

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9013 of 2018
Date of decision : 02.04.2019

Naresh and another

...Petitioners

Vs.

The State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Shalender Mohan, Advocate,
for the petitioners.

Mr. Harish Nain, AAG, Haryana.

Ritu Bahri, J. (oral)

Petitioners are seeking quashing of the order dated 23.02.2018 (Annexure P-9) passed by respondent No.3-Superintendent of Police, Jind, whereby their claim for regularization of services has been rejected.

Petitioner No.1 is working as Water Carrier since 01.05.1994 and petitioner No.2 is working as Sweeper since 21.01.1999. They are seeking the benefit of policy of regularization dated 07.03.1996, which was modified on 18.03.1996 and the judgment dated 08.11.2001 passed by this Court in **Prahlad and others vs. The State of Haryana and another**, CWP No.17734 of 1999 (Annexure P-1). SLP against the said judgment has been dismissed vide order dated 03.01.2011 (Annexure P-2). Consequently, the petitioners (in CWP No.17734 of 1999) filed COCP No.446 of 2012, whereupon the respondents had complied with the order dated 08.11.2001 and framed a policy on 17.10.2002. In this backdrop, COCP No.446 of 2012

was dismissed vide order dated 24.05.2011. Some of the similarly situated employees approached this Court by filing CWP No.4928 of 2013 (Prahlad and others vs. State of Haryana and others), which was allowed vide judgment dated 12.02.2016 (Annexure P-3). At the time of allowing the said petition, reference was made to a judgment passed by this Court in **Budho Devi vs. State of Haryana**, 2015 (3) LLJ 447, whereby direction was given to the respondents to regularize the services of the appellant (therein) without insisting on the eligibility qualification, as she had served the department for almost 31 years. Further reference was made to a judgment passed in **Dharam Pal vs. State of Haryana and others**, 2002 (3) SCT 644.

Learned counsel for the petitioners have placed on record letter dated 09.10.2013 (Annexure P-4), whereby regularization cases of the employees, who have been working on daily wages since long, pertaining to District Hisar have been recommended. When no action was taken, petitioners, along with others, approached this Court by filing CWP No.25643 of 2017, which was disposed of on 06.12.2017 by giving direction to the respondents to take a decision on the legal notice dated 18.07.2017, which was served upon them by the petitioners. Pursuant to the said order, claim of the petitioners have now been rejected vide impugned order dated 23.02.2018 (Annexure P-9) on the ground that as per rules/instructions, minimum qualification for the post of Sweeper/Water Carrier is 5th class pass and having knowledge of Hindi reading and writing, but the petitioners have passed only 2nd and 3rd class and are not possessing the requisite qualifications. While passing the impugned order, it has been further observed that the original engagement of the petitioners was not made by following due process of selection as envisaged in the relevant

rules. Hence, they are not entitled to be absorbed on permanent basis.

Upon notice, written statement on behalf of respondent Nos.1 to 3 has been filed, wherein it has been stated that the petitioner were not engaged against the sanctioned vacant post. It was a backdoor entry. They were engaged as part time workers. They do not fulfill the requisite educational qualifications. It has been further stated that case of the petitioners is not covered by the judgment passed by this Court in CWP No.4928 of 2013 (Prahlaad and others vs. State of Haryana and others). After the judgment given by Hon'ble the Supreme Court in **State of Karnataka vs. Uma Devi**, 2006 AIR 1806, the State has withdrawn the policies of regularization, which were issued in the years 1997, 1999, 2003 and 2004. Hence, the petitioners cannot claim right of regularization against the policy, which has already been withdrawn. They cannot claim parity with those employees, who have been regularized way back in the year 2002 after a delay of almost 16 years.

After hearing learned counsel for the petitioner, this petition deserves to be allowed. Petitioner No.1 is working as Water Carrier since 01.05.1994 and petitioner No.2 is working as Sweeper since 21.01.1999. In the present case, petitioners along with others have served a legal notice dated 18.07.2017 (Annexure P-7) upon the respondents seeking the benefit of regularization, ACP scale, gratuity etc. as per relevant service laws and rules. In the said legal notice, reference was made to the similarly situated employees working under the Superintendent of Police, Hisar, who had approached this Court by filing CWP No.4928 of 2013 (**Prahlaad and others vs. State of Haryana and others**), which was allowed on 12.02.2016.

Thereafter, the petitioners filed CWP No.25643 of 2017, titled as **Om**

Parkash and others vs. State of Haryana and others, which was disposed of on 06.12.2017 (Annexure P-8) by giving direction to the respondents to pass a speaking order on the legal notice dated 18.07.2017. Pursuant to the said direction, impugned order dated 23.02.2018 (Annexure P-9) has been passed by respondent No.3, rejecting the case of the petitioners.

As far as the judgment passed in CWP No.4928 of 2013 **Prahlad and others vs. State of Haryana and others** is concerned, this judgment has been implemented by the department i.e. Superintendent of Police, Hisar and all those petitioners were working on daily wages/part time in the office of SP, Hisar like the present petitioners. Moreover, LPA No.428 of 2017, which was filed by the respondents against this judgment, has been dismissed on 12.07.2017 and SLP against this judgment has also been dismissed. Accordingly, the above judgment has attained finality and its implementation has not been disputed by the respondents. In the case of **Prahlad and others** (supra), reference was made to a judgments passed by this Court in **Dharam Pal vs. State of Haryana and others**, 2002 (3) SCT 644 and **Umed Singh vs. State of Haryana and others**, 2001 (1) RSJ 752, wherein it has been held that if, a daily wager has worked for substantially long period of time, then his case for regularization cannot be rejected on the ground that he was not sponsored through Employment Exchange, he does not fulfill the requisite qualification and there is not sanctioned post available for regularization.

Case of the present petitioners is fully covered by the above judgments. Accordingly, the present petition is allowed and the respondents are directed to regularize the services of the petitioners as per Policy dated 17.10.2002 (Annexure P-5). It is clarified that lack of educational

qualification should not come in their way. This exercise be completed within a period of three months from the date of receipt of certified copy of this order and compliance report thereof, be sent to this Court.

02.04.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No