

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

CWP-6551-2015

Date of decision: 5.4.2018

Shimlo Devi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Saurabh Arora, Advocate for the petitioner

Mr.Amit Mehta, Sr.DAG, Punjab

None for respondent No.5.

JITENDRA CHAUHAN, J.

The present writ petition under Articles 226/227 of the Constitution of India has been filed for quashing of communication/ order dated 12.1.2015 (Annexure P5), vide which, the claim of the petitioner for regularization of her services was declined.

Learned counsel for the petitioner states that the claim of the petitioner for regularization has been declined on the ground that services of none of the part time workers have been regularized from the seniority list of June, 2014 due to non-availability of the posts. The name of the petitioner appears at Serial No.29 of the said seniority list. However, it is asserted that the services of respondent No.5 -Sudesh Kumari, who was identically placed, having seniority at Sr.No.106, in the seniority list of the year 2012 were regularized vide order dated 23.1.2015

(Annexure P-6). Pursuant to the direction issued by this Court in CWP-13506 of 1997 titled as “Gurdev Kaur vs. State of Punjab” vide instructions dated 4.3.1999, the services of part time workers were ordered to be regularized having ten years of service.

On the other hand, learned State counsel submits that the petitioner is an illiterate woman and could only be accommodated against the post of sweeper. He further submits that the respondent- Department has prepared a seniority list of all part time workers and as and when the vacancies of Class-IV become available, the same are to be filled in on the basis of seniority and eligibility of such part time workers. The turn of the petitioner for regularization of her services has not reached so far.

I have heard the learned counsel for the parties.

Admittedly, the petitioner was appointed as part time worker (Sweeper) in Govt. Primary School, Bhumbotar (Haar), Tehsil Mukerian, District Hoshiarpur on 5.1.1990 and has rendered more than 25 years of service without any interruption and her work and conduct is good.

This Court in **Sharda Devi vs. State of Haryana and others** 2017(1) PLR 130 has held as under:-

It is by now well settled that part-time workers and daily wagers do not hold posts under the Government and Government is within its right to employ daily wagers and part-time workers in the exigencies of work and needs of the administration. This concept of employment of daily wagers etc has been recognized by a Constitution Bench of the Supreme Court in

Secretary, State of Karnataka v. Umadevi, (Umadevi 3), (2006) 4 SCC 1 in paragraph 2 of the judgment. Besides, *Umadevi-3* is to be read in the light of **Maharashtra State Road Transport Corporation Ltd. v. Casteribe Rajya Parivahan Karamchari Sanghalana**; (2009) 8 SCC 556 and **Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI and another**; 2014 (2) SCT 234 (SC) and judgment in **Khajjan Singh v. State of Haryana**, 2014 SCC Online P&H 10865; ILR (2014) 2 P&H 363 would also help.

Therefore, I would not accept the view that a part-time employee cannot be regularized except against a vacant sanctioned post as known to service jurisprudence where posts are governed by rules. These people stand on non-rule territory and develop rights of security of labour to root out exploitation at the hands of the functionaries of the State who engage them for very long periods of time and endlessly. As a matter of fact, the Haryana Government policy dated 29.7.2011 itself envisages regularization of part-time workers and therefore, it is not open to the State to argue that part-time workers can be excluded altogether from the concession unless they do not fall within the prescriptions in the policy. The very fact that the petitioner has been working since 1995 [except for the gap period] 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.

In the present case, the claim of the petitioner was rejected by District Education Officer, Hoshiarpur only on the ground that she stands at seniority No.29 in the seniority list issued in the year 2012 and services of none of the part time workers in the said seniority list have so far been regularized on account of non-availability of sanctioned post. However, vide order dated 23.1.2015, in compliance to the directions issued from time to time vide letter 11/15/98-4 P.P. 3/2803 dated 4.3.1999 (Annexure R-1) of Punjab State Personnel Department regarding fresh policy of regularization of services of part time workers, letter No. 21/58/2003-05/7303 dated 24.4.2004 of Punjab Government, Department of Education, services of Sudesh Kumari, who was appointed on 31.5.1995, were regularized.

Regarding non- availability of posts, a Division Bench of this Court in **Raldu Ram Etc. vs. State of Haryana etc.**, CWP-10774 of 1999 decided on 4.2.2000 has observed as under:-

“So far as the second ground is concerned, it is sufficient to point out that the work of the petitioners was with the respondents and they continued to serve and are in service even as on today and since they have already rendered more than 10 years service, it cannot be said that their services cannot be regularized for non-availability of the required posts. Once the respondents have engaged the petitioners on work, which is of continuous nature, and permitted them to serve on their respective posts for more than 10 years, it will be unfair for the respondents to decline the case of the petitioners for regularisation of their services for non-availability of posts.”

In view of the above, the present writ petition is allowed. The respondents are directed to consider for regularizing the services of the petitioner from the date when the services of her junior Sudesh Kumari were regularized within one month from the date of receipt of the certified copy of the judgment.

5.4.2018
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No