

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

RSA No.3959 of 2007 (O&M)

Date of decision : 29.07.2015

State of Haryana & another		...Appellants
	versus	
Budh Ram & others		...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Samarvir Singh, DAG, Haryana.

Mr. Namit Kumar, Advocate for the respondents.

RITU BAHRI , J (Oral)

The State of Haryana has come up in regular second appeal against the judgments of the trial Court dated 15.12.2006 and the lower appellate Court dated 17.08.2007, whereby the suit of the plaintiffs has been decreed for regularisation of service as per Government instructions.

Plaintiffs No.1 to 4 were posted as Malis (gardeners) whereas plaintiff No.5 was posted as water carrier with the defendants. They were appointed on 25.08.1980, 01.07.1984, 18.02.1992, 07.10.1993 and 12.04.1994, respectively. One Sohan Lal, Mali, junior to the plaintiffs, who was appointed on 01.08.1989, was regularised on 22.08.1995. The plaintiffs had completed five years of service and fulfil all the conditions for regularisation as per Government instructions dated 18.03.1996 and 17.10.2003.

On notice of the suit, the defendants filed their written

statement and admitted that some employees who were juniors to the plaintiffs were appointed against sanctioned posts. Some employees were appointed on regular posts under ex-gratia scheme. The case of the plaintiffs did not fit in the instructions dated 18.03.1996 and 01.10.2003 as the plaintiffs were contingent paid part time employees and not on whole time. There was no vacant post of Mali/water carrier in the District/office. The trial Court framed the following issues:-

- “1) Whether plaintiffs are entitled to a declaration to the effect that their services deemed to be regularised w.e.f. 22.8.1995 as per instructions/policies dates 1.2.1999, 17.10.2002 and 26.7.2004 issued by the Government of Haryana? OPP.*
- 2) If issue No.1 is proved in affirmative, whether plaintiffs are entitled to consequential monetary relief alongwith interest @ 18% per annum? OPP.*
- 3) If issue No.1 is proved in affirmative, whether plaintiffs are entitled to a consequential decree for permanent injunction restraining the defendants from terminating their services except in due course of law? OPP.*
- 4) Whether suit is not maintainable in the present form? OPD.*
- 5) Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD.*
- 6) Whether the plaintiffs have concealed true and material facts from this Court and, therefore, they are not entitled to any relief? OPD.*
- 7) Whether suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD.*
- 8) Whether plaintiffs do not have any cause of action to file and maintain the present suit? OPD.*
- 9) Whether plaintiffs are estopped from filing the present suit by their own acts and conduct?*

OPD.

10) Whether suit is time barred? OPD.

11) Relief.”

DW1 Ram Chander in his affidavit stated that the plaintiffs' case shall be considered for regularisation on availability of vacancies. There was no complaint against the plaintiffs and their work and conduct is up to mark. Some juniors to the plaintiffs have been regularised and as per instructions given in letter Ex.P6, plaintiffs were entitled for regularisation of their service. The plaintiffs being part time ground 'D' employees, who entitled for regularisation after completing 10 years of service. The suit was decreed by the trial Court and the lower appellate Court has dismissed the appeal filed by the State. Reference was made to judgments of the Hon'ble Apex Court in *Mineral Exploration Corporation Employees Union Vs. Mineral Exploration Corporation Limited & anr., 2006 (3) SCT 802*, and this Hon'ble Court in the case of *Sukhdev Kaur Vs. State of Punjab, 2002 (8) SLR 349 (P&H)* and *Des Raj Vs. State of Haryana & ors., 2003 (4) SCT 264*, whereby a consistent view has been taken that keeping the contingent workers for a long time, offering regular appointment periodically and abruptly stopping them taking on duty, amounted to unfair labour practices. An employer cannot be allowed to play with the future of the thousands of employees from all benefits available to regular employees. They must be regularised in service after a reasonable time. They cannot be deprived of the benefits of being a regular employee indefinitely. In Sukhdev Kaur's case, where the

petitioners were working as part time sweepers, their claim for regularisation of service was rejected on the ground that they had not been employed after having been sponsored by the Employment Exchange. Finding no merit, the appeal was dismissed. During the pendency of the regular second appeal, an affidavit was filed on 06.04.2009 by the Superintendent of Police. In paragraph 2 of the affidavit, names of the employees who were juniors to the plaintiffs have been regularised, details of which are as under:-

Sr. No.	Name of the employee	Designation	Date of regularisation
1.	Jasbir Singh	Sweeper	01.04.1993
2.	Ram Phal	Cook	22.04.1993
3.	Samar Bahadur	Sweeper	22.04.1993
4.	Sohan Lal	Mali	22.08.1995
5.	Satish Kumar	Barber	23.03.2001
6.	Ram Parshad	Cook	08.09.2001
7.	Rigam Kumar	Sweeper	24.09.2003

The respondent/plaintiffs in CM No.2770-C of 2015 has placed on record order dated 06.08.2014 (Annexure A-2), vide which the persons juniors to the plaintiffs have already been regularised and judgment dated 19.05.2011 passed by a Coordinate Bench of this Court in **CWP No.1133 of 2010** titled as **Ram Harsh & ors. Vs. State of Haryana & ors.** where the claim of the employees who were working as contingent part time employees seeking minimum wages has been allowed.

