

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 20251 of 2016

Date of decision : July 17, 2018

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Ajit Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Ajay Chaudhary, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

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RITU BAHRI, J.

The petitioner is seeking writ of mandamus to consider his claim for regularization in light of the policy decision dated 29.7.2011 (Annexure P-1) issued by the State Government, that all part time employees who have rendered 10 years service on 10.04.2006 are entitled for regularisation.

Briefly stated, the facts of the case are, that the petitioner was appointed as Water Carrier through Employment Exchange on Part time basis vide office letter dated 06.04.1985. Accordingly, in compliance of the same, he joined at Govt. Ayurvedic Dispensary at Gamra. Thereafter, the petitioner was shifted from this Dispensary to Ayurvedic Dispensary at

Petwar in May 1987 and since then he is working there. At the time when the petitioner was appointed on 06.04.1985, on part time basis, the service conditions of Class-IV employees were governed by Punjab State Class-IV Service Rules, 1963. The qualifications, age etc. were prescribed under Rule 5, which is reproduced below for ready reference:-

“5. No person shall be recruited to the service by direct appointment unless he,

(a) Produced certificate of character from two responsible persons not being his relatives who are well acquainted with him in private life,

(b) Is not less than 16 years and not more than 35 years of age on the date of appointment

(c) has not more than one wife living and in the case of a women is not married to a person already having a living wife

Provided that he govt. may, if satisfied that there are special grounds for doing so, exempt any person from the operation of this clause and,

(d) Possess the requisite knowledge of regional languages and of English as may be prescribed by the Government from time to time,

Provided that the appointing authroity may if it is of the opinion that candidate is otherwise fit to discharge his duties satisfactorily, relax any of the qualification prescribed under this clause.”

The Ayurvedic Department forms his own rule for Group-D Employee known as “Haryana Ayurvedic Department Subordinates Offices (Group -D) Service Rules, 1998” and the qualification for the post was also amended and qualification for the post of water carrier under new rules are as under:-

<i>Sr. No.</i>	<i>Designation</i>	<i>Academic qualification and Experience, if any for Direct recruitment</i>	<i>Academic qualification and Experience if any, for appointment other than by</i>
4	Water Carrier	Primary Pass with Hindi	Primary Pass with Hindi

Even under the new Rules, the petitioner fulfilled the required qualification of the above said post, on which he is seeking the regularization.

Pursuant to the judgment passed in the *Secretary, State of Karnataka and others vs. Uma Devi and others, 2006(4) SCC 1*, the Government of Haryana framed regularization policy for Group-C & D employees /workers appointed on ad hoc/contract/work charged/daily wages and part time basis on 29.7.2011. Vide notification dated 29.7.2011 (Annexure P-1), Haryana Govt. has taken a decision that all group-C and Group D employees even working on part time basis who have rendered 10 years service on 10.04.2006 are entitled for regularization. Thereafter, the Govt. issued an amendment on 17.1.2012 (Annexure P-2), wherein decision was taken that if there is any break caused for no fault of the employee, the same shall be condoned. When the claim of the petitioner was not considered for regularization, he served a demand notice dated 16.3.2016

(Annexure P-3). Hence, the present petition.

On notice, the reply was filed by the Director, Ayush Haryana on behalf of respondents no. 1 to 3. The stand has been taken that as per condition no. (v) of the regularization policy dated 29.7.2011, the employee should be regularized against a sanctioned vacant post of relevant category and moreover as per condition no. (iii) the concerned employee should have been appointed only after either his name has been sponsored by the Employment Exchange or has been appointed/engaged on the basis of recommendation made by the departmental selection committee by inviting applications through advertisement against duly sanctioned vacant post.

In the reply reference was made to **Civil Writ petition No. 5021 of 2015** titled, '**Chand vs. State of Haryana and others**' decided on **11.3.2016**, wherein, it was observed that the petitioner had put in 26 years of service approximately and in the latest policy dated 18.6.2014, there was no condition that sanctioned post should be in the same category on which the employee is working. The only condition is that the employee should have worked for not less than 3 years as on 28.5.2014. A direction was given to the respondents to pass appropriate orders for regularization of the services of the applicant/petitioners as per policy dated 29.7.2011 and 18.6.2014. The department further proceeded to make seniority list of al part time sweepers i.e 357 and seniority list of part time water carriers i.e 364 separately and objections were invited. After considering the objections, two final seniority lists dated 10.10.2016 for both part time sweepers and water carriers separately was circulated vide letter dated 26.10.2016. As per the final seniority list of water carriers

(Annexure R-1), the name of the petitioner was at Sr. No.57. Subsequently, a Division Bench of this Court in **Yogesh Tyagi's case (supra)** has quashed the regularization policies of the year 2014. It was further stated in the reply that as the petitioner was relieved from his part time service on 30.11.2016 after attaining the age of 60 years thus this petition has been rendered infructuous. Moreover, as the petitioner was not a regular employee so he was not granted any retiral benefits.

