

**IN THE HIGH COURT OF PUNJAB & HAR`YANA
AT CHANDIGARH**

1. CWP No. 20846 of 2017

Rajni

....Petitioner

versus

Maharshi Dayanad University, Rohtak through its Registrar

**..
Respondent**

1. CWP No. 21208 of 2017

Smt. Sushila

....Petitioner

versus

Maharshi Dayanad University, Rohtak through its Registrar

**..
Respondents**

Date of decision:-23.01.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.P. Chahar, Advocate for the petitioner (s).

Mr. B.L. Gupta, Advocate for the respondent.

RITU BAHRI, J. (Oral)

The above mentioned two petitions, as noted above, are being disposed of by this common judgment, as common questions of law and facts are involved therein. However, for the facility of reference, the facts are being taken from CWP No. 20846-2017.

Petitioner was appointed on 29.10.1991 as Part time Lady Aya (Lady Attendant) by the Chief Warden of the respondent-University initially for a period of six months, which was extended from time to time. Thereafter, the case of the petitioner was considered for regularization, in view of 2011 policy, as per Annexure P-1. But no action was taken and thereafter, the petitioner along with other part time lady attendants filed a joint representation dated 03.02.2017 for regularization of service but no

action was taken.

Learned counsel for the petitioner submits that the State issued various notification dated 01.02.1999, 17.10.2002, 01.10.2003, 10.02.2004 and 29.07.2011 (P-3 to P-7) for regularization of service of part time Group D employees and these notifications were adopted by the respondent-University. Thus the petitioner who is working since 1991 on the post of Lady Attendant (Lady Aaya), is duly entitled for regularization of her services.

Learned counsel for the petitioner has further referred to Schedule A of Budget Estimates for the year 2016-17 of the respondent-University which shows the details of post of Lady Attendant and as per this Schedule, there are total 16 sanctioned posts and out of 16 sanctioned posts, 6 posts are filled by regular employees, 1 post by an adhoce employee and 01 post by an employee on deputation. There are total 09 sanctioned posts, which are lying vacant.

On the other hand, learned counsel for the respondent has submitted that the present petition is liable to be dismissed, as the petitioner has been paid from Hostel Funds as per Annexure R-2.

Learned counsel for the respondents submits that though the petitioner is working for the last 20 years with them but the said appointment was without any sanctioned vacant post and further her name was not sponsored by employment exchange or by way of public appointment. Reference has been made to judgment of *State of Karnataka v. Uma Devi and others, 2006 (4) SCC 1*.

Learned counsel for the petitioner is relying upon a Division Bench judgment of this Court in a case of *Suresh Kumar vs. State of Haryana and another, 2004 (8) SLR 656* wherein respondents were denying

regularization of service to an employee on the ground that he is being paid salary from Student's Fund. This Court allowed the writ petition and held that merely because the petitioner was paid out of Student's Fund, cannot be made a ground to deny him the benefit of the policy framed by the Government for regularization of the service of daily wages employees, who is working for the last 11 years on the post.

Heard learned counsel for the parties.

The issue with regard to prescribed qualification and condition of employment exchange, came up for consideration before this Court in a case of ***Mohammad Farookh and anr vs. State of Haryana and others***, **2012(6) SLR 687** and in para 7 and 8, it has been observed as under:-

7. The other objection which has been raised by the respondents denying the claim as has been made by the petitioners for regularization of their services is that they did not fulfil the requisite qualification nor were they appointed against sanctioned/vacant posts. This objection cannot be accepted in the light of the fact that minimum qualification prescribed for the post of Beldar is not mentioned nor any statutory Rules have been referred to which would suggest that the appointments of the petitioners should be with a specified qualification. With regard to the availability of sanctioned post, the same also cannot be accepted keeping in view the fact that petitioners are daily wage employees and posts are created depending upon the need which has been created by the respondents and persons who have been appointed subsequent to the petitioners have been regularized. Plea of the respondents that petitioners had not completed more than 240 days in a preceding year also cannot be accepted in the light of

the Awards dated 11.8.2004 (Annexures-P-1 and P-2), passed by the Industrial Tribunal-cum-Labour Court, Ambala.

8. *As regards the submission of the counsel for respondents that the policies for regularization of the services of the adhoc/daily wage part time/ temporary workers have been withdrawn, suffice it to say that the right of the petitioners for consideration arose to them as per the policy dated 1.10.2003, and the denial thereof on the ground that they have not completed 240 days in 12 preceding months have been found to be not in accordance with law. The plea of the respondents that the petitioners having approached this Court after a delay cannot again be accepted as the petitioners have been representing the respondents and their claim has been denied merely because they were not in service on the relevant date which plea has also been found to be not correct in the light of the Awards passed by the Industrial Tribunal-cum-Labour Court, Ambala, referred to above. “*

Once the petitioner is fulfilling the condition (i) of policy dated 29.07.2011 that an employee/worker should have continued for not less than ten years as on 10.04.2006 and is still in service, petitioner is entitled for regularisation of her service. The respondents cannot reject the claim of the petitioner on the technical ground that her name is not being sponsored through employment exchange or she is not working against a regular sanctioned post.

Accordingly, the writ petitions are allowed and the respondents are directed to pass appropriate orders for regularization of service of the petitioners as per policy prevalent at that time, keeping in view the judgment passed by this Court in **CWP-2009-2016 Balwinder Singh and others V/s.**

State of Haryana and others, decided on 04.10.2018 within a period of three months from the date of receipt of certified copy of this order failing which Rs.50,000/- will be deposited as costs in the account of petitioner.

23.01.2019

G Arora

(RITU BAHRI)
JUDGE