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

CWP No.18878 of 2013
Date of Decision: **February 01 , 2016**

Rambag and another ...Petitioners

versus

Kurukshetra University and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Sanchit Punia, Advocate
for the petitioners.

Mr.A.S.Virk, Advocate
for the respondents.

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HARINDER SINGH SIDHU, J.

Rambag and Usha Yadav – petitioners have filed this petition for issuance of a direction to the respondent – Kurukshetra University, Kurukshetra to consider their claim for regularisation with all consequential benefits in the light of the policy dated 1.10.2003 (Annexure P-3).

The facts, as stated in the petition, are that petitioner No.1 had initially joined the University in the year 1995 on the post of Common Room Peon in the office of Dean, Student Welfare on adhoc basis for six months in the handicapped quota as he is 60% disabled. Similarly, petitioner No.2 had initially joined the University on the post of Female Common Room Peon pursuant to advertisement dated 23.10.1992 (Annexure P-

4). It is their case that they are continuing in service since the day of their initial appointment in the University.

The Government of Haryana had framed a policy for regularisation of services of ad hoc/ contract/ daily wage employees which was notified on 1st October, 2003 (Annexure P-7). As per this policy daily wagers who have completed 3 years service on 1.10.2003 were entitled to regularisation w.e.f. 1.10.2003. This policy was adopted by the University. The petitioners have asserted that services of many persons who were appointed on daily wages after them have been regularised by the University in pursuance of the aforesaid policy. Such instances have been mentioned in Annexure P-8. It is their case that they have not been given the same benefit and hence have been discriminated against without any justifiable reasons. The petitioners sought information under RTI which revealed that a large number of Class IV posts are lying vacant which includes forty posts of Peon, Peon-cum-securityman, Securityman-cum-Peon (Annexure P-9). It is also averred that case of the petitioners for regularisation was recommended by the Registrar of the University in the year 2006 vide office note dated 6.7.2006 (Annexure P-11), but still they have not been regularised. The University has regularized the services of many daily wagers, peons, Malis, etc. after the directions in CWP No.7363 of 2012 titled `Shiv Raj & ors vs. Kurukshetra University & ors' decided on 3.4.2013 in view of the policy dated 1.10.2003. But the said benefit has not been extended to the petitioners.

Hence, the present writ petition.

The University has filed written statement stating that the petitioners were appointed as Common Room Peons by the Dean Students Welfare on 8.12.1995 and 1.8.1996 respectively out of the Amalgamated Fund (UTD). The initial appointment of petitioner No.1 was on ad hoc basis for a period of six months on a specific contract or till regular selection is made w.e.f. 08.12.1995 at a starting salary of Rs.750-940 plus usual allowances as admissible under the University Rules and thereafter, he was appointed on temporary basis for a period not exceeding 3 months w.e.f. 09.06.1996 at the same salary. Petitioner No.2 was engaged initially on contract basis for a period of 89 days on a specific contract or till regular selection is made w.e.f. 01.08.1996 at the starting salary of Rs.750-940 plus usual allowances as admissible under the University Rules. Thereafter, they were appointed on contract basis w.e.f. 09.09.1997 and 04.08.1997 respectively for a period of 89 days, which was extended from time to time after giving usual breaks.

It has been asserted that the post of Common Room Peon does not exist in the University Budget. The University has framed the Amalgamated Fund Rules for Recognized Colleges which are published in the Kurukshetra University Calender. As per these Rules the expenditure on pay and allowances of Class-III and IV employees appointed for Sports, NCC, Cycle Shed, Common Room, Student Reading Room or for other purposes shall be operated upon by the Dean Students' Welfare of the University/ Principal of the College concerned out of the Amalgamated Fund.

Regarding the policy dated 1.10.2003, it is stated that as per this policy, only those employees working on Adhoc/ Contract or daily wage basis were required to be regularised who had completed 3 years service on 30.9.2003 subject to fulfilment of the conditions mentioned therein i.e. they had been appointed on sanctioned vacant posts. Thereafter, vide Notification dated 29.7.2011, the State of Haryana issued fresh regularization policy of Group-C & D employees appointed/engaged on adhoc/contract/work-charged/daily wages and part-time basis. As per this policy the services of those employees were to be regularized who had continued to work for not less than 10 years as on 10.4.2006 and were in service, and who had either been sponsored by the Employment Exchange or had been appointed/engaged on the basis of recommendations made by the Departmental Selection Committee by inviting applications through advertisement against duly sanctioned vacant posts. It is stated that as per the above said policies issued by the State of Haryana, the

University regularized the services of such employees who were found to be eligible for regularisation under the said policies. It is the case of the University that the petitioners were neither appointed against any budgeted post nor through employment exchange/selection committee as they were engaged as Common Room Peons by the Dean Students Welfare and are being paid from out of the Amalgamated Fund and not from the University Budget. It is also stated that the case for regularization of the services of the petitioners was considered, but the same was not acceded to, being not covered under the Rules as well as policy since no post of Common Room Peon exists in the University Budget. It is admitted that services of some of the employees, who were petitioners in CWP No.7363 of 2012 and other petitions decided on 3.4.2013 were regularised in compliance of the orders of this Court, but the case of the petitioners herein could not be acceded to being not covered under the aforesaid two policies.