After hearing counsel for the parties and going through the contents of the writ petition and the written statement, the case of regularization is being denied by the respondents on two grounds only:

- (i) regularization only against a sanctioned post.
- (ii) The name should have been sponsored by an employment exchange.

This aspect has been considered by a Co-ordinate Bench of this Court in the case of ***Sharda Devi vs. State of Harayna and others (CWP No. 16355 of 2012)*** decided on **22.7.2016 (Annexure P-4)**. In that case, State counsel submitted that the petitioner was not working against a sanctioned post and availability of sanctioned post is sine qua non of the policy of regularization. It was held that the very fact that the petitioner has been working since 1995 is sufficient to conclude that there was continued need for part time sweepers in the organization and she filled that gap when she was taken back in service on a settlement arrived at during conciliation proceedings. Moreover, the claim of the petitioner for regularization cannot be denied by a general order that she does not fulfill all the conditions of the policy only for the reason that she was not initially engaged through sponsorship of employment exchange Part time employment or daily wage

service does not strictly fall within the provisions of Article 16 of the Constitution of India and such services are in fact governed by the principles of labour law and Industrial jurisprudence and their special rights are preserved in the Industrial Disputes Act, 1947 on the touchstone of victimization and unfair labour practice. The writ petition was allowed and the respondents were directed to consider regularizing the services of the petitioner with effect from due date in terms of the policy dated 29.7.2011 within 8 weeks of certified copy of order.

Counsel for the petitioner has further referred to another judgment passed by this Court in the case of *Surjit Kaur vs. State of Punjab and others (CWP No. 1824 of 2014)* decided on **16.1.2015**. In this case, the petitioner was employed by the respondents in the year 1983 initially on part time basis. She was given a consolidated salary and continued to discharge her functions till the time she attained the age of 60 years. The case of the respondents was that the services of the petitioner could not be regularized on account of non-availability of the regular vacancy as also the fact that the petitioner was lower down in the seniority list which was being adhered to in the matter of regularization of services. It was observed by the Co-ordinate Bench that the action of the respondents in denying the benefit of regularization to the petitioner is totally unjust. The plea of the respondents that posts were not available was rejected. The petition was allowed and the respondents were directed to grant the petitioner deemed date of regularization in terms of the policy instructions (Annexure P-1) and thereafter determine the consequential benefits in favour of the petitioner. This judgment was assailed at the instance of the State of Punjab in LPA No. 771 of 2015, wherein it was upheld and it was

observed as under:

“We are sure that the State of Punjab will look into this aspect of the matter and re-structure the policy in such a manner that services of Class-IV part time employees are regularized at least before one attains the age of retirement and in case, regular vacancy does not become available, in that case, such employee shall be taken to have been made regular, immediate before his retirement. Such a liberal and pragmatic interpretation is the only effective modicum to achieve its object. Suffice to observe that recourse to such a policy decision is permissible under the mandate of Constitution Bench decision in *Secretary, State of Karnataka and others vs. Umadevi and others*, 2006(4) SCC 1.”

The petitioner in the present case has since retired after attaining the age of superannuation on 30.11.2016 and she has worked on part time basis since 6.4.1985 i.e for nearly 31 years and has been wrongly denied the benefit of regularization on the grounds that regularization can be done only against a sanctioned vacant post of relevant category and that the employee should have been appointed only after either his name has been sponsored by the Employment Exchange or has been appointed/engaged on the basis of recommendation made by the departmental selection committee by inviting applications through advertisement against duly sanctioned vacant post.

In view of the judgments passed by this Court in the case of

Sharda Devi's case (supra) and in ***Surjit Kaur's case (supra)*** , this petition

is allowed and the respondents are directed to grant the petitioner deemed date of regularization in terms of the policy instructions (Annexure P-1) and thereafter determine the consequential benefits in favour of the petitioner along with 8% interest. Let needful be done as expeditiously as possible but not later than within a period of three months from the date of receipt of a certified copy of this order.

(RITU BAHRI)
JUDGE

July 17, 2018
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Whether speaking/reasoned	Yes
Whether reportable	No