

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

R.S.A. No. 4917 of 2009 (O&M)

Date of decision : 06.05.2015

Block Education Officer & others

...Appellants

versus

Kamla Devi

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.N. Yadav, Advocate
for the appellant

Mr. Sidharth Sanwaria, DAG, Haryana

RITU BAHRI , J.

State has come up in Regular Second Appeal against the judgment and decree dated 07.08.2009 whereby appeal filed by the plaintiff-respondent (for short 'the respondent') was allowed, which was against the judgment and decree dated 03.01.2008, whereby the suit of the respondent was dismissed.

The case as put forth by the respondent is that she was employed as Safai worker (Sweeper) under the defendants/appellants (for short 'the appellants') on temporary basis on 15.09.1983 and she has filed a suit for regularization of her services as service of other

employees had been regularized by the appellants and this benefit was not extended to the respondent.

On notice, the appellants appeared and filed their written statement and took a stand that the respondent had been appointed as part time sweeper only for 1-1/2 hours daily as per Deputy Commissioner Rate and she is not in service from 28.02.2003 and her work and conduct remains satisfactory. As per rules, she is not entitled for regularization of her service.

From the pleading of the parties, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for regularization of her service as sweeper with all consequential benefits on the ground taken in the plaint? OPP

2. Relief.”

As per deposition of D.W.1 Santosh BDO Kanina who tendered her evidence by way of affidavit Ex DW1/A, the respondent was appointed on 15.09.1983 on temporary as part time sweeper on D.C Rate. In the vacation period, she was not paid any salary. She was doing her duty for 1-1/2 hours daily and on 28 February she was relieved and after break she again joined. As per Haryana Government

Policy dated 30.12.1998, the respondent is not fulfilled the conditions for regularization of her service, as she must have the knowledge to read and write Hindi language. The date of birth of the respondent shown as 16.05.1950 and thus she has completed 57 years of her age and not entitled for regularization of her service. Service of any junior of the respondent was not regularized till today.

No evidence was led by the respondent to show that she fulfill the terms and conditions of the above said policy dated 30.12.1998 and accordingly, her suit was dismissed by the learned trial Court.

Feeling aggrieved, she preferred an appeal against the judgment passed by the trial Court and the Lower Appellate Court has referred to judgment passed by this Court in a case of **Dharam Pal vs. State of Haryana, 2002 (2) RSJ 631** to show that where the petitioners in those cases, were engaged as Chowkidar-cum-Water Carrier, Sweeper Mali etc as part time workers in the year 1987 onwards, the State was directed to regularize their services when availability of work was very much there.

The respondent in the present case is working with the appellants for the last about 26 years. As per deposition of D.W.1 in her cross examination, the respondent was working with the

department till the date of deposition i.e 07.08.2009. The respondent had furnished her affidavit that she is still continuing with the department. Accordingly, her suit was decreed by the lower Appellate Court relying upon ***Dharam Pal's case (supra)***.

The present appeal was admitted in this Court on 13.05.2010 and the operation of impugned judgment was stayed. However, the State was not held entitled to dispense with the service in case the respondent is in service and working as on date.

Hon'ble the Supreme Court in a case of ***Secretary, State of Karnataka and others vs. Uma Devi and others, 2006 (2) S.C.T 462*** had held that even a direction cannot be given by the High Court to consider the case of daily wagers for regularization of their service. Similar orders were passed by Hon'ble the Supreme Court in a case of ***State of Karnanataka and others vs. G.V. Chandershekar in 2009 (2) SCT 101***

The respondent filed C.M. No. 10465-C of 2013 for vacating the interim order dated 24.12.2009 and notice of this application was given to the appellant vide order dated 30.09.2013 and the State was given time to file an affidavit of Director, Primary Education Haryana, denoting the factual position qua the respondent in terms of the policy.

