

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

Civil Writ Petition No.16355 of 2012

Date of decision: 22.7.2016

Sharda Devi

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Rajesh Garg, Sr. Advocate, with
Ms.Nimrata Shergill, Advocate,
for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana.

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 petitioner worked as part-time sweeper in the office of the Superintending Engineer, Public Health Branch, Panchkula. There is a dispute whether she served since 1989 or 1995. The issue needs not to be dilated upon since the petitioner concedes before the Court that for all intents and purposes, her service from 1995 should be counted in case there is merit found in her prayer for regularization of her services. Accordingly, this Court accepts her non-disputed length of service from 1995 to determine her prayers.

While she was serving, the Executive Engineer, PHE Division, Panchkula wrote to the Superintending Engineer, PHE Circle, Yamunanagar a memo dated 28.3.2012 [Annexure P-7] certifying facts regarding the petitioner as follows : -

“It is certified that Smt.Sharda Devi part time sweeper has fulfilled the conditions from Sr.no.1 to 8 of the above subject except condition no.1 which is a gap period is more than 1 month, the reasons as already been explained in the letter no.12947 dated 25.9.2003 that her services continuing for previous absent period shall be referred to higher authorities. Now the policy of Government regarding regularization of services there is a condition that the workman should have worked continued minimum ten years without break for more than a one month in a calendar year.

Smt.Sharda Devi has joined after absent period on 1.10.2003 on the basis of demand notice treated as withdrawn/settled (copy attached). The case was pending with Assistant Labour Commissioner cum Conciliation Officer, Sector 30B, Chandigarh and decided on the mutual settlement/withdrawn (certified copy of Labour court attached).

In view of the above if the services of Smt.Sharda Devi are considered as on the date of notification she had completed around fifteen years and that continuously except the period as stated above, this office is of the opinion that the services of Smt.Sharda Devi may be regularized wef 29.7.2011 as per Haryana Govt. notification and lenient view may be taken for the gap period. The matter is submitted for further necessary action please.”

A recommendation was made that her services be regularized from 29.7.2011 as per Haryana Government notification and a lenient view may be taken for the gap period. The gap period was occasioned by cessation of service caused by termination of service in two parts, i.e., from June, 2002 to September, 2003 [cumulatively 15 months] for which the

petitioner cannot be faulted as she was forced out of service. When she raised an industrial dispute, the Conciliation Officer settled the dispute between the parties on a bargain of give and take. The petitioner would give up her rights to back wages and be returned to work. This is how the petitioner was reinstated in 2005.

Diametrically opposite to the recommendations in memo dated 28.3.2012, the Superintending Engineer wrote back memo dated 22.5.2012 [Annexure P-8] to the Executive Engineer with the following remarks : -

“The Service Regularization case of Smt.Sharda Devi, Part Time Sweeper is returned herewith the remarks that Smt.Sharda Devi does not fulfill all the condition of Haryana govt. policy dated 29.07.2011 for regularization, since she was not engaged from employment exchange. The initial appointment is thus not as per constitutional requirement.”

It is this memo which is impugned in this petition. A reading of the memo reveals that no reason has been given as to why the petitioner does not fulfill the conditions laid down in the policy dated 29.7.2011 to rebut the emphatic statement of the Executive Engineer that the petitioner fulfilled all the conditions except the one relating to the gap period which he had recommended to take a lenient view. The policy lays down that the gap period should not be more than one month at a time for the policy to become operational on a claimant. Even so, the case of the petitioner cannot be viewed as a gap period since the wide gap was created by an illegal action of the respondents in terminating her services and refusing to take her back to work. There was no fault on the part of the petitioner as she did not withhold her labour and could only do what was within her power i.e to raise an industrial dispute under Section 10(1)(c) read with Section 2-A of

the Industrial Disputes Act, 1947, which as stated earlier, was resolved in the course of conciliation proceedings and never reached the Labour Court for adjudication on merits. One way of looking at this is that the respondents after disengaging services without notice or compensation deprived the petitioner of her right to an award on merits by agreeing to a compromise before the conciliation officer. Had litigation ensued an award may have come in her favour leaving room for the Labour Court to make such orders as it deemed fit with respect to the termination/reinstatement, back wages etc. in case retrenchment was held illegal and ab initio void. There was a distinct possibility of such a course of events.

