

CWP No.11950 of 2016 (O&M)
CWP No.12560 of 2016 (O&M)
CWP No.12578 of 2016
CWP No.12579 of 2016
CWP No.12751 of 2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.11950 of 2016 (O&M)

Anju Bala and others ... Petitioners

Versus

State of Haryana and others ... Respondents

2. CWP No.12560 of 2016 (O&M)

Naveen Kumar and others ... Petitioners

Versus

State of Haryana and others ... Respondents

3. CWP No.12578 of 2016

Gagan Deep ... Petitioner

Versus

State of Haryana and others ... Respondents

4. CWP No.12579 of 2016

Paramjit Singh and others ... Petitioners

Versus

State of Haryana and others ... Respondents

5. CWP No.12751 of 2016

Sapna ... Petitioner

Versus

State of Haryana and others ... Respondents

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Date of Decision: 15.12.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Harish Bhardwaj, Advocate,
for the petitioner(s) in CWP Nos.11950 and 12560 of 2016.

Mr. Satbir Gill, Advocate,
for the petitioners in CWP No.12579 of 2016.

Mr. B.S. Saroha, Advocate,
for the petitioner in CWP No.12751 of 2016.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Puneet Gupta, Advocate for the respondent HALSA.

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of CWP No.11950 of 2016 titled *Anju Bala and others v. State of Haryana and others*, CWP No.12560 of 2016 titled *Naveen Kumar and others v. State of Haryana and others*, CWP No.12578 of 2016 titled *Gagan Deep v. State of Haryana and others*, CWP No.12579 of 2016 titled *Paramjit Singh and others v. State of Haryana and others* & CWP No.12751 of 2016 titled *Sapna v. State of Haryana and others*.

2. Heard Mr. Vikram Aggarwal, the learned Member Secretary, HALSA in Court and Mr. Puneet Gupta on some of the issues which I thought required his personal presence to assist the Court from the record.

3. Heard learned counsel for the petitioners in this bunch of five cases. Having regard to the limitations placed on this Court by the constitution bench of the Supreme Court in Secretary, State of Karnataka vs.

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Uma Devi, (2006) 4 SCC 1 relief directly from the Writ Court would not flow to regularize their services as clerks in HALSA. In this case regard, the Government has rejected the request of the petitioners in writing for regularization of their services. A detailed order has been passed by the Principal Secretary to Government of the department concerned, which is sought to be impugned by seeking amendment in these petitions. The constraints of *Uma Devi* are equally on the shoulders of the administration, if not as onerous on the High Court. Regularization can only take place if there is a policy and claimants strictly fit the terms and conditions laid down therein.

4. The competent authority in Government, inter alia, considered the case of the petitioners under the regularization policy of June 18, 2014 and has found that the petitioners did not complete three years of temporary/contractual service prior to the cut-off date. It is another matter that this policy is under challenge and consideration before the Division Bench of this Court in pending case *Yogesh Tyagi and others v. State of Haryana and others*, CWP No.17206 of 2014 and the operation of the policy has been stayed ad interim by the Bench.

5. Still further, in the regular recruitment of clerks in HALSA that took place under the aegis of the Central Recruiting Agency of the High Court due to receipt of about 20,000 applications, the petitioners competed in the selection process but failed to make the grade. There are, however, candidates similarly placed as the petitioners who participated in the regular

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recruitment process and Mr. Aggarwal informs that two such candidates are working for HALSA following their regular selection amongst 62 candidates appointed. .

6. Mr. Vikram Aggarwal informs the Court that appointments in District Legal Service Authorities are made except only by prior approval of HALSA Panchkula, which controls recruitments being an independent statutory authority created by an Act of Parliament.

7. In view of these disabling features, it is not possible to interfere with the order sought to be impugned. I find no error in this order which requires to be removed. I would dismiss this petition.

8. Nevertheless, the dismissal of the petition will not preclude the petitioners from competing in the next regular selection and in case, they are overage by then, the period they have served with HALSA may be sympathetically considered for age relaxation. In case, regular selection is not resorted to and vacancies are filled through a process other than direct recruitment, such as by the outsourcing policy, then the petitioners may assert a right to recall through the service providers which HALSA may engage and the State will ensure recall, for the reason that they had rendered service to HALSA for different periods of not more than three years since 2012 till they were discharged from service in May 2016 following regular recruitment, provided their work and conduct was found satisfactory while in service of HALSA and they continue to display standards required for service of HALSA in case they are inducted through the outsourcing policy.

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The reasons for making this part of the order is that HALSA qualifies to be an “industry” under the Industrial Disputes Act, 1947 and Clerks are “workman” and therefore, they might have a right of recall/re-employment to original status under section 25-H of the 1947 Act which offers preferential right to retrenched employees. This opportunity may not be denied to them being a labour law principle which can be applied in service law domain to secure them preference over other persons.

(RAJIV NARAIN RAINA)
JUDGE

15.12.2016
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Whether speaking/reasoned	Yes
Whether reportable	No