Counsel for the appellants has placed on record judgment (Annexure A-1) whereby the claim of the contingent employees for

minimum wages has been accepted and the writ petition has been allowed. An affidavit has been filed by the Superintendent of Police, Kurukshetra in compliance of the order dated 27.05.2015 to explain how the regularisation policies were being implemented. As per notification dated 11.08.2000 (Annexure R-I), no person shall be appointed unless he possesses the qualification and experience as per rules of direct recruitment. The regularisation notification for carpenter and mason, 17 candidates have been regularised who were possessing the qualification. No person junior to the respondents who does not fulfil the requisite qualification has been regularised. As per regularisation policy Annexure R-II dated 25.07.2014, Annexure R-III dated 18.06.2014 and Annexure R-IV dated 07.07.2014, a committee consisting of Deputy Superintendent of Police, Headquarters, Kurukshetra, Inspector Establishment and Welfare Inspector was constituted on 01.08.2014 (Annexure R-V) to consider the case of record of Group 'D' employees for regularisation. A list of 59 class IV employees contingent paid part time employees was made and list of 22 group 'D' employees was prepared (Annexure R-VI) and as per their records strictly in accordance with the guidelines recommendation for regularisation of 17 senior most eligible candidates was made as per posts vacant. Remaining five candidates were recommended for future promotions and separate list of remaining 37 candidates (Annexure R-VII) was prepared by the said committee. The office, vide order dated 06.08.2014, has regularised the services of 17 candidates, who were

recommended (Annexure R-VII). The services of respondent No.2-Ram Hans have been regularised on 06.08.2014 (Annexure R-VIII) as he fulfils the qualification and other conditions. The other respondents do not fulfil the qualification and they are not eligible for regularisation.

The question that arises for consideration is whether the remaining respondents who have not been regularised and have been working since 1980 can be rejected for regularisation only on the condition that as per Annexure R-I they do not fulfil the qualification of the direct recruitment. A Coordinate Bench of this Court in the case of **Gopal Krishan Joshi Vs. Haryana Tourism Corporation Ltd. & anr.** in **CWP No.1631 of 2010 decided on 01.05.2015** examined the case of an employee who was appointed in the year 1984 and his services were not regularised. This was rejected on the ground that he did not have the essential qualification of Matric with two years diploma of Electrician. After serving for a period of 24 years, the respondents could now turn around and claim that his services cannot be regularised since he does not have the prescribed qualification. The writ petition was allowed directing the respondents to regularise the petitioner with effect from the date his immediate junior was regularised. The Hon'ble Supreme Court in the case of **Malathi Das (Retd.) now P.B. Mahishy & ors. Vs. Suresh & ors. 2015 (3) SLR 34,** has held that 55 similarly situated employees were regularised after the decision in the case of **Secretary, State of Karnataka & or. Vs. Uma**

Devi & ors., 2006 (2), SCT 462. 55 Similarly situated employees had been regularised on 18.04.2006. Hence the claim of other employees who were not regularised was to be considered on the principles of parity. The Hon'ble Supreme Court made it clear that all the competent authorities were bound to regularise the services of the respondents as done in the case of 55 persons who were regularised on 18.04.2006.

In the present case, as per the affidavit dated 13.07.2015 filed by the Superintendent of Police, Kurukshetra, the regularisation of the respondents is being denied on the ground that as per the notification dated 11.08.2000 (Annexure R-I), the necessary qualification for the post of carpenter and mason is middle pass with Hindi. Pursuant to the notifications issued for Annexure R-II dated 25.07.2014, Annexure R-III dated 18.06.2014 and Annexure R-IV dated 07.07.2014, a committee consisting of Deputy Superintendent of Police, Headquarters, Kurukshetra, Inspector Establishment and Welfare Inspector was constituted on 01.08.2014 (Annexure R-V) to consider the case of record of Group 'D' employees for regularisation. Vide Annexure R-VI, a list of 22 group 'D' employee was prepared who have the requisite qualifications and a separate list of 37 employees was prepared by the said Committee (Annexure R-VII) and as per their records strictly in accordance with the guidelines recommendation for regularisation of 17 senior most eligible candidates was made as per posts vacant. The services of respondent No.2-Ram Hans have been regularised on 06.08.2014 (Annexure R-

VIII) as he fulfils the qualification and other conditions. The other respondents do not fulfil the qualification and they are not eligible for regularisation, therefore, they have not been regularised. The stand taken in the affidavit is contrary to the judgment passed by the Coordinate Bench of this Court in Gopal Krishan Joshi's case (supra) as the employee who has been working since 1984 was not being regularised as he did not have the essential qualification of Matric with two years diploma of Electrician. The respondents in the present case have been appointed with the department in the years 1980, 1984, 1992, 1993 and 1994. Apart from the condition of having the requisite qualification, the respondents fulfil all the other conditions for regularisation.

In view of Annexure R-I, no substantial question of law arises for adjudication in this appeal.

Dismissed. The appellants are directed to consider the case of the respondents and pass appropriate orders within four months and compliance report be sent to this office.

29.07.2015
Vinay

(RITU BAHRI)
JUDGE