

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

Civil Writ Petition No.24337 of 2012

Date of decision: 17.8.2015

Shri Pal and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.P.K.Goklaney, Advocate,
for the petitioner.

Mr.Nikhil K. Chopra, DAG., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The petitioners are nine in number who have been working at the Dr. Ambedkar Institute of Careers and Welfare Department, Punjab, Mohali. They have been serving continuously on different posts since 1987 and last of them Jagpal joined on 10th June, 1997. They are working on Class IV posts of Chowkidar, Cook, Mali, Helper (Kitchen), Mess Helper, Sweeper, Library Sewadar etc. They have claimed regularization of services from the Government but their request had not met with success.

2. The only defence raised in response to the writ petition is in para. 10 where the Government has pointed out to the policy dated 18th March, 2011 which is stated to be applicable to the workers only in the

Departments of Governments specified in the policy circular but not the respondent department in which the petitioners serve for years together as its name does not figure in the annexure to the regularization policy. No special reason has been given in the written statement as to why the Welfare Department has been excluded from the purview of the policy which appears to be restricted to departments of Forest, Health, Technical Education, Urban Local Bodies even against posts which are sanctioned or not.

3. The petitioners had earlier filed CWP No.4470 of 2001 and CWP 1856 of 2004 claiming regularization of their services as per the policies issued by the Government from time to time. These petitions were disposed of by a common order dated 15th September, 2011 where a direction was issued to the Government to consider the claim of the petitioners for regularization keeping in view the policy circular dated 18th March, 2011. The directions of this Court were as usual not complied with which compelled the petitioners to approach this Court in COCP No.886 of 2012 in which an order was passed on May 14, 2012. The learned Single Judge of this Court was confronted with the situation where the Government had come up with the plea that the policy dated 18th March, 2011 is inapplicable and, therefore, this Court while disposing of the contempt petition, issued a clarificatory direction to the respondents to reconsider the claim of the petitioners for regularization of their services under any other policy applicable and pass an appropriate order within a period of 3 months. In the wake of the order passed by this Court, an order was passed by the Government after about a year on 9th August, 2012 rejecting their case on the specious plea that the petitioners were not working against regular

sanctioned posts. This led to filing of another writ petition bearing CWP No.4150 of 2012 titled *Siri Pal and others v. State of Punjab and others* which was disposed of on 5th March, 2012 with the directions to the respondents that petitioners who had been working till then for the last 22 to 24 years against permanent posts would submit a comprehensive representation to the respondent Government within one month citing the Full Bench decision of this Court in *Avtar Singh v. State of Punjab and others*, 2012 (2) S.C.T. 31: 2012 (1) SLR 832 to *inter alia* contend before the Government that the petitioners are not only entitled to regularization but also to the minimum of the regular pay scales plus allowances and arrears, if any, admissible to them.

4. The Full Bench of this Court in *Avtar Singh's* case had laid down the following principles : -

(1) A daily wager, adhoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, adhoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, adhoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowance on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of

10 years of continuous working a daily wager, adhoc or contractual employee shall be entitled to arrears for a period of three years and two months.”

5. Besides, recently another Full Bench has gone into the question of regularization in LPA No.754 of 2010, **Municipal Council, Dina Nagar v. Presiding officer, Labour Court, Gurdaspur and another** decided on 10th October, 2014 in which 7 labour law principles have been culled out which are : -

(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement,

the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.

6. Still further, the question of regularization has been examined comprehensively by the learned Single Judge of this Court in **Khajjan Singh and others v. State of Haryana and others** and connected writs delivered on May 28, 2014 reported in 2105 (1) SCT 604 where this Court has held that in appropriate cases, the writ court can itself order regularization to remove unfair discrimination where similarly situated daily wage employees have been regularized without resort to court process. Moreover, the Constitution Bench ruling in **Secretary, State of Karnataka and others v. Umadevi**, (2006) 4 SCC 1 was distinguished by the Supreme Court in **Maharashtra State Road Transport Corporation Ltd. v. Casteribe Rajya Parivahan Karamchari Sanghalana**; (2009) 8 SCC 556

to hold that principles of *Uma Devi's* case do not apply to the labour laws and labour courts can pass effective orders regularizing the services of workmen who have remained as daily wagers for years together and action of not regularizing their services would amount to unfair labour practice under Entry 9 Schedule V of the Industrial Disputes Act, 1947 which provision is akin to the corresponding provision in Entry 6 in MRTU & PULP Act considered in *Casteribe* case. The decision of the learned Single Judge has been affirmed recently in LPA No.948 of 2015 decided on 21st July, 2015.

7. Resultantly, any action of the State which amounts to unfair discrimination will have to be redressed by this Court as a primary administrator of unfair discrimination without relegating aggrieved workmen to alternative remedies before the labour court which are tardy and cumbersome provided disputed question of fact are not involved, then the writ court is the speedy and efficacious remedy.

8. I find no substance in the stand of the respondent State and any distinction sought to be drawn artificially between the departments of the Government by excluding the Welfare Department, Punjab would hold no water in the face of mandates of twin facts of unfair discrimination and reasonableness in Articles 14 of the COI. The stand of the State in para. 10 is not approved and is set aside as infringing of the equal protection clause in Article 14 of the Constitution. I also find no reasonable classification in selecting a few departments for preferential treatment for the purposes of regularization of workmen who have suffered long drawn out exploitative employment for over well over two decades.

9. For the foregoing reasons, this writ petition is allowed and the impugned order [P-12] is quashed. A direction is issued to the respondents to consider regularizing the services of the petitioner from the first applicable policy of regularization with all consequential benefits arising from regularization. Fresh orders be passed in the light of this order and in the light of the Full Bench decisions of this Court in *Avtar Singh* and *Municipal Council, Dina Nagar* cases, the decision of the Supreme Court in *Casteribe* case [supra] and the decision of this Court in *Khajjan Singh's* case [supra] as upheld in appeal. Let the needful be done within a period of 2 months from the date of receipt of a certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

August 17, 2015
Paritosh Kumar