

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

CWP-11495-2017

Date of decision: 05.02.2020

Satyanarain and others

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Manoj Chahal, Advocate
for the petitioners.

Mr. Randhir Singh, Advocate
for State of Haryana.

RITU BAHRI, J. (Oral).

By this petition, the petitioners are seeking quashing of impugned orders dated 08.05.2017 (Annexures P-6 to P-8) vide which their claim for regularisation w.e.f. 01.10.2003 under the policy (Annexure P-1) was rejected.

The petitioners No. 1 and 2 were appointed as Chowkidar and petitioner No. 3 was appointed as Carpenter on daily wage basis with the respondent department. The services of the petitioners were illegally terminated by the respondents. The petitioners raised industrial dispute and vide Labour Court award, they were reinstated with continuity of service and 50% backwages. The petitioners were taken back in service and petitioners No. 1 and 3 served till retirement on attaining the age of superannuation. Their service details are as under:-

S.No.	Date of Appointment	Date of Termination	Date of Award
1	01.09.1991	31.07.2000	22.08.2006

2	01.01.1994	01.03.2000	03.02.2006
3	05.08.1986	18.06.2001	07.11.2006

The award passed in favour of petitioner No. 2 was challenged by the respondent department by way of CWP-415-2007 which was dismissed by this Court vide order dated 12.01.2007 and SLP-10814-2007 preferred by respondent department was also dismissed on 17.10.2008. The petitioner No. 2 is serving as such till date, whose services have been regularized w.e.f. 29.06.2016.

The petitioners approached this Court by way of CWP-8986-2015 seeking regularization of their services at par with the similarly situated employees of the department. This writ petition was disposed of on 13.02.2007 giving direction to the competent authority to consider the representation of the petitioners for regularization. However, respondent No. 3 rejected the claim of the petitioners vide orders dated 08.05.2017 (Annexures P-6 to P-8) on the ground that they were not in service on 30.09.2003 without considering the fact they have been granted continuity of service by Labour Court award.

The petitioners are seeking direction to the respondents to consider them for regularization as per policy dated 01.10.2003 (Annexure P-1) keeping in view that once they were granted continuity of service as per Labour Court award they fulfill all the conditions of regularization policy dated 01.10.2003 (Annexure P-1).

On notice of this petition, written statement on behalf of respondents No. 1 to 3 has been filed. The respondents have rejected the claim of the petitioners vide orders dated 08.05.2017 (Annexures P-6 to P-8) on the ground that the petitioners were not in service on 30.09.2003 and

The stand taken in the written statement is that the petitioners were not in service on 30.09.2003 before passing of award. This aspect has already been considered by this Court in ***CWP-11224-2015 titled Lekhu Raj V/s. State of Haryana and others*** that once the labourer has been given benefit of continuity of service by the Labour Court award, he is deemed to be in service from the date of termination till passing of award and then his case has to be considered as per the policy prevailing at that time.

With respect to vacant post, reference can be made to a judgment passed by this Court in ***CWP-3593-2000 titled as Ranbir Singh and others V/s. State of Haryana and others*** (Annexure P-9) placed on record by the petitioners. In this writ petition, it has been held that regularization cannot be denied on the ground that no post is available since the petitioner is working on the post as work was available and it was for the respondents to create necessary post.

Further the Department is bound to maintain parity with respect to all the employees and this aspect has already been considered by Hon'ble the Supreme Court in ***Hari Nandan Prasad and another V/s. Employer I/R to Management of FCI and another***, 2014(2) SCT 234. In para 34, the Supreme Court has observed as under:-

“34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that where there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person,

only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.”

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.

For all intents and purposes, the petitioners were given continuity of service from their respective date of termination. Hence, they fulfill all the conditions of regularization policy dated 01.10.2003 (Annexure P-1).

Keeping in view above observations, writ petition is allowed and direction is being given to the respondents to regularize services of the petitioners in terms of policy dated 01.10.2003 (Annexure P-2) with all consequential benefits alongwith 6% interest and pass appropriate orders within three months from the date of receipt of certified copy of this order and this Court be informed of the orders passed.

(RITU BAHRI)
JUDGE

05.02.2020

Divyanshi

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No