

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.22339 of 2015

Date of Decision:17.03.2020

Pawan Kumar

... Petitioner

versus

District Red Cross Society, Ambala, through its President-cum-Deputy
Commissioner and others.

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Sangita Dhanda, Advocate,
for the petitioner.

Mr. K.K. Gupta, Advocate,
for respondents no.1 and 2.

Amol Rattan Singh, J.

By this petition, the petitioner firstly impugns the order passed by the Deputy Commissioner-cum-President, District Red Cross Society, Ambala, on 06.06.2014, by which his plea for regularisation of his services in the District Red Cross Society (hereinafter to be referred to as the Society) has been rejected.

Thus, he seeks a writ of certiorari quashing the said order, with further a writ of mandamus sought, directing the first two respondents, i.e. the President and the Secretary of the Society, to regularise his services and to grant all benefits thereby available to him including a regular pay scale as per the recommendations of the 6th Pay Commission.

The petitioners' contention is that he is fully eligible for such regularization and benefits from the date that his juniors have been granted

those.

2. A perusal of the impugned order shows that in fact the said order has been passed pursuant to a direction given by the Central Administrative Tribunal, Chandigarh Bench, vide its order dated 13.02.2014, passed in O.A. No.060/00119/2014 titled as Pawan Kumar v. Union of India and others.

Though that order has not been annexed alongwith the present petition, however the impugned order states that the (competent authority of) the Society was to examine the entire matter and thereafter dispose it of.

3. As regards the merits of the petitioners' case, as have been dealt with in the impugned order, it is stated that he was appointed as a Chowkidar on a specific project, i.e. the Working Womens' Hostel, Ambala City, which was a project started on grants given, with even the Government however thereafter not having released grants for the project for a large number of years, and consequently it was actually being run on the basis of income generated from the project.

It has been further stated that the project is not of a permanent nature and therefore the services of the petitioner cannot be regularised against any permanent post, with all such posts being existent till the continuation of the project.

As regards the plea of the petitioner that the services of his juniors, namely Manju Verma and Suman (respondents no.3 and 4) having been regularised and he being therefore entitled to the same benefit, the order states that Manju Verma was an employee of the Society itself and therefore her services were regularised by the Society, and as regards Suman, she was regularised by the St. Johns' Ambulance Association which is a separate entity that has nothing to do with the Society "so far as their respective employees

are concerned”.

On the aforesaid reasoning, the petitioners' case has been rejected.

4. The petitioner first challenged the impugned order by way of again filing an Original Application, No.060/00778/HR/2014, before the Central Administration Tribunal. That application was dismissed by the Tribunal on 28.08.2015, for want of jurisdiction, with the petitioner however given the liberty to approach the appropriate legal forum.

Thereafter, the present petition came to be filed, in October 2015.

5. In the petition, essentially of course the petitioner has, other than giving the functions of the Society etc., reiterated that he having been appointed to the post of a Chowkidar on 20.08.1990 on a daily wages basis, in fact by the Secretary of the Society, when he went to the office the Society to join on that date itself, he was asked to report to the Warden of the Working Womens' Hostel run by the Society, upon which he joined as such, with his joining letter having been endorsed by the Warden on that date itself (copy Annexure P-1).

It has next been contended in the petition that though the petitioner was appointed as a Chowkidar in the year 1990, ever since then, for the past 25 years (at the time of filing of the petition), he has actually worked as a Peon in the Society, performing such duties to everyones' satisfaction, with an unblemished service record, with certificates to that effect having been also issued to him from time to time by the Secretary of the Society, copies of three of which have been annexed with the petition.

6. The petitioner has next contended that as a matter of fact from the year 2009 onwards he has never ever worked in the Working Women's

Hostel (hereinafter to be referred to as the Hostel), and has been working in the office of the Society itself, and in fact on 26.08.2010 even an identity card was issued to him by the Secretary of the Society, a copy of which has been annexed as Annexure P-3 with the petition, showing therein that his designation was a Peon in the Society.

7. The petitioners' next contention is that he possesses the necessary qualifications for appointment as a Peon, he having passed the middle class examination (Class-VIII), but despite that his services have not been regularised, whereas services of those who did not possess either equivalent experience, or even the basic qualification, have been regularised.

Two such cases, of Suman and Manju Verma, have been specifically referred to by the petitioner, as already noticed, i.e. respondents no.4 and 3 respectively in the petition.

