IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.13039 of 2015

Krishan and others ... Petitioners

Versus

State of Haryana and others ... Respondents

2. CWP No.13060 of 2015

Pala Ram ... Petitioner

Versus

State of Haryana and others ... Respondents

3. CWP No.14470 of 2015

Mahboob Khan ... Petitioner

Versus

The State of Haryana and others ... Respondents

4. **CWP No.15322 of 2015**

Chand Ram and others ... Petitioners

Versus

State of Haryana and others ... Respondents

Date of Decision: 20.09.2016

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

Present: Mr. Ajay Chaudhary, Advocate,
Mr. Jaspal Singh Maanipur, Advocate,
for the petitioner(s).

Mr. Harish Rathee, Sr. DAG, Haryana.

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RAJIV NARAIN RAINA, J.

1. This order would dispose of CWP No.13039 of 2015 titled *Krishan and others v. State of Haryana and others*, CWP No.13060 of 2015 titled *Pala Ram v. State of Haryana and others*, CWP No.14470 of 2015 titled *Mahboob Kahn v. The State of Haryana and others* & CWP No.15322 of 2015 titled *Chand Ram and others v. State of Haryana and others* as common issues are involved regarding claims for regularization of services based on the regularization policy of the Haryana Government dated October 01, 2003.

2. A distinction may be kept in mind in these four cases; two of them; i.e. CWP Nos.13039 of 2015 and CWP 14470 of 2015 arise out of awards of Labour Courts which have attained finality in favour of the petitioners decreeing to them awards of reinstatement with continuity of service. Back wages granted or not is material in pursuit of relief of ante-dated regularization.

3. CWP Nos.15322 of 2015 and CWP 13060 of 2015 are writ petitions filed directly in the High Court since the petitioners therein were continuing in service when not retrenched by the department unlike in the above two petitions. In both these cases the petitioners had approached this Court previously in different writ petitions one filed in 2004 (CWP No.13060 of 2015) while the other in 2012 and in both the cases their petitions were disposed of with directions to the respondents to consider their representations and pass final orders declaring their rights and in case, they were found entitled to regularization, they would be granted all

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consequential benefits from the date of their regularization, if conceded the right. The Division Bench of this Court directed that till the final decision on the matter is taken, status quo on services will be maintained. They have worked continuously in their original capacities.

4. The factual position is not disputed that in each of the petitions the petitioners were appointed on daily wages as Labourer-cum-Malis [Gardeners] on different dates ranging between 1980 to 1993, and one of them later on November 01, 1995 in CWP No.14470 of 2015. The difference on facts being that in the last referred petition, the petitioner was appointed as a Timber Watcher/Labourer on daily wage basis. In both CWP Nos.13039 of 2015 and CWP 4470 of 2015 the petitioners suffered retrenchment and their cases were referred to the Labour Court by the appropriate government for adjudication. They claimed regularization of services from the date the benefit was granted to similarly situated employees who were admittedly junior to them but whose services were not retrenched by virtue of grant of deemed continuity from the date of termination.

5. CWP No.15322 of 2015 is tagged with the writs filed in the year 2009 and 2011 together in main case CWP No.20463 of 2009 titled *Luxmi Devi v. The State of Haryana and others* which was decided by the learned Single Judge on February 08, 2012 with directions to the respondents to consider the claim of the petitioners in consonance with and in conformity to the cases of persons mentioned in the judgment who were junior to the petitioners but were retained in service. The order was passed on February

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08, 2012. Likewise, in CWP No.13060 of 2015, the petitioners had earlier approached this Court in CWP No.9200 of 2004 in which similar orders were passed as noticed above on September 18, 2004 (Supra). There is no doubt that the petitioners have served for long years and in cases where termination orders were passed they would be deemed to have served from the beginning on retrenchment declared illegal by the labour court followed by reinstatement and continuity of service.