I have heard Learned counsel for the parties and gone through the paper-book of the case.

It is not denied that the petitioners have been continuously serving the University for about 19-20 years with only notional breaks between their extensions. The only ground of the University in denying them the benefit of the regularisation policies of 2003 and 2011 is that their salaries are being charged out of the Amalgamated Fund of the Dean Students Welfare and not from the University budget and that the post of Common Room Peon does not exist in the University Budget.

This argument of the University cannot sustain.

A Division Bench of this Court in **Suresh Kumar Vs. State of Haryana** **2004(4) SCT 657** has held that merely because an employee is being paid out of the Students Fund is no ground to deny the benefit of the policy of regularisation.

It was held that hostels are integral parts of the University/ college. They have been established and are being maintained by the Authorities. The employees engaged as Attendants or Chowkidars work under the supervision and control of the authorities of the Institute. Accordingly, the mere fact that the chowkidar of the hostel was being paid salary from the Students Fund and he was not working against a sanctioned post in the University was held to be no ground to deny the benefit of regularisation.

The Division Bench observed:

> *"5. We have given serious thought to the respective arguments. It is an undisputed position that hostels are integral part of Pt. B.D. Sharma, PGIMS and Dental College, Rohtak. The same have been established and are maintained by the authorities of the Institute and the College. The employees engaged as Attendants and Chowkidars work under the supervision and control of the authorities of the Institute and the College. The petitioner was engaged as Chowkidar with the sanction of the Director of the College and was paid at the rates fixed by the Deputy Commissioner.*

Therefore, the mere fact that the petitioner was paid out of Students Funds cannot be made a ground to deny him the benefit of the policy framed by the Government for regularisation of the services of daily wage employees.

*6. In **Parimal Chandra Raha and others v. Life Insurance Corporation of India, 1995(3) SCT 248 (SC) : JT 1995(3) SC 288**, the Supreme Court considered the question relating to status of the employees of the canteen being run in the premises of the office of Life Insurance Corporation and held that the canteen workers are employees of the Corporation. Paragraph 31 of that judgment, which contains discussion on this issue, reads as under :*

> *"The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from time to time, taking steps to provide the said services. The canteen committees, the cooperative society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even in organising the canteen committees. It is further the Corporation which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose. The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the record shows that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen, viz., the premises, furniture, electricity water etc. is supplied by the Corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In*

> *fact, by controlling the hours during which the counter and floor service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously, as pointed out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary breakdown in the canteen service, on account of the agitation or of strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are only a veil between the Corporation and canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation."*

*7. In **G.B. Pant University of Agriculture and Technology v. State of Uttar Pradesh** (supra), the Supreme Court, while examining the correctness of the directions given by Allahabad High Court to treat the workers of the Cafeteria of the University as employees of the University and regularise their services in accordance with the regulations framed by it, observed as under :*

> *"Admittedly, Cafeteria employees need succour for livelihood - would they continue to remain half-fed and half-clad as long as they live - is this is the society that we feel proud of ? Is this the guarantee provided by the founding fathers of our Constitution or is this the concept of socialism which they conceived ? None of the answers can possibly be in the affirmative. The situation is rather awesome and deplorable - the University by compulsion directs students to be residents of hostel with a definite ban on having food from outside agencies excepting under special circumstances and the provider of food, namely, the staff of the Cafeteria ought not to be treated as an employee of the University - whose employees they are if we may ask and we think it would not be impertinent on our part to ask the same - is it the consumer of food ? Since when the consumer of food*

becomes the employer ? These are the questions which remain unanswered. The society shall have to thrive. The society shall have to prosper and this prosperity can only come in the event of there being a wider vision for total social good and benefit. It is not bestowing any favour to anybody but it is a mandatory obligation to see that the society thrives. The deprivation of the weaker section we had for long but time has now come to cry halt and it is for the law courts to rise up to the occasion and grant relief to a seeker of a just cause and just grievance. Economic justice is not a mere legal jargon but in the new millenium, it is the obligation for all to confer this economic justice to a seeker. Society is to remain, social justice is the order and economic justice is the rule of the day. Narrow pedantic approach to statutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long catena of cases in regard thereto - the law thus is not a state of fluidity since the situation is more or less settled. As regards interpretation widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice - social and economic, as noticed above ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamed of by the founding fathers can thrive and have its foundation so that the future generations do not live in the dark and cry for social and economic justice."

