

CWP No.1843 of 1996;
 CWP No.1844 of 1996;
 CWP No.16467 of 1995 &
 CWP No.17024 of 1995

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

Date of decision: 27.04.2016

CWP No.1843 of 1996

Pirthvi Raj & others

...Petitioners

Vs.

State of Punjab & others

...Respondents

CWP No.1844 of 1996

Paras Ram & others

...Petitioners

Vs.

State of Punjab & another

...Respondents

CWP No.16467 of 1995

Nachattar Kaur

...Petitioner

Vs.

State of Punjab & another

...Respondents

CWP No.17024 of 1995

Jit Singh & others

...Petitioners

Vs.

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Anju Arora, Advocate, for the petitioner(s).

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J.

This order will dispose of above mentioned four writ petitions, as common questions of law and fact are involved in them, which can conveniently be decided by a common order. However, the facts are taken from CWP No.1843 of 1996 for the sake of convenience.

All the five petitioners had put 6 to 10 years of service on daily-wage basis on the post of Mali/Beldar continuously without break. The claim in this petition is for direction to the respondents to regularize the services of the petitioners. The writ has remained pending for 20 years.

This petition was filed at a stage when the operating law was stated by the Supreme Court in State of Haryana & Others Vs. Piara Singh & Others, (1992) 4 SCC 118. Though *Piara Singh's* case has been held to be no longer a good law in Secretary, State of Karnataka & others Vs. Umadevi & others, (2006) 4 SCC 1 (Umadevi-3), but Paragraphs 44 & 53 of *Umadevi-3* would come in aid of the petitioners.

The claim in this petition is based on Punjab Government instructions dated 07.05.1993, which lay down the State policy of regularization of service of daily-wage employees etc. as per terms and conditions laid down therein. The petitioners had been representing to the Department to regularize their services prior to the filing of the petition. Copies of such representations have been attached with this petition. They have not been addressed by the department.

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The case has been contested by the respondents by filing written statement dated 11.04.1996. The respondents submit that the petitioners were engaged by the Forest Guard in District Fatehgarh Sahib and not by respondents No.1 & 2. It is admitted that the petitioners worked as casual daily-wage workers in the Division concerned, but not as Mali/Beldars. The Forest Division where the petitioners worked came into existence in December, 1992. Prior to this, the area was under the Patiala Forest Division. The D.F.O., Patiala destroyed old record as per Rule 15.19 of the Punjab Forest Manual Volume II and the same is no longer available. It is admitted that the Punjab Government framed another policy on regularization vide letter dated 23.01.1995 to make regular daily-wage workers who had worked for 10 years and who had served for 240 days in each year by recognizing the principle in the Industrial Disputes Act, 1947.

When notice of motion was issued on 06.02.1996, the Division Bench ordered status quo to continue till further orders.

As a result, the petitioners have been in service since then. In Para.2 of *Umadevi-3*, the Constitution Bench of the Supreme Court recognized inherent power of Government to appoint daily-wage workers according to the exigencies of administration. Such workers hold no public posts under the state.

There is at present sufficient body of law both on service law and labour law side to protect the petitioners who have been working for years together and grant them permanency in terms of the policies of regularization then prevailing when the action was brought. There is no categorical refutation in the written statement filed by the State or at the hearing today that the petitioners did not work in the Forest Department prior to the filing of the writ

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petition in 1996. If the record is destroyed due to heavy floods in a calamity that visited Patiala, then the petitioners cannot suffer from their destruction as they were not responsible. Those records as per Annex P-3 relate to Bill Vouchers and Muster Rolls from the years 1980-81 to 1988-89 and 1989-90.

The length of service claimed by petitioners No.1 to 5 is from 1986; 01.01.1989; 1989; 01.01.1986 & 01.01.1990 respectively. The first three as Beldars while the last two as Malis. It can never be disputed that the records from 1990 to 1996 when the petition was brought is thereafter available in the Department records. It can also not be disputed that many daily-wage workers have been regularized in service under policy instructions of the Government during the period claimed. It cannot also be disputed that since the passing of the status quo order by the Division bench, the employment would qualify as of litigious nature as explained in *Umadevi-3*. But the declaration of law came in 2006 even before the rights of the petitioners come into existence even prior to the passing of the status quo order. The State has not disputed that from 1990 (date of destruction of record) to January, 1996, the petitioners were not in service as daily-wage employees. The petitioners have thus a right to claim regularization of their services in terms of the policy circular dated 07.05.1993 even though the circular has ceased to exist in view of the law in *Umadevi-3*.

It may be noted that the respondents have relied on an order rendered in CWP No.6503 of 1992 titled 'Ramesh Kumar & others Vs. The State of Haryana & others' which petition was dismissed by the Division Bench of this Court on 27.05.1992. The finding in that case is that the petitioners therein were employed purely on daily-wage and for seasonal work and not as regular employees. This finding was affirmed and the writ petition dismissed.

The present petitioners were not party to those proceedings. The Supreme

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Court in *Umadevi-3* in the main applied humanitarian principles to long serving employees when their Lordships carved out a remedy for them in cases where the workers had put in 10 years of service prior to 2006, when the judgment was pronounced to consider claims as a one-time measure where the initial appointment was not illegal. It is not the case of the respondents that the employment of the petitioners initially or thereafter was illegal or unconstitutional or they were back door entries.

Keeping in view the directions in Paragraphs 44 & 53 of *Umadevi-3*, while allowing the present set of writ petitions, a direction is issued to the respondents to consider the petitioners case for regularizing their services in the present and the accompanying writ petitions in terms of the policy instructions which fit their case, that is, 07.05.1993 or thereafter, as the case may be. The consideration in the light of this order be completed within 2 months from the date of supply of certified copy of this order.

Order dasti.

01.03.2016
 Vimal

[RAJIV NARAIN RAINA]
JUDGE