

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-13294-2015 (O&M)
Date of decision: 31.01.2020

Brij Pal Sharma and others

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ajay Chaudhary, Advocate
for the petitioners.

Mr. Randhir Singh, Advocate
for State of Haryana.

RITU BAHRI, J. (Oral).

By this petition, the petitioners are seeking direction to the respondents to regularize their services w.e.f. 01.10.2003 alongwith all consequential benefits.

The petitioners are class IV daily wages employees, who are working in the respondent-Department for more than 10 to 20 years and their appointment was made according to Haryana Forest Manual against sanctioned post.

The respondents have recommended the case of the petitioners for regularization as per orders dated 14.08.2014 and 25.08.2014 (Annexures P-5 to P-11). In these orders, it has been specifically observed that all the petitioners have worked for more than 240 days in the last three years prior to 2003 and they are still working.

Thereafter the petitioners approached this Court by way of filing CWP No. 17508 of 2014 whereby they were claiming regularization

as per notification dated 18.06.2014. After withdrawing this writ petition, their case for regularization was not again considered keeping in view Division Bench judgment passed in ***CWP-17206-2014 titled as Yogesh Tyagi and others V/s. State of Haryana and others.***

In CM-10862-CWP-2016, it has been again reiterated that all the petitioners fulfill all the conditions of regularization policy dated 01.10.2003 (Annexure P-1). However, regularization is being denied on the ground of non-existence of sanctioned post and further earlier the petitioners were claiming regularization as per notification dated 18.06.2014.

Written statement on behalf of respondents has been filed on 19.12.2016. The respondents are denying the claim of the petitioners on the grounds that notification dated 18.06.2014 was challenged and this Court had stayed the operation of 2014 policies, since the petitioners were earlier claiming regularization as per notification dated 18.06.2014 and no sanctioned post is available.

Heard learned counsel for the parties.

With respect to non-availability of post, this issue has already been considered by this Court in ***CWP-10774-1999 titled as Baldu Ram V/s. State of Haryana***, whereby it has been held that if the employees have been working for more than 10 years and are still continuing, it is unfair for the respondents to decline their case on the ground of non-availability of posts.

Further recently, the Supreme Court in the case of ***Sheo Narain Nagar and others V/s. State of Uttar Pradesh and others*** was considering case of daily wagers who were employed in the month of

August, 1993. Thereafter they were appointed on contractual basis in the year 1996 and in the year 2000 they were appointed as regular employees on the minimum pay scale. Thereafter vide order dated 25.07.2006, they were given status of temporary employees with retrospective effect from 01.01.2002. They approached the High Court for regularization of their services but the Single Judge of the High Court dismissed the writ petition seeking regularization. The Division Bench of the High Court also affirmed that order. Thereafter in the year 2014, their services were terminated. The Supreme Court while referring to judgment of *Secretary, State of Karnataka and others V/s. Umadevi and others, (2006) 4 SCC 1*, held that the petitioners had been working since 1993 and as one time measure, they had right to be considered for regularization. It was not a case of back door entry or illegal appointment. The Supreme Court rejected the argument of learned counsel for the respondent that it was not the case of irregular appointment but of illegal appointment, since there was post available on which the services of those daily wagers could be regularized. The spirit of *Umadevi* judgment was that employment should be by fair means and not by backdoor entry and should be in the available pay scale. By ignoring the spirit of *Umadevi* judgment, a new devise has been adopted by making appointment on contract basis. The daily wagers are being appointed and continued their services without payment of salary and they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to the destituted and there being no provision for pension and retiral benefits etc. They have equal rights and to make them equal they require protection and cannot be dealt with arbitrarily. The Supreme Court has observed as under:-

“That spirit of the *Uma Devi (supra)* has been ignored and conveniently over looked by various State Governments/authorities. We regretfully make the observation that *Uma Devi (supra)* has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in *D.S.Nakara v. Union of India*, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of *Uma Devi (supra)*. Thus, the time has come to stop the situation where *Uma Devi (supra)* can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006.”

The judgment of *Sheo Narain Nagar's case (supra)* has been followed by the Supreme Court in *Civil Appeal Nos. 9413-9414 of 2019* titled *Rajnish Kumar Mishra and others V/s. State of Uttar Pradesh and others*. In this case the appellants were appointed in the year 1999-2001 for 3 months initially and this term was extended from time to time and thereafter an advertisement was issued in the year 2001 for appointment of class III employees which led the appellants to file several writ petitions

before the High Court which were clubbed together. In the said bunch of

writ petitions, the appellants already working on daily wages were given liberty to apply pursuant to said advertisement and they were allowed continue to work during pendency of the selection process. The selection process was ultimately cancelled and the case of the appellants was considered for regularization keeping in view that they had worked for almost 12 years. The Committee under the chairmanship of an Additional District Judge recommended the case of regularization on 12.07.2012. The District Judge passed orders regularizing the services of the appellants vide order dated 09.11.2012 that they should be regularized w.e.f. 01.06.2012. However the successor District Judge annulled the regularization order vide order dated 16.08.2014 without affording opportunity of hearing and the appellants challenged the said order before the High Court whereby it had been dismissed by Single Bench on 14.09.2017 and thereafter on 09.07.2018, the Division Bench also dismissed the appeal. The Supreme Court while following the judgment of *Sheo Narain's case (supra)* allowed the Civil Appeal and held that the case of the petitioners is covered by the judgment of *Uma Devi's case (supra)* which provides that as a one time measure the State should take up steps for regularization of the employees, who had rendered the services for a period of more than 10 years.

In the present case, the respondents are right in not regularizing the services of the petitioners as per notification dated 18.06.2014 keeping in view judgment of *Yogesh Tyagi's case (supra)*. However the case of the petitioners had to be considered as per policy dated 01.10.2003 (Annexure P-1) which had been recommended vide orders dated 14.08.2014 and 25.08.2014 (Annexure P-5 to P-11) and again vide letter dated 21.06.2016 (Annexure A-1) for demanding of posts for regularization

of services of daily wagers who were covered by regularization policy dated 01.10.2003. Their claim cannot be discarded on the grounds that no sanctioned post is available and the petitioner earlier claimed regularization as per notification dated 18.06.2014.

Hence, this writ petition is being allowed and the respondents are directed to regularize services of the petitioners w.e.f. 01.10.2003 alongwith all consequential benefits with 6% interest within a period of three months from the date of receipt of certified copy of this order.

A cost of Rs.50,000/- will also be paid to each petitioner by the respondents. This cost is being imposed on the ground that the Department had rightly recommended the case of regularization of the petitioners as per policy dated 01.10.2003 vide orders (Annexures P-5 to P-11) and again vide letter dated 21.06.2016 (Annexure A-1) still the services of the petitioners have not been regularized.

Pending applications also stand disposed of.

(RITU BAHRI)
JUDGE

31.01.2020

Divyanshi

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