Hence, the contention is that the rejection of the petitioners' representation for regularisation is a wholly arbitrary act on the part of respondent no.1 because as regards the aforesaid Suman, she was appointed in the year 1999 (9 years after the petitioner), with her services regularised in the year 2009, and as regards Manju Verma, she joined in the year 2000 but with her services regularised in the year 2007.

The notings/memos showing the appointment of respondent no.4, Suman, have also been annexed by the petitioner; with thereafter the recommendation for her appointment on a regular basis also having been annexed, forwarded by the Secretary of the Society, at the end of which she has been ordered to be appointed as a Peon in the St. Johns' Ambulance Association, vide a noting dated 10.07.2009.

Essentially on the aforesaid contentions, the petitioner seeks

regularisation, on parity with respondents no.3 and 4.

8. Notice of motion having been issued in this petition in the year 2015 itself, in the written statement filed by the General Secretary of the Society, on behalf of respondents no.1 and 2, preliminary objections have been taken essentially to the same effect as what is contained in the impugned order, that the petitioner having been appointed as a Chowkidar in the Hostel run by the Society, and not against any sanction post, that does not make him an employee of the Society, with it further stated that even if, “in the exigencies of work such manpower was asked to do the work in the Society as well for some period, it does not mean that such manpower got any vested right and claim him to become an employee of the District Red Cross Society.....”

9. It has further been stated in the preliminary objections that in fact the Hostel was closed down in the year 2014 and that even the building, which was constructed in March 19, 1979, has been declared to be unsafe, which was therefore in the process of being demolished. However, the petitioner was continued as a Chowkidar, till the disposal of the Malba/material.

10. As regards the comparison made with respondents no.3 and 4, it has been reiterated in the preliminary objections (as has been stated in the impugned order), that Manju Verma was appointed to the cadre of the Society itself and was therefore regularised therein, and as regards respondent no.4, Suman, she is an employee to the St. Johns' Ambulance Association, 'where she was regularised'.

11. As regards the experience certificates issued by the Society to the petitioner, it has been contended that they also do not create any vested right

in his favour.

It is, however, also stated that “It is not denying the fact that his employer was the Society, Ambala but he was on an ex-cadre post of a project, namely the Working Womens' Hostel, Ambala City”.

An experience certificate dated 15.09.2000 (in vernacular) has also been annexed with the written statement, stating to the effect that the petitioner was working as a Chowkidar in the aforesaid Hostel.

[It is of course to be noticed that the subsequent certificates annexed by the petitioner as Annexure P-2, pertain to the years 2011, 2012 and 2013, in which he has been shown to be working as a Peon on the rates fixed by the District Collector, in the office of the Society itself, stating therein that in fact he is working since 20.08.1990.

A duty roster dated 07.02.2006 has also been annexed with the written statement, naming the petitioner and three other employees therein, with the petitioner shown to be on duty from 4:00 p.m. to 12:00 p.m. for that particular week, at the Hostel.

The other persons in the duty roster are also shown to be on duty in the Hostel for different time periods on each day of that week concerned, the roster itself having been issued by the Secretary of the Society, i.e. respondent no.2.

The factum of the petitioner having been engaged as a daily wager without any process of appointment having been followed, has been again reiterated in the preliminary objections.

12. In reply to the merits of each paragraph contained in the petition, the aforesaid facts have been reiterated at different points; with it however to be noticed that the experience certificates showing the petitioner to be

working as a Peon in the years 2011, 2012 and 2013, in the office of the Society, nor the identity card issued to him on 31.12.2010, also showing him to be a Peon, have not been specifically denied in paragraphs 5 and 6 of such reply on merits, with it simply reiterated that if he was asked to work in the office of the Society at some point, that it did not mean that he was brought to the cadre of the Society itself, especially as he continued to be shown to be working as a Chowkidar in the Hostel, as per the roster sheet Annexure R-3.

13. It needs to be mentioned here that in reply to the petitioners' contention in paragraph 12 of the petition, that he even represented to the National Commission for Schedule Castes, it has been stated by respondents no.1 and 2 that even that representation was rejected by the competent authority in the Commission.

14. It also needs specific notice that in paragraph 10 of the petition, the petitioners' contention is that his salary is being drawn from the same head as that of regular employees of the Society, with respondent no.4, Suman, working as a Peon in the same location, with the same staff as the petitioner is, and in fact there is no other staff in the St. Johns' Ambulance Association, though she is being paid by that Association, as it is "a sister concern" of the Society.

