

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.14714 of 2013

Krishan Lal ... Petitioner

Versus

State of Haryana and others ... Respondents

2. CWP No.13352 of 2013

Karamveer ... Petitioner

Versus

State of Haryana and others ... Respondents

Reserved on:- 08.08.2018

Pronounced on: 06.09.2018

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Abha Rathore, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

Mr. Pawan Kumar Longia, Senior Panel Counsel
for respondent No.3-Union of India.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.14714 of 2013 titled *Krishan Lal v. State of Haryana and others* & CWP No.13352 of 2013 titled *Karamveer v. State of Haryana and others*.

2. The petitioner approached this Court earlier to this petition in CWP No.10512 of 2013 for regularization of his service claiming right under the 2011 regularization policy. The petition was disposed of on May 15, 2013 with a direction to the respondent No.1 to consider the claim by

taking a final decision on the representation dated September 12, 2011 in accordance with law and in the light of policy instructions. The respondent No.1 has rejected the claim by passing impugned order dated July 11, 2013. The orders are under challenge in this petition.

3. A few necessary facts to decide the controversy are noticed. The petitioner was recruited as a Driver in 1995 on contract for one year to work in the National Leprosy Eradication Programme (NLEP) of Government of India, New Delhi attached as a Driver with the District Leprosy Control Society, Panipat. The contract was renewed from year to year till March 2000. On April 06, 2000 he was engaged on contract on daily wage basis and continues serving. On coming into force of the policy of regularization dated October 01, 2003, the petitioner made a representation. His case was sent to Government of Haryana in the quarters concerned. He was informed that he cannot be regularized since he is not an employee of the Haryana Government but is an employee of the Government of India in its scheme. He approached the Director General of Health Services, Government of India, New Delhi and was informed by letter dated June 28, 2004 that he should take up his case with the State Government and the Government of India has no role to play in this.

4. He claims that on October 30, 2003 the services of three employees working on daily wage basis in District Leprosy Society were regularized and they were absorbed in the Health Department, Haryana. He made several representations in 2005 but to no avail. On July 29, 2011 the Haryana Government issued a fresh regularization policy meant for employees who had worked for more than 10 years on daily wage, contract

or ad hoc basis, till and before April 10, 2006 (the date when the judgment in Secretary, State of Karnataka vs. Uma Devi, (2006) 4 SCC 1 was pronounced). He made another representation on September 12, 2011 claiming that he was covered by the policy. The Civil Surgeon, Panipat recommended his case for regularization in 2011 to the Director General Health Services, Haryana for approval. The matter remained under consideration from 2011 to February 2013 without orders. Despite recommendations in his favour, his services were not made regular. He continued on daily wage basis as a Driver with the Civil Surgeon, Panipat. On July 08, 2013 he was served a termination notice informing him that he would stand relieved on expiry of notice period.

5. He has approached this Court for directions to set aside the termination notice and to regularize his services with all consequential benefits and to absorb him in the Health Department, Haryana. A prayer for stay was made. On July 12, 2013, notice of motion was issued and the termination order was stayed ad interim.

6. During the pendency of this petition, the respondent No.1 has declined the case of the petitioner for regularization by passing impugned order dated July 11, 2013. This order was received/served after stay was granted. The petitioner has amended the petition to impugn the rejection order. The petition was further amended in the prayer clause.

7. The respondents have filed written statement contesting the case. It is averred that the services of petitioner were contractual. The last contract was renewed from April 02, 2013 to March 31, 2014 by letter dated April 02, 2013.

8. The justification for action taken is that the Government of India has withdrawn the Driver's salary budget from NLEP by Programme Implementation Plan/ROP 2013-14. The Government of India stipulated in its letter of 2013 that "no drivers are allowed to be hired in district level". The State Government only implements the Government of India Leprosy Eradication Programme and funds are provided by the Government of India. Therefore, engagement of all contractual drivers under NLEP in all districts of Haryana were revoked. In view of the Government of India decision the 2nd respondent issued the termination notice which has been stayed in the present writ petition. The Managing Director, National Rural Health Mission by mail dated July 12, 2013 directed all the Civil Surgeons to adjust the drivers of Leprosy Programme against vacant post of drivers in Referral Transport Scheme (RTS) in the respective districts. The Civil Surgeon, Panipat vide letter dated July 15, 2013 asked the petitioner to submit an undertaking within two days so that he can be relieved and adjusted in RTS but the petitioner did not respond to the offer.

9. On October 23, 2013 this Court passed the following interim order:-

“CM No.13359 of 2013

The application under Order 6 Rule 7 is allowed.

The amended writ petition is taken on record.

Main case

Let notice be issued to Union of India for 16.12.2013. Dr.Amarpreet Singh Sandhu, Advocate, who is present in Court, on the asking of this Court, accepts notice on behalf of the newly added respondent. Ms. Rathore undertakes to supply two sets of the paper book to Dr.Sandhu, during the course of the day together with the applications

etc.

