

CWP-12878-2013 (O&M)

-1-

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

**CWP-12878-2013 (O&M)
Date of Decision: March 07, 2019**

Subhash Chander and Others

... Petitioners

vs.

**Haryana Dairy Development Cooperative Federation Ltd. and Anr
.. Respondents**

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.K.Malik, Sr. Advocate with
Mr. Sandeep Kumar Rana, Advocate
for the petitioners.

Mr. Ajay Chaudhan, Advocate
for the respondents.

ARUN MONGA, J

The present petition has been filed for issuance of a writ in the nature of *mandamus* directing the respondents to consider the claim of the petitioners for regularization w.e.f. the date when their juniors were regularized.

2. The petitioners have stated in their petition that petitioner No.1 was appointed on daily wages basis as Helper on 01.11.1986 whereas petitioners no.2 and 3 were appointed as Helpers on daily wages basis on 01.04.1987. Later on their services were terminated on 01.04.1988. This led to initiation of proceedings in the Labour Court and vide award dated 05.02.1992, they were directed to be reinstated with continuity of service. The said award was challenged by respondent-HDDCFL. Vide an order dated 17.01.2007 (Annexure P4), passed by this Court, the award was upheld though with a partial modification that back wages were restricted for a period of five

years.

3. The petitioners state that they have been working continuously ever since their reinstatement orders passed by this Court. They state that despite the policy decision dated 25.04.1995 (Annexure P5) taken by the Board of Directors of HDDCF, their services have not been regularized. For ready reference, the above decision of the Board of Directors is reproduced herein below:-

“1546/101/95

*Regularisation of services
of daily wage employees/adhoc
employees of HDDCF*

*The matter regarding
regularization of
services of Daily
wagers/adhoc
employees was
discussed in detail.
The Board resolved
as under:-*

*1. The services of daily-
wagers/adhoc employees who
fulfill the prescribed qualifications
be regularized w.e.f.1.4.95.”*

4. The petitioners also state that they obtained RTI Information, whereby, they came to know that the services of some of their juniors were regularized as is reflected from the order dated 28.04.1996 (Annexure P6). The petitioners have furnished the details in the petition with regard to their contention that the juniors have been promoted.

*The detail of petitioners and juniors is given below for
ready reference:*

Name	Date of appointment on daily wages	Date of regularization
Subhash Chander (Petitioner no.1.)	01.11.1986	Not regularized up till now
Shamsher Singh	1.3.1987	Regularized w.e.f. 1.4.1995 vide order (P6)
Rakesh Kumar	2.3.1987	Regularized w.e.f. 1.4.1995 vide order (P6)

Name	Date of appointment on daily wages	Date of regularization
Rohtash petitioner no.2	1.4.1987	Not regularized up till now
Late Sh. Manphool Singh Satpal	1.4.1987 14.3.1991	-do- Regularized w.e.f. 10.7.1998 vide order 10.7.1998.

5. Per contra, the stand taken by the respondent(s) in their written statement is that the petitioners were appointed as casual labour for civil construction works and currently there are no sanctioned posts available and, therefore, their services cannot be regularized. It is, however, not controverted that the petitioners have been working continuously without any break ever since their reinstatement pursuant to the orders passed by this Court as already noticed above.

6. I have gone through the respective pleadings and heard the rival submissions of learned senior counsel for the petitioners as also counsel for the respondents.

7. I am of the view that the stand taken with regard to non-availability of the sanction posts in the written statement filed by the respondents is not tenable.

8. I am in agreement with the submissions of learned senior counsel for the petitioners that the said argument is not tenable in view of Division Bench judgment rendered by this Court in case titled as **Baldu Ram vs. State of Haryana**, reported as **2000 (5), SLR 1**. The relevant whereof is extracted herein below:-

“So far as the second ground is concerned, it is sufficient to point out that the work for 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.”

9. Furthermore, the denial of regularization to the petitioners is also in violation of their fundamental rights envisaged under Article 14 read with 16 of the Constitution of India. Once, the Labour Court as also this Court had reinstated the petitioners with a clear directions that they shall be entitled to continuity of their service, the benefits of the same has to be granted to the petitioners. Therefore, the argument of the learned counsel for respondents that those who are regularized are seniors by virtue of the fact that at the relevant time the petitioners were not in service since their services were terminated by the Management vide order dated 01.04.1988, is not tenable.

10. Accordingly, I am of the view that for all practical purposes including benefit of regularization, the petitioners are deemed to be in service w.e.f. the date when they were originally appointed on daily wages basis.

11. Once, the petitioners are treated to be in service w.e.f. the original date of the appointments, they would be entitled to seek regularization on the ground of parity as has been held in identical circumstances by this Court in LPA No. 1037 of 2012, titled as **State of Haryana and others vs. Ved Pal and others,** decided on 25.07.2012, in following terms:-

“.....Since it stands admitted on record that juniors to the private respondents were made regular and no effort to de-regularize their services was made even after noticing the fact that seniors have been over-looked and ignored without any reasonable classification, in our considered

CWP-12878-2013 (O&M)

-5-

view, the private respondents have made out a case of hostile discrimination within the ambit of Articles 14 & 16 of the Constitution. It would necessarily mean that even if the Government Policy is not in existence and deemed to have been annulled, the private respondents shall be entitled to seek regularization of their services from the date such a benefit was granted to their juniors....”.

12. For the reasons assigned above, the present petition is allowed and the respondents are directed to consider the claim of the petitioners for regularization, on parity with their juniors, by passing a speaking order within a period of 03 months from the date of receipt of certified copy of this order.

March 07, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No