

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

CWP No. 11427 of 2015 (O&M)

Date of decision: 19.12.2018

Sukhjad Singh and others

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Chopra, Sr. Advocate with
Mr. Gaurav Sharma, Advocate for the petitioner(s).

Ms. Ambika Bedi, AAG, Punjab.

Jitendra Chauhan, J. (Oral)

The petitioners seek quashing of impugned order dated 05.02.2015 (Annexure P-9), vide which the claim of the petitioners for regularization was rejected.

It is asserted that the services of the petitioners have not been regularized despite completion of three years of regular service, whereas, the services of the similarly situated employees working in the other departments have been regularized, vide Annexures P-13 and P-14. He further states that the case of the petitioners is squarely covered by the instructions dated 18.03.2011 (Annexure P-4).

On the other hand, the learned State counsel submits that it has been clearly mentioned in the instructions dated 18.03.2011 (Annexure P-4) as relied upon by the petitioners that the same shall be treated as a 'one time measure', therefore, since the petitioners were

having less than one year of service at the time of issuance of instructions dated 18.03.2011, therefore, the benefit of the instructions is not admissible to the petitioners.

Heard, learned counsel for the parties and perused the record.

As per reply dated 05.11.2018, filed by the State, the services of the Craft Instructors who were appointed in the year 2010 were regularized on completion of their three years of service in the year 2013 in view of the policy dated 18.03.2011. Admittedly, the petitioners were also inducted into service on contractual basis against regular posts in the year 2010. They were deprived of the benefit of regularization only on the ground that they were having less than one year of service at the time of issuance of instructions dated 18.03.2011 (Annexure P-4) which is itself contrary as in the case of Craft Instructors as referred above. For the sake of reference, clause 2(i) of the instructions dated 18.03.2011 is reproduced as under:-

“Those employees who are working on contractual basis against regular posts and their selection was made after following the proper procedure in a transparent manner and who fulfill the prescribed qualification/eligibility, their services be regularized w.e.f. 01.04.2011 or after completion of 3 years service on contract basis, whichever is later but no new posts will be created for them.”

In **Mahavir Singh's case (supra)**, this Court has observed as under:-

“8. The Government of Punjab took a one time policy decision dated 18.03.2011 for regularisation of the services of the

employees who have completed three years service. This policy covered the daily wagers, work-charged, contractual employees working on permanent posts appointed after fulfilling eligibility criteria as per procedure. The only defence raised herein is that the Government in its policy dated 18.03.2011 has made it applicable to certain departments and the same is not applicable to employees working in the Sports Department. No special reason has been given as to why the Sports Department has been excluded from the purview of the policy which appear to be restricted to departments of Forest, Health Technical Education, Urban Local Bodies.

*9. A Single Bench of this court in Civil Writ Petition No. 24337 of 2012 decided on 17.08.2015 titled **Shri Pal And Others Versus State Of Punjab And Others** has held that the exclusion of employees of certain departments from being entitled to the benefits of the regularisation policy of 2011 is unfair discriminatory and violative of Article 14 of the Constitution of India. In deed, there is no such reasonable criteria forthcoming as to why this pick and choose policy has been adopted. Once a decision is taken to extend the benefit of regularization to employees of certain departments, other have to be treated equally.”*

The contention of the learned State counsel that it was a one time measure vide Instructions dated 18.3.2011 (Annexure R-1) and as such, the decision in **Uma Devi's case (supra)** did not permit the regularization of the petitioner, is not tenable in view of the ratio of law laid down by Hon'ble the Supreme Court in **Narendra Kumar Tiwari and others vs. The State of Jharkhand and others**, SLP (Civil) Nos. 19832-19838 of 2017, decided on 1.8.2018, wherein the term 'one time' measure has been interpreted, in the following terms:-

6. The decision in Umadevi (3) was intended to put a full stop to

the somewhat pernicious practice of irregularly or illegally appointing daily wage workers and continuing with them indefinitely. In fact, in paragraph 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.

7. The concept of a one-time measure was further explained in Kesari in paragraphs 9, 10 and 11 of the Report which read as follows: 2 (2010) 9 SCC 247

“9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3), each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in Umadevi (3), cases of several dailywage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the onetime regularisation process. On the other hand, some government departments or instrumentalities undertook the one- time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due

to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi (3), will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six- month period mentioned in para 53 of Umadevi (3) has expired. The onetime exercise should consider all daily-wage/adhoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (3), but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3), the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3), are so considered.

11. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on dailywage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in

Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure.”

8. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

9. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10 th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.”

Since the petitioners were working against regular posts and had completed three years of service in the year 2013 and thus are covered by the instructions dated 18.03.2011.

Accordingly, the present petition is allowed. The respondents are directed to regularize the services of the petitioners along with other consequential benefits from the date when the completed three years of service within a period of three months from the date of receipt of a certified copy of this order.

19.12.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No