The petitioner has also stated that Suman was initially appointed in the family counseling project which was also a grant aided project run by the Society, but her services were subsequently regularised, with her salary ordered to be drawn from the funds of the St. Johns' Ambulance Association.

Hence, his contention is that his case is not different from hers with him in fact having been appointed 9 years before her.

In reply to those detailed contentions in paragraph 10, the written

statement simply states that the contents of the paragraph are mis-leading, wrong and denied, with the contents of the preliminary objections to be read in reply to the said paragraph.

15. Replying to the contents of paragraph 20 of the writ petition, to the effect that vide a letter dated 29.06.2009, the Society regularised the services of such employees whose work and conduct had been satisfactory, the respondents have stated that in fact after the judgment of the Supreme Court in the case of State of Karnataka & Ors. v. Umadevi & Ors., (2006) 4 SCC 1, no policy of regularisation “is prevalent in the society” and that a project employee appointed on daily wages cannot claim regularisation.

16. In the replication filed by the petitioner, to that written statement, it has been stated that though the petitioner was initially appointed for the Hostel but the Society took work from him as a Chowkidar/Peon, in its office in the Red Cross Bhawan and in fact he has obtained a copy of a letter dated 13.03.2015 (copy Annexure P-18) addressed to one Tarun Kumar, in reply to information sought under the Right to Information Act, 2005, that 6 employees named therein (not including the petitioner and respondents no.3 and 4), were all receiving salaries on grants given by the Government and were not employees of the Society. However, 23 others, including the petitioner and respondent no.3 Manju Verma, were receiving salaries from the Society itself. The relevant part of Annexure P-18 is extracted hereinbelow:-

“2. The details of all those employees their names, post and place of posting who are being paid their salaries from the office of District Red Cross Society, Ambala fund is as under:”

12.	Sh. Manju Verma	Peon	Working Women Hostel, Ambala City
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XXXXX

XXXXX

XXXXX

14.	Sh. Pawan Kumar	Peon	Red Cross Office, Ambala City
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What is necessary to be noticed is that in fact Manju Verma, who is shown at sr. no.12 of that list, is shown to be working as a Peon in the Hostel, whereas the petitioner, Pawan Kumar, is shown to be a Peon in the office of the Society itself, at Ambala City.

At the end of the letter addressed to the applicant (one Tarun Kumar), it has been stated that there was no employee in the Society whose grant with regard to salary had been stopped by the Government.

17. Thereafter, it is also necessary to notice here that on August 10, 2017, this court had directed counsel for the respondent Society to give the names of the officers who had passed the orders Annexures P-5 and P7 (dated 10.07.2009 and 06.09.2007 respectively), appointing respondents no.3 and 4 respectively as Peons on a regular basis, which had been duly done, with thereafter the said officers having been directed to file affidavits as to under what under provision the services of respondents no.3 and 4 were regularised by them, and as to why order directing them to make good the payment made to the said respondents be not issued by this court.

The said officers, i.e. S/Shri Sameer Pal Srow and R.P. Bhardwaj (the latter having retired by that time), had filed affidavits dated 07.10.2017 and 09.10.2017 respectively.

In the affidavit of the former, it has been stated that during his tenure as Deputy Commissioner, Ambala, between November 2008 to October 2011, he was also acting President of the Society as also of the St. Johns' Ambulance Association, which are two different and district units but engaged in public welfare activities and projects.

As regards the appointment of respondent no.4, Suman, she is stated to have been working as a Peon on daily wage basis in the Society and had made a representation requesting that she be absorbed therein on a regular basis as she was a widow having minor children. Hence, it is stated in the affidavit, seeing her aforesaid situation and unblemished service record, she was appointed as a Peon in the St. Johns' Ambulance Association, against a vacant post.

In the reply of Shri R.P. Bhardwaj, he has stated that he was posted as Deputy Commissioner-cum-President of the Society at Ambala, from 15.01.2007 to 06.09.2007, and that respondent no.3, Manju Verma, was working as a Peon in that office, who was appointed on a compassionate basis on 03.07.2000, she being a widow and having three children.

Thereafter, her services were regularised on the same ground (that she was a widow with minor children and had a poor financial 'status').

