

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

CWP No. 3977 of 2014

Date of decision:-24.05.2016

Bala Rani

...Petitioner

versus

Managing Director HAFED and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. Indresh Goel, Advocate
for the respondents.

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

RITU BAHRI , J.

Petitioner has approached this Court praying for issuance of writ in the nature of mandamus directing the respondents to regularize the service of the petitioner in the light of the Haryana Government policy/notification dated 29.07.2011 (P-2), as the petitioner has completed more than 27 years of service.

Petitioner was appointed as Part time Sweeper on 01.01.1989 and is working till date with the respondent-Mill. Pursuant to policy dated 29.07.2011, petitioner approached the respondent-Mill and respondent No. 2 wrote a letter dated 16.04.2012 to respondent No. 3

advising him to offer his comments with regard to request of the petitioner for regularisation of her service. Respondent No. 3 vide letter dated 19.04.2012 stated that the work and conduct of the petitioner is satisfactory and no enquiry is pending against her.

Learned counsel for the petitioner submits that similar situated persons like petitioner working as part time sweepers in the Education Department have been ordered to be regularised by the District Education Officer, Yamuna Nagar, vide order dated 11.04.2012 and the petitioner who is working for the last 27 years with the respondent-Mill has not been regularised till date inspite of the fact that as per regularisation policy dated 29.07.2011 (P-2), the service of employees who are working for the last 10 years and are still in service, be regularised.

Learned counsel for the respondents on the other hand submits that though the petitioner is working for the last 10 years with them but the said appointment was without any sanctioned vacant post and further her name was not sponsored by employment exchange or by way of public appointment.

Learned counsel for the respondents further submitted that the petitioner is working on hourly basis and is working one hour daily. Further it has been submitted that after August 2013, petitioner was engaged through a security agency namely M/s Eagle Eye Security

Agency, Sector 5, Panchkula and the petitioner is continuing in this capacity since then. Petitioner is not having prescribed qualification and there is no vacant/sanctioned post with the respondents.

Heard learned counsel for the parties.

Today, an affidavit of M.L Poswal, District Managed Hafed, Yamuna Nagar has been filed admitting that the petitioner is working with respondent Mill since 01.01.1989 and her wages statement is attached with the affidavit which shows that w.e.f 01.01.1989 till 31.05.2013, petitioner was paid salary by the respondent-Mill and thereafter w.e.f 01.06.2013 to till date, she is being paid salary by Security Agency.

The issue with regard to prescribed qualification and condition of employment exchange, came up for consideration before this Court in a case of ***Mohammad Farookh and anr vs. State of Haryana and others, 2012(6) SLR 687*** and in para 7 and 8, it has been observed as under:-

7. The other objection which has been raised by the respondents denying the claim as has been made by the petitioners for regularization of their services is that they did not fulfil the requisite qualification nor were they appointed against sanctioned/vacant posts. This objection cannot be accepted in the light of the fact that minimum qualification prescribed for

the post of Beldar is not mentioned nor any statutory Rules have been referred to which would suggest that the appointments of the petitioners should be with a specified qualification. With regard to the availability of sanctioned post, the same also cannot be accepted keeping in view the fact that petitioners are daily wage employees and posts are created depending upon the need which has been created by the respondents and persons who have been appointed subsequent to the petitioners have been regularized. Plea of the respondents that petitioners had not completed more than 240 days in a preceding year also cannot be accepted in the light of the Awards dated 11.8.2004 (Annexures-P-1 and P-2), passed by the Industrial Tribunal-cum-Labour Court, Ambala.

8. *As regards the submission of the counsel for respondents that the policies for regularization of the services of the adhoc/daily wage part time/ temporary workers have been withdrawn, suffice it to say that the right of the petitioners for consideration arose to them as per the policy dated 1.10.2003, and the denial thereof on the ground that they have not completed 240 days in 12 preceding months have been found to be not in accordance with law. The plea of the respondents that the petitioners having approached this Court after a delay*

cannot again be accepted as the petitioners have been representing the respondents and their claim has been denied merely because they were not in service on the relevant date which plea has also been found to be not correct in the light of the Awards passed by the Industrial Tribunal-cum-Labour Court, Ambala, referred to above. “

Once the petitioner is fulfilling the condition (i) of policy dated 29.07.2011 that an employee/worker should have continued for not less than ten years as on 10.04.2006 and is still in service, petitioner is entitled for regularisation of her service. The respondents cannot reject the claim of the petitioner on the technical ground that her name is not being sponsored through employment exchange or she is not working against a regular sanctioned post.

Accordingly, the writ petition is allowed and direction is given to the respondents to consider the case of the petitioner for regularizing her services as part time sweeper, as per policy dated 29.07.2011 (P-2). The exercise shall be completed within a period of two months from the date of receipt of certified copy of this order. Thereafter, a compliance report be sent to this Court.

24.05.2016

G Arora

**(RITU BAHRI)
JUDGE**