6. The impugned order in CWP No.15322 of 2015 passed in implementation of the directions of this Court rejects the case of the petitioners. The summary of the reasons assigned by the authority which passed the impugned order dated January 21, 2013 is outlined as bullets without the accompanying case law cited before the competent authority. The decree was that where the employee/worker had continued to work for not less than ten years as on 10.04.2006 [date of pronouncement of *Umadevi* (3)] and was still in service but not under cover of the orders of the Court or "Tribunals", against duly sanctioned vacant posts; public appointments must be in terms of constitutional scheme of appointments guaranteeing: that no back door entries are permitted; equality of opportunity in public employment was held to be the basic feature of the Constitution; mere long continuance whether under interim orders passed by various courts, tribunals or otherwise would not confer any right on temporary employees to claim regularization; scheme for regularization cannot prevail over rules which are statutory; Courts cannot frame or direct framing of schemes for regularization of temporary employees; no

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directions for regularization, fixing pay scale, continuation in service, promotion, etc. shall be given by the courts as these are executive functions of the State. Courts can only limit examination as to whether the procedure for selection adopted by the Government and remitted to the High Court is unconstitutional or otherwise illegal or is vitiated by arbitrariness or mala fides; the mere fact that there was resorted to a selection even for temporary appointments is inconsequential; regularization, is not a constitutional mode of recruitment by the State or for further promotion within the meaning of Article 16 of the Constitution of India "or anybody" or authority governed by a statutory Act or the rules framed thereunder; mere description of illegal appointments de hors recruitment rules does not mean that they are not illegal inductees to public office; illegality having been committed in the past is no ground that it should be perpetuated; Article 14 contains a positive concept; completion of 240 days posits no right to regularization; regularization ordered prior to *Umadevi case* needs not be re-opened to cache a startling departure; the doctrine of legitimate expectation cannot be invoked by temporary employees to claim that they be made permanent; interim orders in such cases ought to be refused by courts; in *Umadevi,* the Supreme Court overruled all previous decisions in which directions contrary to what had been held by the Constitution Bench.

7. This is the broad stand which holds ground on behalf of the respondent-State in each of the cases as their defence praying that the impugned orders/decisions/inactions are sustainable in the eyes of law.

8. It is the rival contention of the claiming parties that when unfair

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discrimination is pleaded and not denied for the sake of denial and there is prima facie documentary proof that similarly-placed persons as against whom discrimination is claimed have got the benefit while the persons litigating or not but left out, then it becomes the constitutional duty of the Writ Court to remove and prevent continued unfair discrimination and to uphold the right to equality among the peer group torn asunder by illegal terminations repaired by labour courts. Learned counsel for the petitioners cite the law in Hari Nandan Prasad & Anr v. Food Corporation of India, (2014) 7 SCC 190 and Khajjan Singh and others v. State of Haryana and others, 2015 (2) RSJ 135 : 2015 (1) SCT 604 contending that the ratio of those cases crown the cap of these. Next cited is the social philosophy propounded by the Supreme Court in Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192 in paragraphs 30-31 which are reproduced below:-

> "30. O*f late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of*

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> *the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.*
>
> *31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private."*

9. Moreover, this Court is bound to give effect to the law in *Hari Nandan Prasad* case (Supra) where the Supreme Court reaffirmed the legal position summing up as follows:-

> *"However, wherever it is found that similarly situated workmen are regularized by the employer itself under some schemes or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art.14, rather than violating this constitutional provision."*

10. What is true for cases arising out of awards is held equally true for

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the two cases filed directly in this Court and are the part of this bunch. I find no legal principle to differentiate the two and any attempt to do so will be creating an artificial barrier

11. More so, when their employment does not fall in the category of cases "litigious" in character even in CWP No.13060 of 2015 the status quo order issued on September 18, 2004 before the pronouncement in Secretary, State of Karnataka vs. Uma Devi, (2006) 4 SCC 1 their rights would appear to go back to continuity in service, not broken by termination and costly resort to litigation searching for justice. Justice should be omnipresent, available free of cost everywhere and not only from within the confines of a courtroom.

12. As a corollary to the above discussion, these petitions are allowed. It is declared that the petitioners have a right to consideration for regularization of their services notionally from the date when juniors were retained in service and regularized and in the direct writ petitions where continuous service is for long years protected by The Fifth Schedule, Entry 10 of the Industrial Disputes Act, 1947 as explained in *Khajjan Singh* or even by operation of para.53 of *Uma Devi* case. The principle on which relief is based in these cases is to uphold right to equal treatment within a homogeneous group, the fortunate and the deprived, to achieve social equality among those can be reasonably classified together, as explained with the help of case law in the preceding paragraphs.

13. Accordingly, the cases of the petitioners are directed to be considered for regularization of their services either in terms of the

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regularization policy dated October 01, 2003 or February 10, 2004 issued by the Government of Haryana or any other policy where their cases might fit into, preferably the one which is the earliest in point of time.

14. The writ petitions are allowed in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

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Whether speaking/reasoned *Yes*

Whether reportable *Yes*

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