It has next been stated in that affidavit, that the orders for regularisation were passed by the deponent as the head of the Society, with regularisation of employees not governed by any policies of the Haryana Government as the Society is an independent organisation run for public welfare, after getting funds from its own sources, though for specific projects the Government also gives funds.

Thereafter, it has been stated that employees of the projects have in fact no claim for regularisation with the Society, on any employer-employee relationship basis.

The factum of the petitioner having worked in the specific project of the Hostel, has been reiterated in the affidavit of Shri R.P. Bhardwaj.

18. A reply to that affidavit was also filed by the petitioner, dated 01.11.2017, in which it is stated that the said officer in fact has put the entire responsibility onto Shri N.K.Saini, former Assistant Secretary of the Society as regards regularisation of respondent no.3, Manju Verma, whereas such regularisation was not on his recommendation but on the recommendation of the Secretary of the Society.

[It may be also noticed here that in fact reference to the aforesaid N.K.Saini in the affidavit of Shri R.P. Bhardwaj is not on account of any thing he has stated in the affidavit, but only on account of his having, in that affidavit, reproduced an order of this court dated 28.08.2017, in which a communication addressed to learned counsel for the Society (before this court) by the Secretary of the Society has been referred to, to the effect that it was stated therein that the services of respondent no.3 were regularised by Shri N.K. Saini with that officer being the Assistant Secretary of the Society as also incharge of the District Training Office of the St. Johns' Ambulance Association].

Other than the above, the reply of the petitioner to the affidavit of the former President of the Society, essentially reiterates the main contentions already raised in the petition itself.

Similarly, in his reply to the affidavit of Shri S.P. Srow, former President, the petitioner again reiterates the same.

19. The petitioner also subsequently filed a copy of a resolution dated 07.07.1970 passed by the Executive Committee of the Society, stating to the effect that the employees of the Society would be governed by the Punishment and Appeal Rules applicable to the employees of the State Government, and even as regards allowances for leave and travel, as also pay

scales, those revised by the Haryana Government from time to time would be followed.

20. Thereafter, yet another list of persons whose services were regularised in July 2004, was filed by the petitioner, with three persons, i.e. Dilbag Singh, Vinod Kumar and Sunil Kumar, shown to be regularised, the former two as drivers and the last as a Clerk.

As per the petitioner, Dilbag Singh and Sunil Kumar were initially appointed in their respective capacities for 89 days but with their services still having been regularised, and with Dilbag Singh in fact having been appointed for a Family Planning Project.

Vinod Kumar is stated to have been also appointed as a driver in the Sarva Shiksha Abhiyan Project.

Similarly, one Hitesh Kumar is also contended (by the petitioner) to have been regularised in services after being appointed as a Clerk-cum-Computer Operator in a Tehsil Project for 89 days, who thereafter was also working in the camp office and the house of the Deputy Commissioner, for some days before his regularisation.

Appointments of one Sonia Dua as a Clerk and Atul Kumar, initially only for a period of 89 days, are also stated to have been regularised in August 2007, as per the said Annexure P-21 placed on record by the petitioner.

21. The aforesaid two Annexures P-20 and P-21 (colly.), alongwith Annexure P-22 (colly.), were taken on record after notice was issued in the application by which they were sought to be placed on record.

No reply having been filed to that application, Mr. Gupta, learned counsel for respondents no.1 and 2 had thereafter fairly submitted (as

recorded in the order dated August 17, 2019), that regularisation of the services of all the aforesaid persons were not denied by the respondent Society.

Consequently, all three documents were ordered to be taken on record by this court.

(Annexure P-22 consists of details of salaries and allowances given to employees of the Society including one Alka Ghai (Secretary) and the aforesaid Atul Kumar, Sonia Dua, Vinod Kumar, Dilbag Singh, Sunil Kumar and Harmesh Chand, with learned counsel for the petitioner having contended that the said pay scales are the same as are applicable to Haryana Government employees prior to the last revision of pay scales).

22. The last document, by way of pleadings, as was taken on record by this court, was an affidavit of the Deputy Commissioner-cum-President of the Society at Ambala, dated 15.11.2019, filed pursuant to an order passed by this court on 19.10.2019, with the officer directed to state as to where all the employees as were still on the rolls of the Hostel on the date of its closure, were adjusted/posted.

In reply to that query, it has been stated in the affidavit that the Hostel itself was “given” to the Society as a project in the year 1979, by the Department of Social Justice and Empowerment, Haryana, with it financed by the said department by way of grants given from time to time.

Manpower was engaged for the said project on the basis of such grants, with the petitioner also having been so engaged as a Chowkidar on 20.08.1990, by the Warden of the Hostel, simply on submitting his application for that purpose.

The affidavit next states that vide a latter dated 14.08.2014 the

Department of Public Works had stated that the building of the Hostel had become unsafe and consequently a committee was constituted by the Deputy Commissioner, which in its meeting dated 19.10.2015 declared the building to be unsafe with the Hostel itself closed down.

The building was thereafter demolished on 20.09.2017 with a file put up on 25.12.2017 to relieve the manpower from the Hostel by following the provisions of law, as their services no more required.

Four persons were shown to be still working with the Hostel on that date, including the petitioner, two other Chowkidars and one Sunita, who was the Warden of the Hostel.

As regards Sunita, she was not proposed to be relieved till approval by the competent authority was given, as her services were being utilised as an attendant (temporary) in the Old Age Home at Ambala City.

The remarks against one Sanjay Khan, Chowkidar, are as follows:-

“Till he is relieved, he is temporarily utilized as Chowkidar in the Day Care Home at Ambala Cantt.”

As regards the petitioner and one Bhag Singh, no specific remarks have been given against their names, but with the Deputy Commissioner having stated that they are also proposed to be relieved but “till the proposal is approved by the competent authority”, though they were virtually sitting idle after even the *malba* from the site of the Hostel had been removed.

23. Finally, the affidavit of the Deputy Commissioner-cum-President of the Society states that the services of none of the aforesaid four persons was required after the closing of the Hostel, and therefore in fact permission may be granted by this court to relieve the petitioner by following due

procedure of law, as the project for which the petitioner was engaged had been shut down.

The bar conveyed by the President of the Indian Red Cross Society, Haryana Branch (the Governor of the State of Haryana being the President), has been referred to vide a letter dated 05/06.10.2005 (though that letter itself has not actually been annexed with the affidavit, even though it is shown to be Annexure R/X therein).

Hence, it is stated that the petitioners' services cannot be regularised, with all the aforesaid four persons having been recruited without following any due process of recruitment.

24. Even after the aforesaid affidavit was filed, the petitioner has filed an application (CM No.18160 of 2019) dated 27.11.2019, seeking to place on record Annexures P-25 and P-26, the first of which contains photocopies of the daily register of the Society for the period between February 2012 to September 2014, in which the attendants of the petitioner and other employees, including those who are shown to be regularised, is marked.

Annexure P-26 is shown to be a copy of an office order passed on 31.08.2010, in which five employees including respondent no.4, Suman, as also Hitesh Kumar and Sanjay Khan (who are admitted to have been regularised), alongwith one Umesh Kumar and Bhag Singh, have been assigned duties by the Secretary of the Society, with the initial part of the order stating as follows:-

“The officials working at Kamkajii Mahila Avas Police Lines, Ambala City are hereby directed they will perform their duties in accordance with the time table given as per following and if any official found absent from his duty and found negligent in his

duty, then strict disciplinary action shall be initiated against him:-”

Thereafter, their duties have been shown to be running, in the case of some from 8:00 a.m. to 4:00 p.m., and for the others from 4:00 p.m. to midnight, with rest days provided to each of them.

25. Thus, the contention of learned counsel for the petitioner was that, very obviously, as per the attendance sheet, the petitioner had been performing duties alongwith those employees who have been regularised, in the same manner, due to which he was also shown on the same Daily Attendance Register (Annexure P-25).

Though arguments were addressed as regards the application in court by learned counsel for the applicant-petitioner, they had not been specifically noticed because, at the outset, Mr. Gupta, learned counsel for the respondent Society, had submitted that the petitioner is continuously seeking to place on record new documents, even though the petition was filed in the year 2015. Consequently, that matter had not been further dwelled upon by this court and in fact at the time when judgment was reserved on 07.12.2019, the application had wholly escaped my mind, as a result of which it does not even find mention in any of the orders but is otherwise very much on record, though with even no notice issued, formally, in it, to the respondents.

26. Having noticed that, before coming onto the arguments addressed on behalf of the parties, it is to be noticed that though respondents no.3 and 4 were represented by their own counsel, no written statement is seen to have been filed on their behalf.

27. It is also necessary to notice that pursuant to orders passed by this court on 28.08.2017 and 11.10.2017, an affidavit of Shri D.R. Sharma,

General Secretary, Indian Red Cross Society, Haryana Branch, had been filed, the direction of this court being in the form of a query as to whether, at any stage, the regularisation policies issued by the State of Haryana had been adopted by the Society or not.

The affidavit of the General Secretary, dated 08.11.2017, states that the Society (Haryana State Branch), had neither framed any policy of regularisation of its own, nor had adopted the regularisation policies issued by the State of Haryana, and in fact the Governor of Haryana-cum-President, Indian Red Cross Society, Haryana State Branch, had issued orders dated 05/06.10.2005, to the effect that as and when any vacancy arises in a District Branch, it would be advertised in the newspaper so as to give adequate publicity; and selections would be made on the recommendations of the selection committee, the composition of which is also mentioned in the said order.

A perusal thereof shows that a selection committee was to consist of the Vice-Chairman of the State Red Cross Society as the Chairman of the Committee, the honorary Secretary of the State Society as its member and the concerned Deputy Commissioner-cum-President of the District Society, as the Member Secretary.

The order dated 05.10.2005 further states that the recommendation of the selection committee would be put up to the President of the State Branch of the Society for approval, through the honorary Secretary of the State Branch.

28. Coming then to the arguments of learned counsel before this court.

Counsel for the petitioner naturally reiterated in detail what is

contained in the petition as also in the various applications filed from time to time, including those showing regularisation of different employees in the years 2004 and 2007, as already noticed earlier in this judgment.

She also relied upon various judgments, including one of a Division Bench of this court in **Smt. Alka Ghai v. J.R. Verma and others** (LPA no.176 of 2008), decided on 16.04.2009 and three of the Supreme Court of India in **Jivanlal v. Pravin Krishna, Principal Secretary and others** (2016) 15 SCC 747, **State of Punjab v. Jagjit Singh** 2016 (4) RSJ 270 and **Sheo Narain Nagar v. State of Uttar Pradesh** (2018) 13 SCC 432.

Per contra, Mr. K.K. Gupta, learned counsel appearing for respondents no.1 and 2, other than also reiterating what has been already discussed hereinabove as per the written statement filed by the said respondents as also the affidavits filed subsequent thereto by the two former Presidents of the Society and the present Deputy Commissioner-cum-President of the Society, submitted that a project employee cannot claim permanent employment as has been held by the Supreme Court in **Lal Mohammad and others v. Indian Railway Construction Co. Ltd. and other** 2007 (2) SCC 513; and consequently, the petitioner having been appointed as a Chowkidar in the Hostel itself, which was a project given to the Society, irrespective of where his services were utilised, he cannot be regularised.

He also cited 6 other judgments of the Supreme Court to that effect.

29. Mr. Gupta next submitted that as regards seeking parity with other employees of the Society and the St. Johns' Ambulance Association, two of them were in any case regularised on account of the fact that they were

widows, in the circumstances given by the concerned Presidents of the Society at the relevant time, in their respective affidavits; and in any case even any such regularisation would be actually against the order of the President of the State Branch of the Society, i.e. the hon'ble Governor of the Haryana, as per the order dated 05.10.2005, and that two wrongs cannot make things right.

In that context, he cited two judgments, one of the Supreme Court in State of Orissa and another v. Mamata Mohanty (2011) 3 SCC 436 and one of Full Bench of this court, in Union of India and another v. Ram Pal and others 2013 (3) SCT 220.

Mr. Gupta next submitted that regularisation cannot be ordered *dehors* any policy for such regularisation, especially after the judgment of the Constitution Bench of the Supreme Court in Secretary, State of Karnataka and others v. Umadevi (3) and others (2006) 4 SCC 1.

Learned counsel submitted that the same position was (naturally) reiterated by the Supreme Court in Official Liquidator v. Dayanand and others (2008) 10 SCC 1.

Consequently, he prayed for dismissal of the writ petition.

30. As regards arguments addressed by Mr. R.K.Malik, learned senior counsel appearing for respondents no.3 and 4, he had on an earlier occasion submitted that the stand of the said respondents would be the same as that of respondents no.1 and 2 but in any case they would not like to comment with regard to whether or not the petitioners' services be regularised, as long as their own services were not deregularised.

