

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

CWP No. 10419-2016

Date of decision : 21.08.2018

Hawa Singh and another

...Petitioners

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Sonak, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl. A.G. Haryana

RITU BAHRI, J.

Petitioners are seeking quashing of impugned order dated 24.11.2015 (P-10) vide which cases of petitioners for regularization of their services have been kept in abeyance.

Petitioner No. 1 was appointed on 04.04.1982 and petitioner No. 2 had been appointed on 01.07.1980 as Beldar-cum-Mali on daily wages basis in the respondent-department. The services of the petitioners were terminated by respondent No. 3 and they raised Industrial dispute before the Labour Court and the Labour Court vide award dated 25.05.1998 and 22.05.1998 respectively (P-1 and P-2)

After reinstatement in service, the petitioners made their claim for regularization in view of policies dated 07.03.1996, 18.03.1996 and 01.10.2003 (Annexure P-3 to P-5 respectively). When the case of the petitioners was not considered by respondent no.2, they filed *CWP No.8229*

of 2011 titled, '*Hawa Singh and others vs. State of Haryana and others*' which was disposed of on 10.05.2011 with a direction to respondent no.2 to decide the case of the petitioners in view of decision rendered in Dalip Singh's case and in case petitioners found entitled they shall also be granted all consequential benefits. But their case was rejected passing order dated 13.01.2005. The petitioners then not challenged that order as Hon'ble the Supreme Court put almost a ban on the matters of regularization. However, later on when the petitioner came to know about the decision in ***State of Karnataka vs. Uma Devi and others 2006(4) SCC (1)***, petitioners approached this Court again by filing CWP NO. 8229 of 2011, which was disposed of on 10.05.2011 with direction to decide the legal notice of the petitioners. The case of the petitioners was again rejected by respondent No. 3 vide impugned order dated 20.01.2012 (Annexure P-7) on the ground that Government has withdrawn its policies of regularization vide order dated 25.04.2007 and also taken the stand that SLP against the award of the petitioners is also pending before Hon'ble the Supreme Court. Petitioners then again approached this Court by way of filing CWP NO. 859-2015 to consider the case of the petitioners in view of notification dated 18.06.2014 whereby Government of Haryana decided to reconsider the leftover Group C and D employees working on adhoc/contractual/daily wage/work charge basis etc, who could not be regularized earlier policies due to administrative reasons but were otherwise eligible. The above writ petition was disposed of on 19.01.2015 (P-8) with a direction to the respondents to decide the legal notice of the petitioners.

However, respondent No. 2 instead of deciding the issue of

regularization of the service of the petitioners has passed office order dated 24.11.2015 vide which, he has held that the services of petitioners cannot be considered for regularization as all the regularization policies are put on hold by the Government (P10). Thereafter, in the SLP filed by the department against the award dated 25.05.1998 and 22.05.1998, Hon'ble the Supreme Court vide order dated 12.02.2001 (P-11) only stayed the back wages but there was no stay on reinstatement in service . Thereafter, after the above said order was passed, the petitioners were taken back into service by the department and they are working in the respondent-department till date.

Further service of juniors to the petitioners namely Ram Singh, krishana, Maya Rani, Jagidsh, Zile Singh, Tara Cahnd and Om Parkash have already been regularized by the respondent-department.

On notice, a written statement has been filed on behalf of respondent No. 2 and 3 taking a stand that in para No. 53 of ***Uma Devi's case (supra)***, there was an exception to the general principles against regularization enunciated in Uma Devi, if the following conditions are fulfilled:-

(i) The employees concerned should have worked for 10 years or more in duly sanctioned post. The petitioners were employed as daily wager. There is no sanctioned post of daily wager in the department. The petitioners have never worked on sanctioned post.