In the affidavit dated 10.02.2014, reference was made to the policy dated 30.12.1998 (R-2) of regularizing the service of part time employees working on part time basis against regular sanctioned posts. As per this policy, the part time employees who fulfilled the requisite qualification as prescribed for regular class IV employees in the Haryana State Secondary Education Field Offices (Group D) Service Rules, 1998, they can be regularized against the regular sanctioned vacant post. As per appendix B (R-3), the candidates must be able to read and write Hindi, whereas the respondent is an illiterate person and cannot read and write Hindi. There was no regular sanctioned post of Sweeper available in the institution i.e office of Block Education Officer, Kanina or at Government Girls Primary School, Kanina Mandi, where the respondent remained posted. Subsequently, vide government order dated 25.04.2007 (R-4) the policies for regularization of services of adhoc/contractual/daily wages and part time workers were withdrawn, keeping in view the law laid down by **Uma Devi's case (supra)**. Once the policy had been withdrawn, the the respondent cannot seek regularization of her services. Therefore, notification dated 29.07.2011 had been issued by the Government of Haryana for regularization of the certain category of employees belonging to Group C & D as a one time measure on humanitarian

ground. The respondent does not even fulfill the conditions of this policy. She was relieved from service on attaining the age of 60 years on 31.05.2010, before coming into effect of this notification dated 29.07.2011.

In view of the fact that the respondent has been relieved from service on attaining the age of 60 years on 31.05.2010, her case has now to be examined that whether she is entitled for regularization of her services on the date when the suit was filed by her on 07.12.2002.

The respondent was initially appointed on 15.09.1983 and she had put in almost 19 years of service when she had filed her suit for regularization.

In ***Dharam Pal's case (supra)***, a Division Bench of this Court had examined the case of part time workers who had been working since 1987 and the writ petitions were disposed of by giving a direction to the State to regularize the services of the petitioners in accordance with the policy and upon giving regularization (relaxation ?) to the petitioners in regard to the prescribed qualifications as submitted by the learned Adcoate General, Haryana.

As per direction given by the Division Bench, there was no condition imposed with the part time employee that they should be

literate.

The respondent has been working since 1983, and she had put in 19 years of service when she had filed a suit. The above mentioned Division Bench judgment was passed on 21.03.2002 and many part time employees were regularized. However, the present respondent who had filed the suit on 07.12.2002, was not considered for regularization of her service. Even after a gap of 09 months of passing of the Division Bench judgment, part time sweeper i.e the respondent was compelled to approach the civil court for seeking the necessary relief after putting in 19 years of service with the appellants. The respondent cannot be denied the benefit and should be considered for regularization on the ground that in the year 2007, the policy had been withdrawn vide government order dated 25.04.2007 (R-4). The respondent had a right to be considered as per directions of the Division Bench judgment passed on 21.03.2002 before 25.04.2007. The judgment in ***Uma Devi's case (supra)*** passed in the year 2006 and notification was issued on 29.07.2011 (R-5). Even part time employees were to be considered for regularization if they fulfilled the conditions. One of the condition was that they should be in service for not less than 10 years as on 10.04.2006. The notification was issued by State of Haryana after the judgment in ***Uma Devi's case (supra)***

on humanitarian ground. The object of issuing notification was that the part time/adhoc employees who had not put in 10 years of service with the State authorities could not be left high and dry and their services should be secured. Vide government order dated 25.04.2007 (R-4) the policies for regularization of services of adhoc/contractual/daily wages and part time workers were withdrawn. Hence, an attempt was made by the State Authority on humanitarian ground to regularize the service of adhoc/part time employee, subject to fulfilling conditions of eligibility. Hence, the part time employees who were employed in the year 1963 and had completed 10 years of service as on 10.04.2006, were eligible for regularization of their service whereas the present respondent who had put in 27 years of service and had retired on 31.05.2010, had a right on humanitarian ground to be considered for regularization of her service after being appointed in the year 1983. Her case on the date of filing of suit on 07.12.2002 was covered by ***Dharam Pal's case (supra)*** which was passed on 21.03.2002 and till the revocation of the regularization policy vide government order dated 25.04.2007 (R-4), it was the State authorities who chose not to consider the case of the respondent for regularization and pass appropriate orders.

In the special circumstances of the present case, the

present appeal is dismissed and direction is being given to the appellants to pass appropriate considering the case of the respondent, in view of ***Dharam Pal's case (supra)*** for regularization without insisting on the condition that she must have the knowledge to read and write Hindi language. This process shall be completed within a period of four months from the passing of this order and compliance report be sent to this Court thereafter.

(RITU BAHRI)
JUDGE

06.05.2015

G Arora