

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 26587-2017 (O&M)

Date of decision:-14.02.2019

SANJEEV KUMAR AND ANR.

.....Petitioners

vs.

STATE OF HARYANA AND OTHERS

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Jagdish Manchanda, Advocate
for the applicants-petitioners.

Mr. Gaurav Jindal, Addl. A.G. Haryana

RITU BAHRI, J.(Oral)

C.M. No. 15637-2018

The present application seeking preponement of the above said case, is allowed and the main case is taken up today itself for disposal.

C.W.P No. 26587-2017

The present petition is for quashing of action of the respondents for not regularizing the services of the petitioners inspite of the judgment passed in ***CWP No. 2326-2011 by this Court in a case of Chhabi Lal and others vs. State of Haryana and others.***

Brief facts of the case are that petitioners were appointed on 01.01.1996/20.12.1996 respectively as part time workers in Haryana Vidyut Prasaran Nigam Ltd (for short 'HVPNL'), as per details given in Annexure P-1 colly. Thereafter, State of Haryana has framed a policy dated 07.11.1996 for regularizing the services on adhoc basis, daily basis who had completed three years of service as on 31.03.1996 and Nigam has also

framed the policy to regularize the service of daily wages employees, vide Annexure P-2. Thereafter, in view of certain directions given by this Court, the respondents framed a policy for regularization of part time employee on 20.07.1999 (P-3) with the observation that the employees who have completed 05 years of continuous service on the date of issuance of the policy, the preference be given to them. This policy was then challenged in CWP No. 13529-1999 and this Court vide order dated 08.12.2000 directed the respondents to again frame a policy and regularize the service of the writ petitioners.

The grievance of the petitioners before this Court is now that their services have not been regularized till date by the respondents despite the fact that they have been appointed in the year 1996. The petitioners are relying upon judgment i.e ***CWP No. 17324-2003 and connected matters titled as Chabbi Lal and others vs. HVPNL and others (P-7)***, decided on 10.08.2004 (P-7) wherein the petitioners were appointed as Mali/Sweeper/Sewerman by Haryana Prasaran Nigam as Class IV employees on part time basis between the period i.e 1981-1997. Subsequently their services were terminated on 12.03.2001. This Court disposed of the writ petition by holding that the case of the petitioner is squarely covered by the judgment of ***Satya Dev's case*** (supra) and the present petitioners were held entitled to the same relief. The respondents were directed to consider the case of the petitioners for regularization of their services in their respective cadres within a period of six months from the date of decision.

Since the order was not complied by the respondents, the

petitioners filed COCP No. 521-2008 and the contempt petition was dismissed on 13.07.2010 (P-10) as the stand of the respondents was that since the Government had already withdrawn the policies of regularization, no policy of regularization of service of adhoc/part time etc is there to regularize the services. Accordingly, the petitioners in contempt petition were given liberty to take recourse to the remedy in accordance with law. Subsequently, the petitioners in CWP No. 17334-2003 again filed CWP No. 2326-2011 challenging orders whereby their claim for regularization was rejected. The writ petition was allowed on 20.05.2015 (P-11) keeping in view the length of service of the petitioners. The respondents were directed to regularize the service of the petitioners who are similarly situated person to the present petitioners.

The respondents-department then filed LPA No. 1700-2015 against the judgment dated 20.05.2015, which was dismissed on 10.10.2017 (P-12). Thereafter, the respondents framed a policy to consider the cases of part time workers for regularization who are working since long, vide Annexure P-13. Subsequently, this Court allowed CWP No. 11368-2012 titled as *Gian Chand and others vs. H.V.P.N.L and others, decided on 22.04.2014 (P-14)*. Against this judgment, the respondents filed LPA No. 1126-2014, which was dismissed on 17.07.2014 (P-15). SLP was also filed against judgment dated 17.07.2014 and the same was dismissed on 07.01.2015 (P-16).

Learned counsel for the petitioners submits that the case of the petitioners, who were appointed as part time employee with the respondent-department in the year 1996 is squarely covered with *Chhabi Lal's case*

(supra). In this writ petition, it was held that the present petitioners and other similarly situated person who are working for the last 18-27 years against the posts are entitled for regularization. Thus, now the regularization cannot be denied on the pretext of sanctioned posts are not available.

Learned counsel for the respondents on the other hand while referring to written statement has argued that the petitioners are not entitled for regularization, as per policy dated 07.11.1996, as they were working on part time basis. Further it has been argued that there are no sanctioned posts on which the services of the petitioners can now be regularized..

