishwar Singh

....Petitioner

Versus

The State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J. (ORAL)

The present petition has been filed for issuance of a writ in the nature of *mandamus* directing the respondents to modify the order dated 16.10.2006, whereby, the services of the petitioner were regularized w.e.f. 01.10.2003, whereas, it should have been regularized w.e.f. 01.02.1996.

Learned counsel for the petitioner submits that the case of the present petitioner has wrongly been rejected, which is in violation of Articles 14 and 16 of the Constitution of India. Learned counsel also submits that case of one Mahlo Devi was considered from the back date like the case of the present petitioner but the claim of the present petitioner has been rejected only on the ground that the post was not sanctioned as has been mentioned in the impugned order of rejection.

Learned counsel for the petitioner has also relied upon the judgment of Division Bench of this Court in case ***Hari Om and another vs***

State of Haryana and others 2003(2) S.C.T. 507.

Learned counsel for the respondent-State submits that in the judgment of Hon'ble the Apex Court in case ***Secretary, State of Karnataka vs Uma Devi, (Appeal (Civil) 3595-3612 of 1999)***, decided on **10.04.2006**, it has specifically been mentioned that in case, the order of regularization has already been passed then it need not be reopened.

Learned counsel for the respondent-State also submits that the regularization of post can only be ordered against sanctioned post but in the present case, there is no post available and hence, the petitioner could not be regularized. He also submits that the petitioner has not challenged the earlier order of regularization in spite of having the opportunity to raise his grouse. He also submits that no such grievance was ever raised except for filing of the writ petition and that too after much delay, wherein, simply a direction was issued to consider the case of the petitioner for regularization.

Heard the arguments of learned counsel for the parties and have also perused the impugned order of rejection as well as earlier order of regularization.

Admittedly, the petitioner was working with the respondent-department on daily wages basis since 1988 and he approached this Court by way of filing ***CWP No.9340 of 2004*** for regularization of his services. The said petition was disposed of with a direction to the respondent to consider the case of the petitioner for regularization.

In compliance of said directions issued by this Court, the case of the present petitioner was considered and he was found to be entitled for regularization w.e.f 01.02.1996 and as such, the order of regularization was passed on 04.01.2005. The services of the petitioner were regularized w.e.f. 01.10.2003, whereas, the petitioner is claiming his right of

regularization w.e.f. 01.02.1996. Subsequently, the petitioner filed **CWP No.6184 of 2010**, which was disposed of with a direction to the respondents to consider the case of the petitioner for regularization vide order dated 04.01.2005. The claim of the petitioner was rejected vide order dated 27.07.2011, which is subject matter of challenge in the present petition.

The argument of learned counsel for the petitioner is that the petitioner is entitled for regularization w.e.f. 01.02.1996, whereas, he has been regularized from the subsequent date. The petitioner has also relied upon the case of one Mahlo Devi as her services have been regularized from the back date.

On perusal of documents available on the file, it is apparent that said Mahlo Devi has filed a suit and as per directions issued by the Additional District and Sessions Judge, the benefit of regularization was given to her.

In the present petition, the order of regularization was not challenged as the petitioner remained satisfied with the earlier order. Subsequently, after long delay, the petitioner served a legal notice dated 20.01.2010 and thereafter, filed a petition before this Court, which was disposed of simply with a direction to consider the case of the petitioner.

In compliance of directions issued by this Court, the case of the present petitioner was considered and the same has been rejected on the ground that no post was available. The instance given by learned counsel for the petitioner is not applicable in the present case as in that case, the remedy was availed of by Mahlo Devi but the petitioner remained silent as he was satisfied with the earlier order of regularization. Moreover, as per judgment of Hon'ble the Apex Court, the order passed earlier cannot be reopened. The relevant portion of the said judgment is reproduced as

under :-

“ It is very pertinent to mention here that even though the Constitutional Bench of Hon'ble Supreme Court of India vide their judgment dated 10.04.2006 in case titled ***Secretary State of Karnataka vs Uma Devi*** had categorically prohibited the regularization of those not duly appointed as per the constitutional scheme, the Hon'ble Apex Court had clarified that regularization if any already made but no sub-judice need not be reopened based on the judgment but there should be no further by passing as the constitutional requirement and regularizing or making permanent those not duly appointed as per the constitutional scheme.”

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.

06.07.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE