

CWP-18494-2004

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

**CWP-18494-2004 (O&M)
Date of Decision: 28.03.2019**

Pawan Rekha & Ors.

... Petitioners

Versus

Kurukshetra University & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Tribhuvan Dahiya, Advocate
for the petitioners.

Mr. Pankaj Mulwani, DAG Haryana.

Mr. A.S. Virk, Advocate
For respondent-Kurukshetra University.

ARUN MONGA, J

1. The instant petition, inter alia, has been filed for issuance of writ in the nature of *certiorari* for quashing the order dated 08.11.2002 (Annexure P-5) whereby the services of the petitioners were dispensed with. They have also questioned the legality and propriety of two orders, both dated 23.07.2004 (Annexures P-13 & P-14), by which their representations seeking the claim of re-employment and regularization were dismissed.
2. The petition was initially filed by eight persons, however, qua petitioner No.8 it was withdrawn on 01.06.2017.
3. The factual matrix of the case, which is not in dispute, is that the services of the petitioners No.1 to 7 were engaged by the respondents on contract basis between the period November, 1995 and April, 1996. The appointment of the petitioners was on fixed period and their services were

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extended from time to time with increase in salary. They worked till 08.11.2002 and their services were terminated vide impugned order dated 08.11.2002 (Annexure P-5).

4. It is the case of the petitioners that they were discriminated and were given less salary during their employment than the salary paid to their counter-parts. Their request for grant of regular pay scale instead of fixed salary was not acceded to by the respondents, leading to filing of CWP No. 4290 of 2001. The writ petition was disposed of on 12.09.2002 pursuant to an undertaking given by the counsel for the respondents to consider the case of the petitioners in the light of directions previously given in CWP No. 4382 of 2002.

5. It is averred by the petitioners that annoyed with their action of approaching this Court, the respondents vide impugned order dated 08.11.2002 (Annexure P-5) terminated their services in a totally illegal, arbitrary and pick and choose manner, whereas at that time there were 26 surplus peons(as enumerated in Annexure P-6) while the respondents terminated the services of 41 peons and the persons appointed later in time were permitted to continue in service. Their termination was challenged by the petitioners by filing CWP Nos. 201 and 272 of 2003.

6. It is further the case of the petitioners that, in the meanwhile, Government of Haryana issued Notification dated 01.10.2003(amended from time to time) for regularization of services of the adhoc/ contract employees who had completed three years service on 30.09.2003, as adopted by the respondents. Other employees were also taken back in service in the light of judgment of rendered by Full Bench in **Tek Chand & Ors. Vs. State of Haryana & Ors., 2001(3) SLR 770**, wherein it was held that the benefit of regularization can be denied only in a case where break in service is

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attributable to the employee and not in a case where the employer has caused the break. The petitioners named the persons in para no.21 of the writ petition whose services were also terminated in December, 2002 but their services were regularized in terms of the policy *ibid*, on 26.03.2004.

7. Hoping that their cases for regularization would also be considered by the respondents, the petitioners withdrew their writ petitions, referred to above, with liberty to make representation to the respondents. The petitioners also appeared before the competent authority and furnished an undertaking not to claim any arrears of salary for the period they remained out of service nor the benefit of past service, but their request for regularization did not find favour with the authorities and the same were rejected vide impugned orders dated 23.07.2004 (Annexures P-13 & P-14). The respondents discriminated the petitioners and regularized the services of the juniors and other similarly situated persons who were taken back in service and granted regularization. The petitioners also claimed that the respondents kept on engaging the services of other peons after terminating the services of the petitioners.

8. In the reply filed by respondents No.1 and 2, the stand taken by the petitioners was controverted. It was averred that the services of the petitioners were engaged on contractual basis for a fixed period and on consolidated salary keeping in view the requirements, which were extended from time to time. The engagement of the petitioners was not on sanctioned posts and their services were terminated as per the contract executed by them, before coming into force of the policy of regularization. Pursuant to the directions given by this Court in CWP No.201 of 2003, the representations of the petitioners were considered and rejected by the authorities in accordance with law and they cannot be equated with regular

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counter-parts working with the respondents. It was specifically averred that no person junior to the petitioners was kept in service or was regularized as Peon.