31. Having considered the matter in detail, it is first to be noticed that after this Bench had passed various orders in the year 2017, the matter thereafter had gone to another Bench, with it again having put up before me in

view of the orders earlier passed, and consequently, it has been heard thereafter from time to time, with judgment having reserved on 07.12.2019.

32. Though I otherwise wholly agree with Mr. Gupta, learned counsel for the respondents, that very obviously in terms of the ratio of the judgment in *Umadevis'* case (supra), services of employees cannot be regularised and a proper method of appointment to any service has to be adopted as far as filling in regular vacancies is concerned, and therefore this court would be otherwise prohibited from issuing any writ of mandamus directing regularisation of the petitioner; yet, what cannot be ignored by this court is that the petitioner was in fact taken in service, even on a daily wage basis in the year 1990, and has continued as such even till the date that the judgment in this case was reserved, i.e. for a period of 29 years, the writ petition itself having remained pending for four years, and consequently, even at the time of the institution of the writ petition (and before that when he had approached the Central Administrative Tribunal), he had put in 25 and 24 years of service respectively, *albeit* in a wholly temporary capacity.

In fact, looking at the fact that respondents no.3 and 4 were given regular appointments only because they were widowed ladies with children, this court would not have been inclined to interfere with the impugned order rejecting the petitioners' case for regularisation, because their appointments were obviously made on a compassionate basis, which fact has not been refuted even after the affidavits of the concerned Presidents of the Society were filed, i.e. S/Shri R.P. Bhardwaj and S.P.Srow, (former Deputy Commissioners of Ambala).

33. However, what this court cannot ignore is that thereafter, the petitioner also filed CM No.15957 of 2017, seeking to place on record

Annexures P-20, P-21 and P-22, which have been referred to in detail earlier in this judgment (in paragraph 21).

A perusal of Annexure P-21, again, shows that it is contended by the petitioner therein that other than respondents no.3 and 4, the services of 6 other persons were regularised, 4 in July 2004 and 2 in September 2007.

As already noticed earlier, despite the respondent Society having been put to notice on that application, no reply was filed and learned counsel for the respondents was very fair in admitting, as recorded in the order of this court dated 17.08.2019, that their services having been regularised is not disputed.

It is to be further noticed here that in the aforesaid application, to which, to repeat, no reply has been filed, it has been stated in paragraph 4 thereof that the Society regularised the services of the aforementioned persons in July 2004, without even seeing as to whether they had put in a minimum of three years of service or not, which fact would become clear upon summoning the record.

Thereafter, they had been paid regular scales as per Haryana Government Rules, including Assured Career Progression scales (as per Annexure P-22).

Hence, what is stated in paragraph 4 of that application, to the effect that those regularised in July 2004 did not even have a minimum period of three years of service, being a contention not refuted by way of any reply or affidavit, and their regularisation in any case having been admitted, the inference that this court would take is that what is stated in paragraph 4 is correct, even in terms of the basic law of pleadings as contained in Rule 5 of Order VIII of the Code of Civil Procedure, 1908, to the effect that every

allegation in a plaint if not denied specifically or by necessary implication, would be taken to be admitted.

34. Hence, though this is a writ petition invoking jurisdiction of this court under Article 226 of the Constitution, and discretion as regards pleadings is to an extent permissible, however with the respondents (despite having been granted time to do so), not having filed a reply and their counsel, (obviously on instructions) having admitted that the services of those persons had been regularised, this court would necessarily infer that regularisation of such services was also after a far lesser period of service than had been put in by the petitioner.

35. Even having said that, what is most important to be considered is whether the contention of the Society, as contained in its written statement, as also the affidavit of its President dated 15.11.2019, can be accepted, to the effect that the petitioner is not an employee of the Society but was in fact employed only against a specific project, i.e. the Hostel, as had been handed over to the Society in the year 1977 (though the petitioner was employed on a daily wage basis in the year 1990 much thereafter).

36. In that context, it is to be noticed that very obviously on the date that the petitioner joined on daily wages, it was with the Hostel. His letter, Annexure P-1, was also addressed to the Warden of the Hostel, upon which she forwarded it to the Secretary of the Society for necessary action, on the same date, i.e. 20.08.1990, (with him having joined on the same date). Thereafter, the petitioners' contention specifically is, as contained in paragraph 6 of the writ petition, that ever since the year 2009, he has never worked in the Hostel and has been working in the office of the Society, and in any case even the experience certificate issued to him by the Secretary of the

Society (respondent no.2) in the years 2011, 2012 and 2013 (Annexure P-2 collectively), shows him to be working for the Society itself since 20.08.1990 as a Peon, on the rates fixed by the District Collector.