Ms. Kirti Singh has filed reply on behalf of the State in Court today which is taken on record. Copy has been supplied to the opposite counsel. She submits that the petitioner has been engaged in their National Leprosy Eradication Programme of Government of India which is fully funded by the Central Government.

Ms. Kirti Singh, on instructions from Dr. S.K.Nagpal, Deputy Civil Surgeon, Panipat, submits that as an interim measure and to justify payment of salary, the petitioner would be deployed as driver in Referral Transport Scheme in Panipat City which would not involve physical displacement. This has been undertaken to be done in para. 4 of the written statement.

The respondents would pay to the petitioner of his previous dues by 4.11.2013. The petitioner would then be shifted without break to the new scheme on the same terms and conditions as were available to him under NLEP and will perform all lawful duties as he is called upon to do by his superior officials/officers.

Dr. Nagpal, who is present in Court, submits that two ambulances will be joining the fleet of the vehicles and as soon as they are available, the petitioner would be deputed in one of them. This will be an interim arrangement till further orders.

A copy of this order be given to the parties under the signatures of the Bench Secretary of this Court."

10. The matter was admitted on July 15, 2016 with interim order to continue. By order dated January 23, 2017 this Court expedited hearing of the matter, with case to be listed within one year. That is how this matter has been taken up for final disposal and the counsel heard.

11. State responds that there was a stipulation in the petitioner's appointment letter that if Government of India abolished the leprosy scheme, he would be deemed to be relieved. His, was not a Government job

but on annual contracts in the Leprosy Eradication Programme.

12. It is the stand of the State in the written statement (para.9) that the petitioner's case was not covered by the regularization policy dated July 29, 2011 as he has not worked against a sanctioned vacant post of Haryana Government. He has worked on contract basis with the NLEP of Government of India which was funded 100% by the Central Government and run locally by the District Leprosy Control Society, Panipat.

13. In the short reply filed by Civil Surgeon, Panipat, the averments made by the petitioner in para.7 of the writ petition are rebutted stating that the three employees working on daily wage basis in District Leprosy Society were regularized and absorbed in the Health Department, Haryana were employees belonging to the "Hind Kusth Nivaran Sangh Haryana (HKNSH)" which was an NGO engaged in the elimination of leprosy under the World Health Organization Programme in Haryana with financial assistance coming from the Haryana Government. Not three, but four Para Medical workers, one Physiotherapist and one Pharmacist working in HKNSH. Grant-in-aid was provided by the Health Department, Haryana for reimbursement of salary of the six employees. Haryana State successfully achieved the object of leprosy elimination status in 2004 and World Health Organization decided to wind up the Leprosy Elimination Programme on March 31, 2004. A Special Committee of HKNSH in its meeting dated October 31, 2003 decided to absorb the services of those six employees and offered them appointment in September 2005. The petitioner cannot claim the benefit of Annex P-12 because he was never employed in the HKNSH.

Therefore, parity cannot be claimed especially when Government of India

has withdrawn the Driver's salary budget from NLEP on and since 2013-14. In any case, the petitioner has been adjusted in the RTS under the National Rural Health Mission and joined as driver in that scheme on November 05, 2013 in the wake of interim directions of this Court.

14. It is argued by Ms. Abha Rathore appearing for the petitioner that the petitioner was not a back door entry in NLEP since the post was advertised in the newspaper and the petitioner was selected in 1995 to work as a driver in the office of Civil Surgeon, Panipat. Till the year 2000 he worked on yearly contracts and thereafter on daily wages till the last contract ending with quit notice as surplus. He continued in this way for 18 years when he received the termination notice. Her client is protected by an interim order. She asserts that NLEP scheme has not ended.

15. Ms. Rathore asserts that the petitioner has a right to regularization under the 2003 policy failing which under the policy dated July 29, 2011. The 2011 policy was framed pursuant to *Uma Devi's* case providing right to certain employees who had completed ten years on April 10, 2006 should be regularized. The petitioner fulfills the requirements of this policy. On the respondents' plea that petitioner was not working on a sanctioned post, learned counsel says that the petitioner had worked for 18 years, then it cannot be said that by long passage of time he had not been working against an unsanctioned post. By virtue of long service, the petitioner would be deemed to have been working on a regular post. On the petitioner's claim for absorption, she cites the instance of absorption of employees from HKNSH in the Health Department when the Leprosy Eradication Programme was wound up. The petitioner should similarly be absorbed in the Health

Department.

