

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

C.W.P. No.5596 of 2015

Date of Decision:-08.05.2018

Shishpal and others

....Petitioners

vs.

Haryana Vidyut Parsaran Nigam Ltd. and others

....Respondents

BEFORE :- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr.J.K. Goel, Advocate,
for the petitioners.

Mr. R.S. Longia, Advocate,
for the respondents.

Sudhir Mittal, J. (Oral)

The petitioners are working as part-time Sweeper/Mali in the Haryana Vidyut Parsaran Nigam Ltd., Kaithal (hereinafter referred to as the 'HVPNL'). They were appointed as such between the period 13.10.1993 to 14.7.1997. They seek regularization of their services w.e.f. the date when their juniors have been regularized and to grant arrears of pay along with interest.

Learned counsel for the petitioners submits that earlier, petitioners No. 1 to 6 and some other persons had filed CWP No.4917 of 2001 seeking regularization of their services, which was disposed of by this Court vide judgment dated 28.8.2002 in terms of the judgment passed in CWP No. 17998 of 1999 decided on 22.8.2002, wherein it was directed that the HVPNL should frame a proper policy of regularization. Consequently, policy dated 8.8.2003 was framed followed by policy dated 29.7.2011.

However, the services of the petitioners were not regularized. A representation was made but no action was taken thereupon and, therefore, the petitioners approached this Court by way of filing CWP No.22459 of 2013, which was disposed of vide order dated 09.10.2013 with a direction to the respondents therein to consider the claim as mentioned in the legal notice. Thereafter, order dated 23.12.2014 (Annexure P-10) has been passed and the claim of the petitioners has been rejected on the ground that they were not appointed against the duly sanctioned vacant posts. This order is under challenge in this writ petition on the ground that the policy does not state that the appointment should have been made against a duly sanctioned post. Moreover, the petitioners have been working for more than **20 years now** and, therefore, it is obvious that work is available for them. Reliance is placed upon judgments dated 20.5.2015 passed in CWP No.2326 of 2011 titled as ***Chhabi Lal & ors. vs. The State of Haryana & ors.***, dated 24.4.2018 passed in CWP No..13675 of 2015 titled as ***Ram Kishan vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and others*** as well as judgment dated 17.4.2018 passed in CWP No.29171 of 2017 titled as ***Rajender Kumar and others vs. The State of Haryana and others*** wherein reliance has been placed upon ***Chhabi Lal's case (supra)***. Moreover, juniors of the petitioners had approached this Court by way of filing CWP No.11368 of 2012 titled as ***Gian Chand and others vs. Haryana Vidyut Parsaran Nigam Ltd. and others*** which was allowed by this Court vide judgment dated 22.4.2014. LPA filed against this decision was rejected and pursuant to the order of the learned Single Judge, the petitioners therein were

regularized vide order dated 5.3.2015 (Annexure P-16).

The prayer is opposed by learned counsel for the respondents on the ground that there are no vacant sanctioned posts available and that as and when the same are available, the case of the petitioners would be considered in the transmission circle concerned. Moreover, the policy dated 29.7.2011 requires that the appointment should have been made against a vacant sanctioned post but that is not the situation in the case of the petitioners.

It is also stated that the petitioners were not appointed by following a regular selection process and thus, they are not entitled to regularization of their services.

I have given my anxious consideration to the issues raised by the parties and with their assistance, I have gone through the record placed before this Court. Although it is the case of the respondents that the appointment of the petitioners were made without following the regular selection process yet it would not affect the petitioners' rights for regularization in view of the judgment rendered in *Ram Kishan's case (supra)*. The learned Judge has specifically dealt with this issue and has held that in case of daily wage workers, a competitive selection is not necessary and the right to permanence accrues on the length of service. It is not the case of the respondents that the appointments of the petitioners are illegal and, therefore, they are not hit by the ratio of the judgment rendered in *Secretary, State of Karnataka and others vs. Umadevi and others*, (2006) 4 SCC 1 (CB). So far as the reason mentioned in the impugned

order dated 23.12.2014 (Annexure P-10) that the appointments were not made against duly sanctioned posts is concerned, the answer is provided in judgment dated 22.4.2014 (Annexure P-14) wherein after relying upon the ratio of judgment passed in CWP No.13529 of 1999 titled as *Satya Dev vs. Haryana Vidyut Prasaran Nigam Ltd.*, decided on 8.12.2000, it has been held that where Class IV person has been working for decades together, a presumption arises that sufficient work is available and, therefore, existence of a vacant regular post is not necessary. The order dated 5.3.2015 (Annexure P-16) makes it clear that persons junior to the petitioners have been granted regularization pursuant to orders passed by this court. The fact that the persons mentioned in the said order are juniors to the petitioners is evident for the reason that the said persons were appointed between the period 1995 to 1997 whereas the petitioners have been appointed between the period 1993 to 1997. If they are not regularized, it would amount to invidious discrimination as their juniors have been regularized.

In view of the above, the writ petition is allowed and it is directed that the services of the petitioners be regularized w.e.f. the date their juniors were regularized and arrears of salary along with interest @ 6% per annum be released to them within a period of 8 weeks from the date of receipt of certified copy of this judgment.

May 08, 2018
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(SUDHIR MITTAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes