

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

CWP No.23001 of 2011 (O&M)

Date of Decision: **November 26, 2015**

The Haryana State Cooperative Agriculture
Rural and Development Bank Ltd., Panchkula ...Petitioner

Versus

Financial Commissioner and Principal Secretary
to Govt. Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.S.S.Dalal, Advocate
for the petitioner.

Mr.R.K.S.Brar, Addl. AG, Haryana.

Mr.Vikas Malik, Advocate for
respondent No.3.

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HARINDER SINGH SIDHU, J.

Challenge herein is to the order dated 1.12.2010 (Annexure P-4) passed by respondent No.1, whereby, the petitioner-Bank has been directed to accept the claim of respondent No.3 regarding regularisation of his services from the date when he had completed 240 days as was done in the cases of his co-employees and juniors.

Factual matrix of the case is that respondent No.3 was appointed as ***Daftri*** on ad hoc basis w.e.f. 1.2.1991 with the petitioner Bank and his services were regularised w.e.f. 20.10.1995. Respondent No.3 represented to the petitioner

Bank for regularisation of his services w.e.f. the date when he had completed 240 days of service, which was rejected vide order dated 15.1.2008 (Annexure P-2). He filed appeal before respondent No.2, which also met the same fate. Thereafter, respondent No.3 filed revision before respondent No.1, which was allowed vide the impugned order dated 1.12.2010 (Annexure P-4).

In the petition, it has been pleaded that the services of respondent No.3 are governed by the statutory service rules, namely 'The Staff Service Rules of the Haryana Cooperative Land Development Bank Ltd' (hereinafter referred to as 'the Rules') and under the said Rules, the period of ad hoc service rendered by an employee cannot be counted towards seniority and promotion.

In response to notice of motion, respondent No.3 has filed written statement stating that his co-employees, namely Satish Kumar son of Suraj Mal and Naresh Kumar son of Jainarayan were also appointed along with him on ad hoc basis. In the year 2003, the petitioner Bank passed resolution and their services were regularised from the date they had completed 240 days. There are some other examples i.e. Dinesh Kumar, Raj Singh, Jagat Singh, Surender Kumar, who were also regularised from the date they had completed 240 days by the petitioner Bank. It is also stated that batch-mates and juniors of

respondent No.3 have been regularised from date, when they had completed 240 days of service, but respondent No.3 has been ignored for the reasons best known to the petitioner.

Having heard Learned counsel for the parties and going through the paper-book, I find no merit in the petition.

There is no denial by the petitioner Bank to the claim of respondent No.3 that the employees, who had joined with him in the year 1991 as also some other employees, who had joined thereafter, have been regularised w.e.f. the date they completed 240 days of service. Hence, the plea of the petitioner Bank that the ad hoc appointment of respondent No.3 cannot be counted towards his seniority in view of the Staff Service Rules, is not relevant and determinative of the issue.

Vide the impugned order Annexure P-4, respondent No.1 allowed the said benefit to him while concluding as under:-

“I heard both the counsels and perused the record. I find merit in the case of the petitioner. The claim of the petitioner is to regularize his services from the date when he completed 240 days as was done with his co-employees and juniors. Hence, both respondents No.1 and 2 erred while passing the impugned orders. The judgments referred by the respondents are not applicable in this case. Keeping in view the above facts, the petition is accepted and the impugned orders dated 18.9.2008 and 12.3.2008 are hereby set aside and respondent No.2 is directed to accept the claim of the petitioner.”

It was directed that respondent No.3 (petitioner therein) be granted benefit of regularisation on completion of 240 days as has been done in the cases of his co-employees.

Learned counsel for the petitioner Bank could not distinguish the case of respondent No.3 from the cases of Satish Kumar, Naresh Kumar, etc. mentioned in the written statement. The specific pleading raised by respondent No.3 with regard to his juniors, who were appointed on ad hoc basis later in point of time and having been regularised prior to him, has gone un rebutted at the hands of the petitioner Bank. Thus, respondent No.3 cannot legally be denied the right to consideration for regularisation at par with his juniors.

The Hon'ble Supreme Court in **Hari Nandan Prasad and another vs Employer I/R to Mangmt of FCI and another** 2014(3) SLR 262, held 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 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.”

The above decision was recently followed by this Court while deciding a bunch of 24 writ petitions on 7.5.2015 including **CWP No.9873 of 2013 titled `Raj Kumar vs. State of Haryana and others'**.