This aspect has already been considered by Hon'ble the Supreme Court in a case of *State of Bihar vs. Kirti Narayan Prasad, 2018 SCC Online SC 2615*. In para 15, it has been observed as under:-

“15. In some of the LPAs the Division Bench appears to have followed paragraph 11 in M.L. Kesari (*supra*) for directing regularisation of service without considering the observations contained in paragraph 7 of the judgment. In paragraph 11, it was observed that "the true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation within six months of the decision in Umadevi (3) as a one-time measure". However, in paragraph 7 after considering Umadevi (*supra*) this Court has categorically held that for regularisation, the appointment of employee should not be illegal even if irregular.

"7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi (3), if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

The above judgment makes it abundantly clear that an employee who had been appointment illegally on part time basis/contract basic, he is not to be given benefit of regularization of his services. However, in the present case, it is not the case of the respondents that the appointment of the petitioners was made in illegal manner. The only stand taken by the respondents is that the petitioners are not employed through employment exchange. The case of the petitioners is squarely covered by ***Chhabi Lal's case (supra) and Gian Chand's case (supra)***.

Further with respect to the fact that the petitioners are not employed through employment exchange and they do not have requisite qualification, this aspect has been considered by this Court in a case of ***Gulashan and another vs. State of Haryana and others, passed in CWP No. 18923-2015, decided on 23.02.2016 and it has been observed as under:-***

Reference has been made to a decision of Hon'ble the Supreme Court in a case of State of Rajasthan and others v. Daya Lal and others, 2011 (2) SCC 429 wherein in para 8 of the judgment, it has been observed as under:-

8. We may at the outset refer to the following well settled principles relating to regularisation and parity in pay, relevant in the context of these appeals :

“(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with

relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularisation of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part time temporary employees.

(v) Part time temporary employees in Government run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with Government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

*Similar issue 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. “

Reference at this stage can be made to judgment of Hon'ble the Supreme Court judgment in **Malathi Das (Retd.) Now. P.B. Mahishy and others V/s. Suresh and others, 2014(2) CLR 168** wherein it has been held that the parity has to be maintained while regularizing the services of Group D employees since similarly situated employees have been regularized. In paragraph 8, it has been observed as under:-

*“8. It is not in dispute that the original batch of employees who had filed writ petition Nos. 33541-571/1998 on the basis of which the writ petitions filed by the respondents herein (W.P. Nos. 39117-176/1999) were allowed by the order dated 15.12.1999 have been regularized. It is also not in dispute that out of the 445 employees who had filed writ petition Nos.39117-176/1999, by separate government orders, the service of 161, 64 and 55 employees have been regularized in three batches. The records placed before the Court would indicate that 7 other persons have been regularized during the pendency of the present appeal. In a situation where a Scheme had been framed on 29.12.2005 to give effect to the order of the High Court dated 15.12.1999 passed in the writ petitions filed by the respondents herein and many of the similarly situated persons have been regularized pursuant thereto the action of the appellants in not granting regularization to the present respondents cannot appear to be sound or justified. The fact that the regularization of 55 employees, similarly situated to the present respondents, was made on 18.04.2006 i.e. after the decision of this Court in **Umadevi (supra)** is also not in serious dispute though Shri Bhat, learned senior counsel for the appellants, has tried to contend that the said regularizations were made prior to the decision in **Umadevi (supra)**. The date of the order of regularization of the 55 persons i.e. 18.4.2006 will leave no doubt or ambiguity in the matter. In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularization on the date of the decision in **Umadevi (supra)** is required to be dealt with in accordance with the conditions stipulated in para 53 of **Umadevi (supra)** inasmuch as the claims of the respondent employees can well be decided on principles of parity. Similarly placed employees having been regularized by the State and in case of some of them such regularization being after the decision in **Umadevi (supra)** we are of the view that the stand taken by the*

*appellants in refusing regularization to the respondents cannot be countenanced. However, as the said stand of the appellants stem from their perception and understanding of the decision in **Umadevi (supra)** we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty bound to regularize the services of the respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order.*

In the present case, the services of similarly situated employees have already been regularized, in view of policies dated 07.03.1996/18.03.1996 and thus, the services of the petitioner should also have been regularized in view of policies dated 07.03.1996/18.03.1996.

The writ petition is allowed and respondents are directed to regularize the services of the petitioners, keeping in view judgment (P-11 and P-14). This exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

14.02.2019
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No