16. There is no doubt that the petitioner was not a back door entry in the Leprosy Eradication Programme, but the contention does not hold good for purposes of absorption in government service. Furthermore, policies of regularization gave right only to the employees of Haryana Government who may have served on ad hoc, contract or daily wage basis. No policy has been shown to the Court which deals with NLEP for purposes of regularization and absorption. The respondents have satisfactorily explained the cases of six employees of the HKNSH and there can be no similarity in the two cases to bring relief to the petitioner. The petitioner has not demonstrated a right and a corresponding duty on the respondents to absorb him in a Government department. A contractual employment normally ends at the expiry of the contract and a mandamus will not issue to extend the contract and also to regularize the petitioner against a post in a Government department where the rights of eligible candidates from the open market would have to be granted to achieve the mandate of Article 16 (1) of the Constitution.

17. Per contra, Ms. Goyal relies on the decision of this Court in CWP No.5975 of 2016, *Dr. Vinay Gupta v. State of Haryana and others* decided on January 16, 2018 and connected cases and another decision in CWP No.23702 of 2015, *Pritpal and others v. State of Haryana and others* decided on February 21, 2018 and connected cases to contend that neither regularization nor absorption is possible in the facts and circumstances.

18. For the aforesaid reasons, I find no force in this petition and hold that the same deserves to be dismissed.

19. Ordered accordingly.

20. However, the dismissal of this petition will cause no harm to the petitioner on his adjustment as a driver in the RTS where he may continue to serve.

CWP No.13352 of 2013

21. This writ was ordered to be listed along with CWP No.12941 of 2013 (Indraj Singh v. State of Haryana) also filed by Ms. Abha Rathore, Advocate involving the same issue i.e. CWP No.12941 of 2013 relating to the National Leprosy Eradication Programme sponsored by the Government of India. Like the petitioner, Indraj Singh was also a driver in the office of the Civil Surgeon, (TB), Narnaul. The petitioner was adjusted in the Referral Transport Scheme while Indraj Singh was offered to be adjusted in the National Ambulance Service Scheme. The offer was accepted by Indraj Singh.

22. In CWP No.12941 of 2013, the following order was passed:-

“Counsel for the State produced an account payee cheque, in the name of the petitioner, bearing No.002899, drawn on Central Bank of India, Main Road, Narnaul, District Mohindergarh, amounting to `99,733/- which is the salary which the petitioner would have earned till 31st of March, 2014. The said cheque has been handed over to the counsel for the petitioner in Court. This renders CM No.18074 of 2013 as infructuous.

Counsel for the State, on instructions from Dr. Ashok Kumar, Deputy Civil Surgeon, (TB), Narnaul, submits that the post of Driver under the National Leprosy Eradication Programme sponsored by the Government of India is no more in existence and, therefore, the petitioner cannot be allowed to continue. He states that a post of driver in National Ambulance Service Scheme is available and it

would be open to the petitioner to join the said scheme, if he so desired, from tomorrow onwards.

Counsel for the petitioner, on instructions from the petitioner, states that he accepts the offer made by the counsel for the State and would join the same. Counsel for the petitioner further states that the claim of the petitioner for regularization of his service under the policy dated 29.07.2011 was considered and forwarded by the Civil Surgeon, Narnaul, vide letter dated 09.04.2013 (Anneuxre P-4) to the Director General of Health Services, Health Department, Haryana.

Counsel for the State has produced an order dated 05.07.2013 passed by the Director General of Health Services, Health Department, Haryana, vide which the claim of the petitioner has been considered and have not been found to be covered by the policy of the State for regularization dated 09.07.2011. Copy of the same has been handed over to the counsel for the petitioner.

Counsel for the petitioner states that liberty may be granted to the petitioner to challenge this order, if so advised, in accordance with law. Liberty is granted to the petitioner to challenge the said order in accordance with law.

Counsel for the petitioner further referred to the recommendation of the Civil Surgeon, Narnaul, dated 26.06.2003 (Anneuxre P-7) to contend that the claim of the petitioner for regularization under the policy dated 01.10.2003 has not been considered and was kept pending.

This claim of the petitioner cannot be accepted in the light of the subsequent withdrawal in the year 2007 of all the notifications issued for regularization by the Government of Hayana after the passing of the judgment of the Hon'ble Supreme Court in Secretary, State of Karnatka Vs. Uma Devi, (2006) 4 SCC 1.

The writ petition stands disposed of."

23. It may be noted that Indraj Singh also relied on the policy dated October 01, 2003 for regularization.

24. This fact was not brought to the notice of the Court during the

prolonged hearing of the case. The same issue stands decided and it was only while going through the order sheet that I found the order dated August 02, 2013 that CWP No.13352 of 2013 be listed with CWP No.12941 of 2013.

25. Karamveer in connected case CWP No.13352 of 2013 was engaged by Deputy Civil Surgeon, (TB & Leprosy), Karnal. He worked as a Mini Bus driver in the Leprosy Eradication Programme. In absence of budget for wages for the post of driver at District Level, Karamveer's contract was terminated as per Clause 9 of the contract of service and was served one month's show cause notice. The orders passed in the main petition (above) and the judgment and order in *Indraj Singh* case will cover this case as well.

26. Dismissed.

06.09.2018
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No