The decision in ***Hari Nandan Prasad's case* (supra)** was also relied upon by this Court in **Khajjan Singh and others vs. State of Haryana and others, CWP No.100017 of 2011** decided on 28.5.2014, wherein, it was held as follows:-

“64. Umadevi (3) has now to be understood in its application to labour jurisprudence as one keeping in mind the dictum of both Casteribe and Hari Nandan

Prasad, the former from the point of view of unfair labour practice, the latter from the standpoint of unfair discrimination while Umadevi stands beyond the pale of labour law as contradistinguished from mainline service law jurisprudence and their subtle difference. Labour law was delineated in Casteribe. But yet the Supreme Court did not go full throttle and circumscribed its decision on service law principles weighed down by principles of vacancies and the nature of initial appointments bound by the constitution bench principles laid down in Umadevi (3). Nevertheless, the exception carved out in Hari Nandan Prasad (para 34) is where the foothold lies and the take off point of the present batch of cases now rests. The clamour for regularization on principles of unfair discrimination is now louder for passing of favourable office orders of regularization in cases coming via the Industrial Tribunals and Labour Courts giving rise to a demand for application of constitutional law principles re: discrimination. I may say that any minor discrimination is not unfair because it may suffer reasonable restrictions as are permitted by the law. That is why I have dwelt only on unfair discrimination which is judicially unacceptable, but not mere discrimination which may suffer reasonable restrictions. But the position here is unacceptable because it is not legally justified to break a homogenous group asunder artificially. Failing which non-regularization of left over workers/the unfortunate group as now defined in Hari Nandan Prasad would amount to hostile and invidious discrimination. Therefore the equilibrium has to be restored by granting the status quo ante from the dates counterparts secured benefit of regularization by administrative orders passed without judicial intervention. The Supreme Court holds in Hari Nandan Prasad that "...the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision".

65. High Court Judges bound by Constitutional limitations in article 14 as elsewhere in the law are enjoined to erase unfair inequality resulting from adverse State action or inaction and would remain under oath while discharging judicial duties to strike down unfair discrimination the moment they find its ugly head rearing from case papers placed before them. They would remain bound to kill the weed

before it grows on the meadow of article 14. Article 14 to say the least is the heart of the law pumping sap into the capillaries of the Constitution so that it grows well nourished and well tended into a Banyan tree with its root system pervading all things. After South Africa won its freedom the emblem of it Constitutional Court became the Banyan Tree.

66. Any unfair discrimination practiced by the State has to be dealt with by the strong arm of the law by firm affirmative action in order to remove unfair discrimination and not to promote it so that rights of no citizen go un-redressed. It would be a crying shame to leave the petitioners deserted and feeling that article 14 was not meant for them and only for the 'haves'. Subverting consciously the equality clause in article 14 would be an anathema to the Constitution. Judges may as well then pack up their bags and go home.

67. However, I may add a word of caution here, I have not touched upon in this judgment the issue of regularization arising in cases of questionable appointments to posts sanctioned on the cadre strength of units of service in the departments of Government, besides the instrumentalities of State and nothing said here would apply to the other set of pending cases involving claims of regularization made by holders of posts in Class III service which are to be decided on their own facts and the laws applicable.

68. Since the Judgment of the Supreme Court in Hari Nandan Prasad in paragraph 34 now holds the roost, the apparent conflict caused by the verdict of Channi, in following Uma Devi and Rajinder Kumar overlooking the subsequent view of the Supreme Court in Casteribe, pales into insignificance. Accordingly, the already formulated view of this Court, which is now reflected in the Supreme Court Judgment of Hari Nandan Prasad, stands fortified and buttressed. This obviates any necessity of any alleged conflict between earlier views of this Court to be reconciled. Having drawn strength from the latest view of the Supreme Court in Hari Nandan Prasad, it may be safe for me to conclude that there no longer exists any conflict of opinion in the interpretation of Umadevi. Therefore, I find no reason to accede to the request of Mr. Nehra for the matter to be placed before a larger bench of this Court as the issue seems resolved by the Supreme Court itself in the

illuminating view in Hari Nandan Prasad.

69. The nine questions crystallized above indicate internally what their answers might be but with one broad thread running through all of them indicating a case for grant of positive retroactive parity and to answer if this relief at all deserves to be given to the petitioners to remove the vice of unfair discrimination even if it is through the process of making a supernumerary arrangement to give effect to the cardinal principle of equality under the law and of equal protection of the laws. A parity which is measured by the laws founded on State policies of which the beneficiaries were the fortunate group, then could the petitioners be lawfully deprived of those social and material benefits.”

The ratio of above judgments is very clear that there can be no discrimination in matters of regularization. Hence, respondent No.3 cannot be denied the benefits of regularisation at par with the similarly situated employees.

Accordingly there is no infirmity in the impugned order.

The writ petition is dismissed.

November 26, 2015

**(HARINDER SINGH SIDHU)
JUDGE**

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