Ms.Shruti Jain Goel, learned State counsel contends that the petitioner cannot claim regularization as a matter of right and the gap period was not as a result of malafide action. She further submits that the issue of regularization of the petitioner has remained without a decision thereon since 2012 regarding condoning of gap period, if warranted.

It is now 4 years gone and the long period of inactivity is sufficient passing time to presume and conclude that there is deemed condonation of the gap period since her services have been utilized.

Another contention of learned State Counsel is that the petitioner was not working against a sanctioned post and availability of sanctioned post is *sine qua non* of the policy of regularization. It has also not been recorded in the memo dated 28.3.2012 when the Executive Engineer made recommendation in favour of the petitioner that she was working against a sanctioned post. On these premises she prays for dismissal of the petition.

It is by now well settled that part-time workers and daily wagers do not hold posts under the Government and Government is within its right to employ daily wagers and part-time workers in the exigencies of work and needs of the administration. This concept of employment of daily wagers etc has been recognized by the Constitution Bench of the Supreme Court in **Secretary, State of Karnataka and others v. Umadevi**, (Umadevi 3), (2006) 4 SCC 1 in paragraph 2 of the judgment. Besides, *Umadevi-3* is to be read in the light of [Maharashtra State Road Transport Corporation Ltd. v. Casteribe Rajya Parivahan Karamchari Sanghalana](#); (2009) 8 SCC 556 and [Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI and another](#); 2014 (2) SCT 234 (SC). And my judgment in [Khajjan Singh v. State of Haryana](#), 2014 SCC Online P&H 10865; ILR (2014) 2 P&H 363 would also help.

Therefore, I would not accept the view that a part-time employee cannot be regularized except against a vacant sanctioned post as known to service jurisprudence where posts are governed by rules. These people stand on non-rule territory and develop rights of security of labour to root out exploitation at the hands of the functionaries of the State who engage them for very long periods of time and endlessly. As a matter of fact, the Haryana Government policy dated 29.7.2011 itself envisages regularization of part-time workers and therefore, it is not open to the State to argue that part-time workers can be excluded altogether from the concession unless they do not fall within the prescriptions in the policy. The very fact that the petitioner has been working since 1995 [except for the gap period] is sufficient to conclude that there was continued need for part time sweepers in the organization and she filled that gap when she was taken

back in service on a settlement arrived at during conciliation proceedings. As far as the impugned memo is concerned, I find no cogent reason to deny the claim of the petitioner by a general order that she does not fulfill all the conditions of the policy only for the reason that she was not initially engaged through sponsorship of employment exchange. The respondents have rejected the case of the petitioner mainly for the reason that the initial appointment is not as per constitutional requirements. This is a specious plea which is noticed only to be rejected. Part-time employment or daily wage service does not strictly fall within the provisions Article 16 of the Constitution of India and such services are in fact governed by the principles of labour law and Industrial jurisprudence and their special rights are preserved in the Industrial Disputes Act, 1947 on the touchstone of victimization and unfair labour practice. If there are no disputed questions of fact to be resolved, then this Court in its writ jurisdiction can well issue directions in equity to the respondents to consider regularization of the services of the petitioner in terms of the declared policy by treating the gap period as regular since it was occasioned by a wrongful and vindictive act of employer.

Accordingly, this petition is allowed. Memo dated 28.3.2012 is quashed. A direction is issued to the respondents to consider regularizing the services of the petitioner with effect from due date in terms of the policy dated 29.7.2011 within 8 weeks of certified copy of order. The petitioner would take all consequential benefits flowing therefrom as per policy.

(RAJIV NARAIN RAINA)
JUDGE

July 22, 2016