

IN THE HIGH COURT OF PUNJAB ANDHARYANA AT
CHANDIGARH

1. **CWP No. 16218 of 2016**

SANT LALPetitioner

vs.

STATE OF HARYANA AND OTHERSRespondents

2. **CWP No. 26894 of 2016**

PALE RAMPetitioner

vs.

STATE OF HARYANA AND OTHERSRespondents

3. **CWP No. 26919 of 2016**

BALBIRPetitioner

vs.

STATE OF HARYANA AND OTHERSRespondents

4. **CWP No. 26991 of 2016**

BALWANPetitioner

vs.

STATE OF HARYANA AND OTHERSRespondents

Date of decision:-31.01.2020

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Dharamveer Phour, Advocate
for the petitioner (s).

Mr. Harish Nain, AAG, Haryana

RITU BAHRI, J.(Oral)

This order shall dispose of the above four petitions as common question of facts are involved in the above petitions wherein challenge is to orders dated 06/09.02.2015 with a further prayer for issuance of directions

to the respondents to regularize the services of the petitioners from the date the service of juniors to them, has been regularized. However, the facts are being taken from CWP No. 26894-2016.

In the year 1987, the petitioner was appointed as Beldar cum Mali on daily paid labourer and works continuously till 30.09.2000. His services were terminated and he raised a demand notice and the same was referred to the Labour Court for adjudication. The award was passed in his favour on 28.02.2013 and the petitioner was held entitled to reinstatement with continuity of service and 25% back wages from the date of demand notice dated 06.04.2004. The award dated 28.02.2013 was challenged by the respondent-department by filing CWP No. 25838-2013, which was dismissed on 25.11.2013. But now vide impugned order dated 06.02.2015, his claim was rejected on the ground that the policy has been withdrawn.

Learned counsel submits that the above impugned order dated 06.02.2015 was set aside by this Court in ***CWP No. 9873-2013 and connected matters titled as Raj Kumar vs. State of Haryana, decided on 07.05.2015***. The petitions were allowed in terms of Khajjan Singh's case. Thereafter, the department regularized the service of several person. Further in compliance of judgment dated 22.04.2014, the department regularized the service of six persons, who were junior to the petitioner, vide order dated 30.06.2016 (Annexure P-6). Further vide Annexure P-9 as well, the department regularized the service of employees who were junior to the petitioner.

On the other hand, learned State counsel has submitted that the case of the petitioner for regularization has rightly been rejected, as the regularization policies have been withdrawn. Reference has been made to judgment of State of Karnataka vs. Uma Devi 2006 (4) SCC 1. Further it has

been argued that the petitioner has not completed 240 days in a calendar year from the date of his termination, as per official record. However, it has been admitted that the services of junior to the petitioner has been regularized.

Heard learned counsel for the parties.

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.*

Reference at this stage can also be made to a judgment of Hon'ble the Supreme Court in a case of ***Hari Nandan Prasad and another vs. Employer I/r to Mangmt. of FCI and another, 2014 (2) SCT 234*** wherein Hon'ble the Supreme Court had considered a case of an employee whose services were not regularized when his junior's services had been regularized by the Employer. It was held that nonregularization of the left over workers itself would amount to invidious discrimination qua them in each cases and would be violative of Article 14 of the Constitution. In para 34, it has been observed as under:-

detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization 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 regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize 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 Art.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 regularized 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 regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.”

The above said judgment has been followed by this Court in a case of ***Ram Dhan vs. HSIDC and another, passed in CWP No. 24998-2016, decided on 28.02.2018*** and the operative part of the judgment reads

as under:-

Law requires that workman's continuity of service has to be accounted for from 19.05.2005 i.e. the date of illegal termination. It would be deemed as if the order of termination was never passed and the petitioner continued and in this process would reap the benefit of any policy of regularization which fell on the way.

In this petition, the prayer is for regularization of services on the ground that those employees who were not terminated and with whom he worked shoulder-to-shoulder have admittedly been regularized by the Management. Learned counsel appearing for the Management concedes that a categorical statement has been made in the written statement filed to contest this petition, that the petitioner's colleagues have been regularized. Thus, when colleagues have been regularized, then the case of the petitioner comes within the scope and protection of Article 14 of the Constitution to prevent discrimination and restore equality. The relief sought in the petition deserves to be granted to the petitioner and his services ordered to be declared regular from the date when his first of the colleague was regularized. This is the guarantee of the equality clause in Article 14. For this right, Mr. Dahiya cites the Supreme Court judgment in Hari Nandan Prasad & another Vs. Employer I/R to Management of FCI & another, 2014 (2) SCT 234 and the decision of learned Single Judge in Khajjan Singh Vs. State of Haryana & others, (2015) 1 SCT 604, which ruling has been upheld in appeal etc.

In the present case, the services of similarly situated employees have already been regularized and the respondents in their written statement had admitted this fact and the only ground for rejecting the claim of the petitioner was that earlier policies were withdrawn

Applying the ratio of the above mentioned judgment, the writ petition is allowed and respondents are directed to regularize the services of the petitioners with effect from the date the services of similarly situated

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employees or juniors to the petitioner had been regularized along with all consequential benefits.

31.01.2020
G Arora

(RITU BAHRI)
JUDGE

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