9. The respondents sought to distinguish the case of the Clerks, as mentioned in the writ petition, who were granted the benefit of regularization, by mentioning that their services were regularized against the posts of Clerks which were lying vacant as per the policy, whereas in the case of the petitioners, no sanctioned post of Peon was available on 30.09.2003 and the services of the Peons who were senior to the petitioners were regularized against the sanctioned post available on that date.

10. According to the respondents, Rai Singh etc. were engaged as *Mali* and it was admitted that their services were regularized as per the policy of the State Government meant for Malis and Maya Ram and Jasmer Singh were engaged as labourers and not Peons and their services were regularized as *Mali*. The stand of the respondents No.1 and 2 was that the petitioners were heard and their representation was rightly rejected.

11. Respondent No.3 also filed the separate written statement and more or less took the similar stand as that of respondents No.1 and 2. It was reiterated that the services of the petitioners were engaged on contractual basis and not against the sanctioned post and the same were dispensed with in the light of agreement executed by them and they were not covered under the policy of regularization of the State Government.

12. When this petition came up for hearing before the Coordinate Bench of this Court on 12.12.2014, following observations were recorded:-

“Specific averments taken in para 21 of the writ petition have gone virtually controverted to the effect that as many as 10 Clerks who were also not in service on the day when policy for regularization was issued, have

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*been considered and regularized, whereas the genuine claim of the petitioners has not been properly considered thereby treating the petitioners in a discriminatory manner. The action of the respondent-University also runs counter to the judgment of the Hon'ble Full Bench of this Court in **Tek Chand and others Vs. State of Haryana and others, 2001(3) SLR 770** wherein it was held that benefit of regularization cannot be denied if the gap in service was not attributable to the employees and it was caused because of the action of the employer."*

13. The Coordinate Bench had directed the respondent No.2 to consider the case of the petitioners, which prima facie appeared to be genuine, and take decision in the matter sympathetically.

14. Pursuant thereto, affidavit of Registrar of the University was filed and it was informed that the Committee has considered the matter and concluded that the petitioners cannot be given the benefit of regularization as per policy dated 01.10.2003 as they were not in service on 01.10.2003.

15. I have heard learned counsel for the parties and have gone through the paper-book carefully with their able assistance.

16. From the sequence of facts narrated above, it is emphatically clear that the respondents have not controverted the plea of the petitioners about taking back the persons/ Clerks in service and grant of benefit of regularization to them in terms of policy of 2003. The sole reason for denial of benefit to the petitioners is that they were not in service when the regularization policy of 2003 was notified.

17. Relevant parts of the Haryana Government notification dated 01.10.2003 as amended vide notification dated 10.02.2004 and of the letter dated 13.08.2004 (Annexure P/7), applicable to the respondents, providing

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for regularization of services of ad-hoc/contract and daily wages employees of Group C and Group D are as under :

A. Notification dated 01.10.2003 as amended vide notification dated 10.02.2004:

1. *Ad-hoc employees/contract employees:-*

(i) *That only such ad-hoc/contract employees who have completed three years service on 30th September, 2003 and were in service on that date should be made regular. If the break in service of an adhoc/contractually employed person has been caused for no fault attributable to him, such break period should be condoned unless is is of an extraordinary longer period i.e. not more than six months in a year. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days in a year.*

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B. Letter dated 13.08.2004:

“Subject: Amendment of policy regarding regularization of adhoc contractual and daily wage employees.