8. In Hari Singh's case (supra), this Court examined the claim of the petitioner, who too was employed in the service of the Institute for regularisation of service and upheld the same. Paragraph 5 of the order passed in that case which has direct bearing on the claim of the petitioner, is extracted below :

"5. After hearing Shri Sharma and Shri Parmod Goyal, we are convinced that the order Annexure P.9 passed by respondent No. 2 refusing to regularise the services of the petitioner cannot be held (upheld ?) because it is ex-facie contrary to the directions given by the High Court. A bare reading of the order dated 31.3.1997 passed in C.W.P. No. 16872 of 1996 shows that while deciding the previous writ petitions filed by Suresh Kumari and the petitioner, the Court had taken cognizance of the plea raised by the respondents that the petitioners, who were appointed against the posts funded by amalgamted fund were not entitled to be regularised in terms of the instructions issued by the Government. Rather, after taking note of the nature of duties performed by the petitioners and the length of service rendered by them, the Court gave an unequivocal direction to the respondents to regularise the services of the petitioners

> *against the sanctioned posts of Clerks which were lying vacant. In view of this, it is not permissible for the respondent to contend that the petitioner is not entitled to be regularised in service because he was paid salary out of the amalgamated fund. The respondent No. 2, in our view, cannot refuse regularisation of the services and the petitioner on a ground which was not accepted by the High Court in the previous litigation."*

> *9. In our opinion, the ratio of above noted three judgments is squarely applicable to the case of the petitioner. It is an undisputed position that as on the date of filing the writ petition, he had completed more than 7 years service as Chowkidar. As on today, he has completed more than 11 years service. Therefore, there could be no justification to deny him benefit of the policy of regularisation which is applicable to the service of the Institute/College only on the ground that he was paid out of Students' Funds."*

The ratio of this judgement is squarely attracted in the facts of this case.

The petitioners have been working as Common Room Peons in the University. Petitioner No.1 is physically handicapped with disability having been assessed at 60%. Petitioner No. 2 applied and was appointed in response to an advertisement dated 23.10.1992 inviting applications for the post of daily rated Common Room Peon for the Girls Common Room. They have been working continuously since their initial appointment on 8.12.1995 and 1.8.1996 respectively. Their initial letters of appointment (Annexures P-2 and P-5 respectively) which were issued by the Office of Dean Students Welfare of the respondent University, state that their appointment is to the post of Common Room Peon in the office of the Dean Students Welfare, Kurukshetra University at a starting salary of Rs.750-940 plus usual allowances as admissible under the University Rules. Both contain clauses that their conditions of service, in so far as not specified in the letter will be governed by the Rules of the University as in force from time to time. As per the said letters they were also required to undergo medical examination by the RMO of the University. In view of all this the University cannot disown their appointments and deny them the benefit of regularisation on the specious plea that they are being paid out of the Amalgamated Fund.

Ld. Counsel for the petitioners had placed on record an Office Order dated 31.8.2006 whereby the Vice Chancellor shifted various employees who were employed on Regular basis out of the Amalgamated Fund and whose salary was being drawn out of the Amalgamated Fund of Dean Students Welfare/ University/ College to the University Establishment against budgeted posts. This indicates that there is not rigid inseparable wall between the two categories of employees as canvassed by the respondent University.

In the replication the petitioner has annexed an order dated 29.3.1994 whereby one Mam Raj who was working as Bus Cleaner-cum-peon in the office of Dean Student Welfare had been regularised. The regularisation order stated that the salary would be paid out of Amalgamated Fund of UTD. Thereby the

the petitioner seeks to negate the stand of the University that no employee drawing salary from the Amalgamated Fund can be regularised.

Accordingly, this petition is allowed. The respondents are directed to consider the petitioners' case for regularisation in accordance with the policy dated 1.10.2003 (Annexure P-7) and pass appropriate orders in this regard within two months from date of receipt of certified copy of this order. The fact that they are being paid out the amalgamated fund and the posts are not sanctioned in the University budget will not be taken to be grounds to deny them the said benefit. The petitioners would be entitled to all consequential benefits.

February 01, 2015 **(HARINDER SINGH SIDHU)**
JUDGE

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