(ii) The employee concerned should have worked without the benefit or protection of the interim order of Court or Tribunal

Thus, even as per exception carved out in para No. 53 of the judgment of Hon'ble the Supreme Court, the petitioners were not held

entitled for regularization. Further the respondents stated that the persons junior to the petitioners have been regularized by the department in compliance of order passed by this Court. Moreover, the respondent-department has not prepared any list of the daily wages workers, then question of junior and senior does not arise at all. Thus, the respondent-department has not prepared any list of the daily wages workers, then question of junior/senior does not arise at all.

Heard learned counsel for the parties.

The question for consideration before this Court would be that once the petitioners have been reinstated in service and the SLP filed by the State is pending for final hearing before Hon'ble the Supreme Court and there is no stay with regard to reinstatement in service except the back wages before Hon'ble the Supreme Court, thereafter, whether the petitioners are entitled for regularization of their service, as the services of the juniors to the petitioners have also been regularized, as admitted by the respondent-department.

The writ petition deserves to be allowed in view of decision passed by this Court in the case of **State of Haryana and others vs. Mohammad Farookh and another, passed in LPA No. 836-2013, decided on 30.04.2013** wherein this Court was considering a case of regularization where reinstatement had been ordered by way of labour Court Award. The termination of workmen was held to be violative of Section 25-F of the Industrial Disputes Act, 1947 as they were held to have worked for more than 240 days in the 12 preceding months prior to their wrongful retrenchment. The case for regularization was denied as they were not

covered under the policy circular dated 1.10.2003 issued by the State Government for regularization of services of daily wages/contractual employees as the policy stipulated certain conditions including that the eligible employees should be in service as on 30.9.2003. The Division Bench observed that this policy of regularization dated 1.10.2003 had been withdrawn by the State Government on 9.5.2007 after the decision of Hon'ble the Supreme Court in *Uma Devi's case (supra)* but keeping in view that before withdrawal of the policy, hundreds of daily wages/contractual employees were made regular under the said policy, the respondents were also in service before withdrawal of the above stated policy and in view of the Labour Court's award which had attained finality, they were deemed to be in service on 30.9.2003. Hence they were held entitled for regularization as per the policy circular dated 1.10.2003. The Letters Patent Appeal No. 836 of 2013 filed by the State of Haryana was dismissed.

This Court thereafter, while relying upon the above judgment, allowed CWP No. 22743-2013 titled as Suresh Chand and others, decided on 16.02.2016 wherein the petitioners were seeking regularization of their service, in view of policy dated 01.10.2003 on the ground that they were in service on 30.09.2003, as the award was passed in their favour.

In the present case as well, firstly the petitioners were appointed 01.07.1980 as Beldar-cum-Mali on daily wages basis and after their termination, they raised Industrial dispute before the Labour Court and the Labour Court vide award dated 25.05.1998 and 22.05.1998 respectively (P-1 and P-2) reinstated them into service with 25% back wages. Against the award, the writ petition filed by the State was dismissed and SLP is

pending before Hon'ble the Supreme Court in which there was no stay on reinstatement in service of the petitioners. The right of regularization of the services of the petitioners had accrued much prior to issuance of notification dated 18.06.2014. Further the service of junior to the petitioners have also been regularized by the respondent-department.

The ratio of LPA No.836 of 2013 is directly applicable to the facts of the present case. After reinstatement of the petitioners in service, for all intents and purposes, their case was fully covered as per policies dated 07.03.1996, 18.03.1996 and 01.10.2003 (Annexure P-3 to P-5 respectively). Having regard to the aforesaid, the issue involved in this petition is squarely covered by judgment in the case of ***Mohammad Farookh's case (supra)*** bearing LPA No.836 of 2013, therefore the present writ petition is allowed. Order dated 24.11.2015 (P-10) is set aside. The services of the petitioners are ordered to be regularized from the date when the service of juniors (Ram Singh, Krishana, Maya Rani, Jagidsh, Zile Singh, Tara Cahnd and Om Parkash) to the petitioners have been regularized. The petitioners are also entitled to all consequential benefits.

(RITU BAHRI)
JUDGE

21.08.2018

G Arora

Whether speaking/reasoned	Yes
Whether reportable	No