I am directed to refer to Haryana Government letter No.6/9/2003.IGSI dated 22.10.2003 and even number dated 11.02.2004, on the subject noted above and to inform that the State Government had formulated the policy for regularization of adhoc/ contractual and daily wages employees vide notification No. GSR 24/Const./Article 309/2003 dated 1st October, 2003, wherein clarification was sought by departments of the Government regarding creation of posts for regularizing the services of daily wage employees of Group ‘C’ and Group ‘D’.

It is clarified that only such wagers who had been engaged before 31.01.1996 and who have completed three years service on Group ‘C’ and Group

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‘D’ posts on 31st September, 2003 and were in service on 30th September, 2003 shall be regularized against their respective Group ‘C’ or Group ‘D’ posts provided they fulfill the other conditions and were originally appointed on Group ‘C’ or Group ‘D’ posts. If the posts are not available, they should be got created from the Finance Department with effect from 01.10.2003.”

18. Indisputably, the petitioners had been appointed as peons on contract basis on different dates during the period from 01.11.1995 to 11.04.1996. Their appointments for fixed periods were extended from time to time. Impugned notice dated 08.11.2002 was issued by the respondents ordering that the services of the petitioners, who were working on contract basis were no longer required from the date of issue of the said notice. Petitioners’ services were terminated by the respondents and the same is attributable to them alone and not to the petitioners. The petitioners had not abandoned their employment.

19. As held by a Full Bench of this Court in Tek Chand’s case (supra), the benefit of regularization can be denied only in a case where the break is attributable to the employee and not in a case where the employer has caused the break. Full Bench judgment is fully applicable to the instant case. The petitioners were to be deemed, by a legal fiction, as continuing in service for determining their eligibility for regularization on 30th September, 2003, the relevant date. It is not disputed otherwise that they fulfilled the prescribed requirements of qualifications and the length of service for regularization. This being the situation, the respondents were not justified in rejecting the petitioners claim for regularization on the ground that they were not in actual service on 30.11.2003.

19. Secondly, it is not disputed that the respondents had taken back

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into service and regularized ten ad-hoc clerks (named in para 21 of the petition), even though their services had also been terminated on 28.01.2003 and they were not in the actual service of the respondents on 30.11.2003. The policy and formula for regularization of services for clerks and the peons were same and uniform. The petitioners were also similarly placed. The refusal to take back and regularize their services could/cannot be justified on an artificial distinction created/set up of the respondents that the petitioners were Peons while those who had been taken back and regularized were Clerks. The respondents' refusal to take back the petitioners in service and regularize them is thus a clear case of hostile discrimination. This action of the respondents is illegal.

20. As noted above, petitioner No. 8 was allowed to withdraw her claim. Petitioners had given an undertaking dated 05.07.2004 Annexure P/12 to the respondents that if re-employment was given to them in the light of regularization policy, they will not claim any arrears for the period from the date of termination of their services up to the date of re-joining and any past service benefit rendered by them in the University. In my opinion, such an undertaking, particularly when it was conditional and the condition was not accepted by the respondents, does not destroy or deprive the petitioners of their legal and vested rights to claim the benefits of past service.

21. If there are no vacancies for taking the petitioners back in service as alleged by the respondents, they have to create necessary posts for the petitioners in accordance with the policy letter dated 13.08.2004 (Annexure P/7).

22. In the light of the above circumstances, I am of the opinion that the impugned orders are liable to be set aside, with direction to the

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respondents to take the petitioners No. 1-7 back in service, regularize their services and give them the benefits of their past service, except the salary for the period from 08.11.2002 till the date of rejoining.

23. Accordingly, the writ petition of petitioners No. 1-7 is allowed, the impugned orders dated 08.11.2002 (Annexure P/2) and 23.07.2014 (Annexures P-13 & P-14) are set aside, with direction to the respondents to take petitioners No. 1-7 back in service, regularize their services and give them all the consequential benefits of their past service, except the salary for the period from 08.11.2002 till the date of rejoining.

24. Needful shall be done within a period of two months from the date of receipt of certified copy of this order by the respondents.

25. No order as to costs.

March 28, 2019

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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No