

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 14980 of 2017

Date of decision : October 25, 2018

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Pala Ram

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.K Kaushik, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

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RITU BAHRI, J.

Petitioner is seeking quashing of the order dated 10.4.2017 (Annexure P-8), whereby his case of regularization has been rejected. Further prayer has been made seeking direction to the respondents to regularize the services of the petitioner according to Policy decision dated 01.10.2003 (Annexure P-1).

The petitioner Sh. Pala Ram was appointed as Labourer-cum-Mali on 1.4.1989. He had been denied the relief earlier vide office order dated 28.8.2007 (Annexure P-3), which he had challenged in CWP-13060-

2015. The said writ petition was disposed of vide order dated 20.9.2016

(Annexure P-7) with a direction to consider the services of the petitioner either under the regularization Policy dated 01.10.2003 or under the Policy dated February 10, 2004. In compliance of this order, impugned order dated 10.4.2017 (Annexure P-8) was passed by respondent no.3-Divisional Forest Officer, Jind. It was observed in the impugned order that the petitioner was engaged on daily wages basis by local forest guard keeping in view the seasonal work on nursery and plantation. The nature of the work of Forest Department is totally seasonal and mostly limited to rainy season. It was further observed that although the petitioner completed 240 days in calendar year 1996, 1997, 1998, 1999 but there was break in service for more than one month at one time and he was not originally appointed against sanctioned vacant post. Moreover, he was not on work prior to 31.01.1996. As such, the petitioner does not fulfill the conditions of said regularization policy dated 01.10.2003 and he was not found eligible for regularization. According to the policy of Haryana Govt. dated 01.10.2003, only such daily wages employees who have completed three years service on 30.9.2003 shall be regularized against their respective Group 'D' post provided they fulfill the requisite qualification and were originally appointed against vacant post. Provided further that they have worked for a minimum period of 240 days in each year and if the break in service of daily wage employee has been caused for no fault attributable to him, such break period should be condoned unless it is of an extra ordinary longer period. Moreover, no junior to the petitioner in Jind Division of the Forest Department has been regularized. The petitioner cannot claim himself

senior to the workmen of other Divisions. It was held that the claim of the petitioner was not found to be covered under regularization policies dated 27.5.1993, 18.3.1996, 1.10.2003,, 18.6.2014 and 20.6.2014 issued by the State Govt. of Haryana from time to time. Hence, the claim of the petitioner was rejected and his services were not regularized. Hence the present petition.

Heard counsel for the parties. The present aspect has been considered by Hon'ble the Supreme Court in the case of ***Malathi Dass vs. Suresh and others 2014 (2) CLR 168***, wherein it *has been held that parity has to be maintained between similarly placed employees having been regularized by the State. Even if the regularization policies have been withdrawn after the judgment passed in the case of Secretary, State of Karnataka and others vs. Umadevi and others, 2006 (2) SCT 462, the State is duty bound to regularize the services of the respondents on the basis of parity. In paragraph 8 of the judgment it has been held as under:*

“8. It is not in dispute that the original batch of employees who had filed writ petition Nos. 33541-571/1998 on the basis of which the writ petitions filed by the respondents herein (W.P. Nos. 39117-176/1999) were allowed by the order dated 15.12.1999 have been regularized. It is also not in dispute that out of the 445 employees who had filed writ petition Nos.39117-176/1999, by separate government

orders, the service of 161, 64 and 55 employees have been regularized in three batches. The records placed before the Court would indicate that 7 other persons have been regularized during the pendency of the present appeal. In a situation where a Scheme had been framed on 29.12.2005 to give effect to the order of the High Court dated 15.12.1999 passed in the writ petitions filed by the respondents herein and many of the similarly situated persons have been regularized pursuant thereto the action of the appellants in not granting regularization to the present respondents cannot appear to be sound or justified. The fact that the regularization of 55 employees, similarly situated to the present respondents, was made on 18.04.2006 i.e. after the decision of this Court in Umadevi (supra) is also not in serious dispute though Shri Bhat, learned senior counsel for the appellants, has tried to contend that the said regularizations were made prior to the decision in Umadevi (supra). The date of the order of regularization of the 55 persons i.e. 18.4.2006 will leave no doubt or ambiguity in the matter. In the aforesaid undisputed facts it is wholly unnecessary

for us to consider as to whether the cases of persons who were awaiting regularization on the date of the decision in Umadevi (supra) is required to be dealt with in accordance with the conditions stipulated in para 53 of Umadevi (supra) inasmuch as the claims of the respondent employees can well be decided on principles of parity. Similarly placed employees having been regularized by the State and in case of some of them such regularization being after the decision in Umadevi (supra) we are of the view that the stand taken by the appellants in refusing regularization to the respondents cannot be countenanced. However, as the said stand of the appellants stem from their perception and understanding of the decision in Umadevi (supra) we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty bound to regularize the services of the respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order.

In a judgment passed by this Court in the case of ***Krishan and others vs. State of Haryana and others (CWP No. 13039 of 2015)*** decided on 20.9.2016 (Annexure P-7), in paragraph 9 and 12, it has been observed as under:

9. Moreover, this Court is bound to give effect to the law in *Hari Nandan Prasad* case (Supra) where the Supreme Court reaffirmed the legal position summing up as follows:-

"However, wherever it is found that similarly situated workmen are regularized by the employer itself under some schemes or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art.14, rather than violating this constitutional provision."

12. As a corollary to the above discussion, these petitions are allowed. It is declared that the petitioners have a right to consideration for regularization of their services notionally from

the date when juniors were retained in service and regularized and in the direct writ petitions where continuous service is for long years protected by The Fifth Schedule, Entry 10 of the Industrial Disputes Act, 1947 as explained in Khajjan Singh or even by operation of para.53 of Uma Devi case. The principle on which relief is based in these cases is to uphold right to equal treatment within a homogeneous group, the fortunate and the deprived, to achieve social equality among those can be reasonably classified together, as explained with the help of case law in the preceding paragraphs.

In view of all that has been discussed above and having regard to the fact that the ratio of the above mentioned judgments is applicable to the facts of the present case, the writ petition is allowed. The respondents are directed to consider the case of the petitioner for regularization as per the regularization policy 01.10.2003 (Annexure P-1) from the date services of their juniors were regularized without insisting that the petitioner should have completed 240 days in every year. Necessary exercise be carried out within two months from the date of receipt of a certified copy of this order.

October 25, 2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes