

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-12859-2017

Date of decision: 03.02.2020

Sumer Singh

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. Randhir Singh, Advocate
for State of Haryana.

RITU BAHRI, J. (Oral).

By this petition, the petitioner is seeking direction to the respondents to consider his case for regularization of services from the date juniors to him has been regularized and grant all consequential benefits as he is fully eligible for regularization of his services under 1996/2003 policies.

The petitioner was appointed as Mali-cum-Chowkidar on daily wage basis on 01.05.1985. The services of petitioner were terminated by the respondents illegally on 01.06.1996. He raised an industrial dispute before the labour Court, Gurgaon. During the pendency of the reference before the labour Court, he was taken back into service by the respondent/management on 01.10.1999, as a result of which, he had given up his claim regarding back wages. Vide labour Court award dated 16.08.2000 (Annexure P-1), he was granted continuity of service. The award of the labour Court has attained finality. As per labour Court award

(Annexure P-1), the continuity of service has to be considered w.e.f. 01.06.1996 till 16.08.2000. As per the RTI information sought by co-worker (Annexure P-7) about 100 employees have been regularized after the judgment of the Supreme Court passed in ***Secretary, State of Karnataka and others V/s. Umadevi and others, (2006) 4 SCC 1***. Thereafter left over daily wagers approached the department for regularization and respondent No. 2-Principal Chief Conservator of Forest vide letter dated 10.02.2011(Annexure P-8) issued direction to all Chief Conservator of Forest to send those cases in which regularization could be made prior to 10.04.2006 but due to some reasons, orders could not be passed. Respondent No. 3-Conservator of Forest vide letter dated 18.02.2013 (Annexure P-9) sent the case of the petitioner for creation of post for regularization. The petitioner has placed on record order of regularization of similarly situated employees (Annexure P-10 colly) where persons junior to him namely Kaushalya, Rajesh Kumar, Rajpal, Ramphal, Hira Lal and Mahender have been regularized.

A detailed legal notice dated 17.02.2017 (Annexure P-11) was served upon the respondents but no action was taken by them and hence the present writ petition has been filed.

After notice of this petition, respondents have filed written statement taking the plea that regularization policies issued by State of Haryana was withdrawn on 25.04.2007 and policy dated 01.10.2003 was not in existence. Thereafter the respondents have referred to judgment of Supreme Court passed in ***Indian Drugs & Pharmaceuticals Ltd. V/s. Workmen Indian Drugs & Pharmaceuticals Ltd.*** 2007 (1) SCC 408 on the point that there should be mode of appointment and appointment of an

employee should be made on sanctioned post. Further reference has been made to a decision given by this Court in ***CWP-17206-2014 titled as Yogesh Tyagi and another vs. State of Haryana and others*** (Annexure R-1) whereby regularization policy dated 18.06.2014 has been set aside. The respondents have further stated that the petitioner had filed civil suit No. 704 of 2004 for regularization as per policy dated 01.10.2003 which was dismissed on 25.10.2010. The appeal against the said decree had also been dismissed on 08.08.2012 (Annexure R-2). Hence, the petitioner is estopped from filing present writ petition on the same cause of action. No RSA had been filed against the judgment and decree dated 08.08.2012.

Heard learned counsel for the parties.

The case of the petitioner for regularization cannot be closed keeping in view that civil suit of the petitioner had been dismissed and appeal against the judgment of the trial Court had been dismissed by observing that petitioner had not led any evidence to show that the petitioner including others had been appointed on the post of Mali cum Chowkidar. The only evidence was in the form of PW 13 Dharamvir Singh who had proved the bills that petitioner had been engaged alongwith other daily wagers. With respect to policy dated 01.10.2003, it had been observed that daily wager who had not been appointed against the regular and vacant post, had no right for regularization. In the absence of any appointment letter and non-availability of vacant post and the fact they had not led any evidence that they had completed 3 years of service as on 30.09.2003 and had worked for 240 days in each year, they could not be regularized. Moreover policy dated 01.10.2003 had since been withdrawn keeping in view judgment of ***Secretary, State of Karnataka and others V/s. Umadevi***

and others, (2006) 4 SCC 1. On the above said grounds, appeal was dismissed on 08.08.2012 and much water has flown.

In the present case, the respondents are not disputing the fact that the petitioner was appointed on daily wages in 1985 and he was terminated on 01.06.1996 and was taken back into service on 01.10.1999 and vide labour Court award dated 16.08.2000 (Annexure P-1) he was reinstated without backwages. For all intents and purposes, his services from 01.06.1996 till 16.08.2000 has to be considered continuous without any break and on this issue, this Court has allowed **CWP-16325-2012 titled as Bhagirath and another V/s. State of Haryana and others** (Annexure P-12) whereby it is held that continuity has to be given and the orders have been complied by giving benefit of regularization.

Further, the respondents have not denied regularization orders passed as per the RTI information dated 20.07.2007 (Annexure P-7) with respect to 100 employees and recommendation made for regularization of the petitioner by respondent No.3 on 18.02.2013 (Annexure P-9). A perusal of the recommendation dated 18.02.2013 (Annexure P-9) shows that the case of the petitioner was recommended for regularization alongwith Smt. Bimla Devi for sanctioning two posts of labourers so that the petitioner alongwith Smt. Bimla Devi could be regularized. Further petitioner has placed on record regularization orders (Annexure P-10 colly) whereby persons junior to the petitioner have already been regularized. A perusal of regularization orders (Annexure P-10) shows that instead of Chowkidar, employees had been regularized on the post of Protection Watchers. Even in the present case, the objection of the respondents is that petitioners were appointed on daily wages and not as Chowkidar. Since the respondents had

regularized the services of juniors as Protection Watchers, the same benefit can be extended to the petitioner as well keeping in view the Supreme Court judgment passed in ***Hari Nandan Prasad and another V/s. Employer I/R to Management of FCI and another***, 2014(2) SCT 234 whereby it is held that the Department is bound to maintain parity with respect to all the employees. 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 ***Civil Appeal No. 18510 of 2017*** titled as ***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 be 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.

Keeping in view above observations, writ petition is allowed and direction is being given to the respondents to regularize services of the

petitioner in terms of policy dated 01.10.2003 (Annexure P-4) with all consequential benefits alongwith 6% interest and pass appropriate order within three months from the date of receipt of certified copy of this order and this Court be informed of the order passed.

(RITU BAHRI)
JUDGE

03.02.2020

Divyanshi

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