

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

1. CWP No. 9489 of 2018 (O&M)

Om Parkash and others **...Petitioners**
versus

State of Haryana and others **..Respondents**

2. CWP No. 19430 of 2018 (O&M)

Subhash Chander & ors. **...Petitioners**
versus

State of Haryana and others **..Respondents**

3. CWP No. 19446 of 2018 (O&M)

Nirmala Devi **...Petitioner**
versus

State of Haryana and others **...Respondents**

Date of Decision:07.09.2018

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Shalender Mohan, Advocate
for the petitioners in all the above four writ petitions

Mr. Kiran Pal Singh, A.A.G. Haryana

RITU BAHRI, J.

The above said three petitions, as noted above, are being disposed of by this common judgment, having arisen out of the impugned orders dated 30.03.2018 (in CWP No. 9489-2018), order dated 28.02.2018 and 28.09.2017 (in CWP No. 19430-2018) and order dated 18.01.2018 (in CWP No. 19446-2018) as common questions of law and facts are involved therein. However, for the facility of reference, the facts are being taken from CWP No. 9489-2018.

employee in the departments on various posts of Sweepers, Water Carrier, Mali on part time basis. They are working from near about 03 decades and are still working upon their posts. The details of their joining of the department is given in the legal notice dated 25.07.2017 (Annexure P-7). The petitioners are continuing in service from the date of their appointment till date without any break. There is no complaint pending against them. They are working against the sanctioned posts but they have not been paid salary as per the regularly selected employees.

The State has introduced the policy dated 07.03.1996 for regularization of service of part time employee/daily wagers and thereafter, this policy was modified, vide order dated 18.03.1996.

The employees who were falling in the above policy, approached this Court by way of filing CWP No. 1447-1998, which was disposed of on 15.02.1999 with a direction to decide the representation of the petitioner, within a period of three months.

The grievance of the petitioners before this Court that similarly situated employees have filed CWP No. 17734-1994 challenging the policy dated 01.02.1999. This petition was disposed of on 08.11.2001 (Annexure P-1) by saying that the requirement through the employment exchange cannot be made applicable. Further it was directed to the respondents to decide the representation of the petitioners after reconsidering their case in view of the latest situation of the facts.

Instead of passing any order on the representation filed by the employees, the respondents assailed the decision dated 08.11.2001 before Hon'ble the Supreme Court by way of filing SLP No. 18854-2002 but the SLP was dismissed on 03.01.2011.

But thereafter, no action was taken by the respondents and the employees have COCP No. 446-2012 and the employees came to know that the respondents have already passed an order dated 07.12.2012, in view of order dated 08.11.2001 and framed a policy dated 17.10.2002, in view of High Court decision. Thus, the contempt petition was dismissed on 24.05.2011.

Despite the above said judgments, the claim of the petitioners was rejected vide impugned order and now the petitioners are seeking regularization of their services under the policy 17.10.2002 (Annexure P-5).

The similar relief has already been granted by this Court in ***CWP No. 4928-2013 titled as Prahlad and others vs. State of Haryana and others, decided on 12.02.2016 (Annexure P-3)***. Some of the petitioners in CWP No. 4928-2013 are junior to the petitioners and the petitioners in CWP no. 4928-2013 were appointed along with petitioners. Thus, the petitioners are entitled for the same relief of regularization, which has been granted to similar situated employees.

Learned State counsel has not disputed this fact that the petitioners are similarly situated employees and their case is fully covered by CWP No. 4928-2013. In this petition, this Court has discussed in detail and the operative part of the judgment reads as under:-

*“Reference at this stage can further be made to a judgment of a Division Bench of this Court in a case of **Umed Singh vs. State of Haryana and others, 2001(1) RSJ 752** wherein it has been held that after 10 years, the petitioners in the case cited above were considered to be eligible for regularisation. It is pertinent to note that the petitioners are*

also claiming that the expression “part time” does not indicate with regard to nature of their work and the time spent by them in the schools. According to them they are working for the entire day in the school and performing their functions and duties assigned to them by the Administration. It is specifically disputed that they work only for an hour or two in a day. It is contended that there are nursery schools where small children are studying. Thus, the cleaning process of the class rooms etc is carried out for the hours during which the school is run.”

The writ petition was allowed and the following direction was issued:-

(i) The case of the petitioners for regularisation as par time employees would be considered by the State within a period of six months in the light of its policy dated 30.12.1995/25.02.1999.

(ii) The claim of the petitioners would not be declined on the ground that they do not possess the essential qualification as stipulated in the said policy as per the statement made in the court by Mr. Amol Rattan, learned Assistant Advocate General upon the instructions of the State.

(iii) The State shall appoint the Sub Committee headed by an officer not below the rank of Under Secretary to Government of State to examine the building, infrastructure, staff and number of children studying in every school of the State of Haryana and in the light of that to recommend how many regular posts can be created in every school depending

on the work and the strength of the employees and students. The committee shall consider the availability of the posts as and when it became available/vacant in a particular school to identify the total number of posts which can be filled up as of now, under the policy of the Government.

(iv) We also consider it appropriate that the Committee afore-stated shall hear the part time employees in a representative capacity before determining the criteria to implement the order.”

The above said judgment is directly applicable to the facts of the present case, as in the present case, the case of the petitioner for regularisation of their services had been declined on two grounds i.e non availability of posts and with regard to qualification, which have been taken care of in the above mentioned judgments.

*Reference at this stage can further be made to a judgment of this Court in a case of **Budho Devi v. State of Haryana, 2015 (3) LLJ 447** whereby this Court directed the respondents to regularise the services of the appellant as he had served the department for almost 31 years. The respondents have rejected the case of the appellant on the ground that she did not fulfil the condition of eligibility. Reference has been made to the judgment of **Dharam Pal v. State of Haryana and others, 2002(3) SCT 644.***

Even the case of the petitioners was recommended for regularization of their services, vide letter dated 09.10.2013 (Annexure P-4).

Applying the ratio of the above said judgments, the present writ petitions are allowed and orders dated 30.03.2018 (in CWP No. 9489-2018), order dated 28.02.2018 and 28.09.2017 (in CWP No. 19430-2018) and order dated 18.01.2018 (in CWP No. 19446-2018) are set aside. Respondents are directed to pass appropriate orders for regularizing the service of the petitioners with all consequential benefits. This exercise shall be completed within a period of four months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

07.09.2018
G Arora

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>