

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

CWP-9239-2014

Date of decision: 24.9.2018

Gurmukh Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.BS Jaswal, Advocate for the petitioner

Ms.Monica Chhibber Sharma, Sr.DAG, Punjab

JITENDRA CHAUHAN, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance direction to the respondents to regularize the services of the petitioner, who has been serving as Chowkidar continuously since 26.6.1996 with respondent No.3, in view of the Instructions dated 18.3.2011 issued by the Department of Personnel, Government of Punjab.

Learned counsel for the petitioner submits that the petitioner is working as Chowkidar in the office of Child Development Project Officer, Jandiala Guru (Amritsar) since 26.6.1996. Despite the Instructions issued by the State Government, his services were not regularized on the ground that the Department of Social Security and Women and Child Development, Punjab is not mentioned in the list of Departments, services of whose employees were ordered to be regularized in view of the Instructions dated

18.3.2011. The petitioner has completed more than 21 years of service and is squarely covered by the judgment dated 19.4.2017 passed in CWP-24735-2015 titled as “**Mahavir Singh vs. State of Punjab and others**”.

On the other hand, learned State counsel submits that in view of the ratio of the law laid down by Hon'ble the Supreme Court in **State of Karnataka vs. Uma Devi 2006 (3) SLR (1)**, the Government of Punjab as a one time measure vide Instructions dated 18.3.2011 had decided to regularize the services of work charged/ daily workers who had completed 10 years of service upto December, 2006 of only those departments whose list was attached alongwith the said Instructions. However, since the Department of Social Security and Women & Child Development Punjab was not mentioned in the said list and as such the said Instructions dated 18.3.2011 were not applicable to the employees of the respondent Department including the petitioner and thus, he could not be considered for regularization.

Heard.

Admittedly, the petitioner was appointed as Chowkidar in the office of Child Development Project Officer, Jandiala Guru (Amritsar) vide appointment letter dated 26.6.1996. His period was extended from time to time. He is working in the said office since his appointment without any break. He has completed more than 21 years of service. The Punjab Government, Personnel Department, issued Instructions dated 18.3.2011 (Annexure R-1) regarding regularization of services of daily wagers/ work charged employees working in different departments in the State of Punjab.

The relevant part of the said Instructions are reproduced hereunder:-

i) in order to regularize the service of those employees, who are working against permanent posts on contract basis and their recruitment has been made according to the fulfilment of the prescribed qualifications/ eligibility by adopting proper procedure in a transparent manner, their services be regularized with effect from 1.4.2011 or on completion of three years service on contract, whichever is later, but no new post will be created for them.”

In **Mahavir Singh's case (supra)**, this Court has observed as under:-

“8. The Government of Punjab took a one time policy decision dated 18.03.2011 for regularisation of the services of the employees who have completed three years service. This policy covered the daily wagers, work-charged, contractual employees working on permanent posts appointed after fulfilling eligibility criteria as per procedure. The only defence raised herein is that the Government in its policy dated 18.03.2011 has made it applicable to certain departments and the same is not applicable to employees working in the Sports Department. No special reason has been given as to why the Sports Department has been excluded from the purview of the policy which appear to be restricted to departments of Forest, Health Technical Education, Urban Local Bodies.

9. A Single Bench of this court in Civil Writ Petition No. 24337 of 2012 decided on 17.08.2015

titled *Shri Pal And Others Versus State Of Punjab And Others* has held that the exclusion of employees of certain departments from being entitled to the benefits of the regularisation policy of 2011 is unfair discriminatory and violative of Article 14 of the Constitution of India. In deed, there is no such reasonable criteria forthcoming as to why this pick and choose policy has been adopted. Once a decision is taken to extend the benefit of regularization to employees of certain departments, other have to be treated equally.”

The contention of the learned State counsel that it was a one time measure vide Instructions dated 18.3.2011 (Annexure R-1) and as such, the decision in **Uma Devi's case (supra)** did not permit the regularization of the petitioner, is not tenable in view of the ratio of law laid down by Hon'ble the Supreme Court in **Narendra Kumar Tiwari and others vs. The State of Jharkhand and others**, SLP (Civil) Nos. 19832-19838 of 2017, decided on 1.8.2018, wherein the term 'one time' measure has been interpreted, in the following terms:-

6. The decision in Umadevi (3) was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily wage workers and continuing with them indefinitely. In fact, in paragraph 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason

that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.

7. The concept of a one-time measure was further explained in Kesari in paragraphs 9, 10 and 11 of the Report which read as follows: 2 (2010) 9 SCC 247

“9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3), each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in Umadevi (3), cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in

terms of para 53 of the decision in Umadevi (3), will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six- month period mentioned in para 53 of Umadevi (3) has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (3), but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3), the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3), are so considered.

11. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that

they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure.”

8. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

9. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10 th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.”

In view of the fact that the petitioner fulfils the criteria of regularization in terms of Instructions dated 18.3.2011 and his case is squarely covered by the law laid down in **Narendra Kumar Tiwari & others' case (supra)** and **Mahavir Singh's case (supra)**, the present petition is allowed and the respondents are directed to regularize the services of the petitioner in view of the Instructions dated 18.3.2011 (Annexure R-1). Let the exercise be carried out within a period of two months from the date of receipt of the certified copy of the judgment and any arrears of pay etc. admissible to the petitioner consequent to regularization, be released to him limited to a period of 38 months prior to the filing of this writ petition as has been held by a Division Bench of this Court in **Krishan Kumar Sharma and others vs. State of Punjab and another 2013 (16) SLT 890**.

24.9.2018
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No