

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

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**CWP-9041-2014
Decided on 13.01.2017**

GANESH PRASAD AND OTHERS

....PETITIONERS

VS

SHREE MATA MANSA DEVI SHRINE BOARD AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Mandeep Singh, Advocate
for the petitioners.

Mr.Sunny Saggar, Advocate
for respondents No. 1 and 2.

Mr. K.S.Nalwa, DAG, Haryana.

AJAY TEWARI, J.(Oral)

This petition has been filed for directing the respondents to regularize the services of the petitioners in view of the law laid down by the Supreme Court of India in the case of UP State Electricity Board vs. Poonan Chandra Pandey and others (2008) 1 SCC (L&S) 736 and followed by this Court in L.P.A No. 1037 of 2012 titled as State of Haryana and Others vs. Ved Pal and Others decided on 25.07.2012 and L.P.A No. 1236 of 2012 titled as State of Haryana and Others vs. Krishan Singh and Others decided on 28.08.2012.

Brief facts of the case are that the petitioners were working as

labourers since 1993 and their services were terminated and being aggrieved against their termination they sought References before the Labour Court which were allowed vide Awards dated 31.12.2003 whereby respondent No.1 was directed to reinstate the petitioners with continuity of service alongwith back wages. Respondent No.1 challenged the said different awards by filing separate civil writ petitions but those writ petitions were dismissed vide judgment dated 26.03.2007 by this Court. Pursuant to that order the respondent No.1 Board reinstated the petitioners. It is admitted that certain employees who were engaged after the petitioners were regularized during this interregnum and hence the present petition. They claim that the services be regularised from the date the services of persons appointed after them were regularised.

Learned counsel appearing on behalf of respondents No.1 and 2 have relied upon the decision of Division Bench of this Court in **“Shilpa Jindal vs. CAT, Chandigarh Bench, Chandigarh in CWP-16157-2015”** decided on 29.04.2016. In that case, some teaching faculty in Chandigarh College of Engineering and Technology, Chandigarh appointed on contractual basis and sought regularization. The Court held as follows:

What could be deduced from the cited decision is as under:-

- (i) *Any public employment has to be in terms of the Constitutional scheme.*

(ii) *Adherence to the rule of equality in public employment*

is a basic feature of our Constitution.

(iii) *Regular appointment must be the rule.*

(iv) *A regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up.*

(v) *The appointment should be in terms of relevant rules and after a proper competition among the qualified persons. Otherwise, such appointment would not confer any right on the appointee.*

(vi) *If a contractual appointment is made, the appointment comes to an end at the end of the contract. The Government or the instrumentality of the State cannot confer any permanency of such employment either by way of regularisation or by way of absorption.*

(vii) *If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.*

(viii) *A temporary employee could not claim to be made permanent on the expiry of his term of appointment.*

(ix) *Merely because a temporary employee or a casual wage worker is continued for a time being beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength on such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.*

(x) *Regularisation is not a mode of appointment.*

(xi) *The Government or the instrumentality of the State cannot regularise the appointment made contrary to the course of selection as envisaged by the relevant rules governing the posts.*

(xii) *The High Court acting under [Article 226](#) of the Constitution of India should not issue directions for regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.*

(xiii) *There should be no further by-passing of the constitutional requirement and regularization or making permanent those not duly appointed as per the constitutional scheme.*

It is the contention of the learned counsel for the respondents that in these circumstances there can be no consideration of the claim of the petitioners for regularization. He further states that the State of Haryana had issued a new regularization policy in the year 2014 but this Court has restrained the respondents from giving effect to the decision in **CWP No. 17206-2015**. As per counsel that interim order has to be applied on the petitioners as well since their case could have been considered only under that policy.

In my opinion, reliance on the judgment of **Shilpa Jindal vs. CAT, Chandigarh Bench, Chandigarh** is misplaced. It cannot be lost sight of the fact that the said judgment refers to Class-I employees whereas the petitioners are Class-IV labourers. Though contractual appointments may not be a correct mode of appointment for higher category of employees but it is well-known and accepted formula that

Class IV labourers are usually appointed on daily wage basis. It also cannot be lost sight of the fact that other persons who were engaged much after the petitioners were given the benefit of regularization. Had their services been not terminated, their services would have also been regularised. Moreover, in view of this reinstatement with continuity of services and back wages the argument that the petitioners services could be regularised only under the 2014 Policy cannot be accepted. Even if the Policy of 2014 had not been notified the claim of the petitioners for regularisation would have to be allowed on the basis of the fact that persons who were appointed after the petitioners have been given the benefit of regularisation.

Learned counsel for the respondents have further argued that the petition has been filed 07 years after the dismissal of the writ petitions filed by the Board, therefore barred by delay and laches. However I find from the documents Annexure P-7 and P-8 that right up till 2012-13 the respondents were considering the case of the petitioners for regularisation and from that time the petition cannot be deemed to be delayed on any account.

In these circumstances, the petition is allowed and respondents are directed to consider the claim of the petitioners for regularization from the date of services of the persons appointed after they were regularised and in case their claim is allowed to grant them the consequential benefits. Let the necessary exercise be conducted

within a period of 03 months failing which the petitioners would be
entitled to claim interest @ 12 % per annum on the amount/s from the
date/s it fell due.

13.01.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No