No doubt, the said certificates are only to show his work and conduct with it also stated that he was working in a temporary capacity, yet, even his identity card dated 26.08.2010/31.12.2010 (copy Annexure P-3), again issued by the Secretary of the Society, shows him to be working as a Peon.

37. Further, with the replication filed by the petitioner to the written statement of respondents no.1 and 2, Annexures P-18 and P-19 have been annexed, the first of which (as noticed earlier) shows the petitioner to be a Peon in the Society, whereas in fact respondent no.3, Manju Verma, is shown to be working as a Peon in the Hostel at Ambala City.

The said document, to repeat, is one addressed to an applicant (one Tarun Kumar) who sought information under the provisions of RTI Act, 2005, with the said document/letter dated 13.03.2015.

The said letter also says at the end that there is no employee in the Society whose grant with regard to salary had been stopped by the Government.

38. It is to be yet again noticed that the fact that the petitioner had not always worked with the Hostel, has not been specifically denied in paragraph 5 of the written statement filed by respondents no.1 and 2, wherein it has been stated that even if he was asked to work in the office of the Society, that does not mean that he was brought on the cadre strength of the Society.

Annexures P-25 and P-26, though have been annexed with an

application filed in the year 2019 and in which no notice was actually issued, are actually seen to be photocopies of an attendance register of the Society itself, from the month of February 2012 to September 2014 (Annexure P-18).

Though obviously that is well after regularisation of service of respondents no.3 and 4, as also the other 6 persons whose names are given in Annexure P-21 (in the years 2004 and 2007), yet, with the respondents not having denied the regularisation of the services of those six persons, even if this court were to take the appointment by regularisation of the services of respondents no.3 and 4 to be wholly on a compassionate basis (keeping in view their status being widows with small children), however obviously no such situation has been explained by the respondents in the case of the other six persons regularised, with the respondents not even having denied what is averred by the petitioner in his application, to the effect that some of those persons had not even put in 3 years of service when their services were regularised in the years 2004 and 2007, by which time the petitioner already had worked for 14 to 17 years.

Hence, I would see no reason as to why the petitioner should be discriminated against.

39. Undoubtedly, the ratio of the judgment in *Umadevis'* case would otherwise prohibit any such appointment; yet, even in that case their Lordships had held that in the case of those who had put in at least 10 years of service as on the date of judgment, a regularisation policy would be issued by the Governments concerned, as a one time measure, pursuant to which such persons, if eligible, would be appointed by way of regularisation of their temporary services.

The Society undoubtedly is not Government and consequently,

no regularisation policy has been framed at any stage, even as per the affidavit filed by the General Secretary of the State level Society. Still, despite that, it has regularised the services of at least 8 persons as have been brought to the notice of this court by the petitioner, by way of Annexures P-5, P-6 (in the cases of respondents no.4 and 3 respectively) and P-21, with those whose names are given in Annexure P-21, to yet again repeat, contended to be persons regularised even without fulfillment of basic requirements and with less than three years of service in some cases.

Those persons are not even contended before this court, by the respondents, to be appointees on compassionate basis as has been contended in respect of respondents no.3 and 4.

40. Hence, to conclude, as regards whether or not the petitioner was an employee of the project, it has to be held by this court that even with him having initially been appointed to the Hostel (as even respondent no.3 is shown to be in Annexure P-18), subsequently his services have been continued not while working at the Hostel but while working in the office of the Society itself, though he continued to be shown on the rolls of the Hostel.

Therefore, whether he worked in the Hostel or in the office of the Society, he was again obviously an employee of the Society itself, with the document Annexure P-18 even stating to that effect and his duties having continued alongwith the other employees of the Society, whose services were eventually regularised.

This is to be held further in the light of the fact that no specific denial is seen to the contention of the petitioner that his salary is being drawn from the same head as that of regular employees of the society and further, the reply under the RTI Act, addressed to the aforementioned Tarun Kumar

(Annexure P-18), shows respondent no. 3 to be a Peon in the Hostel, with the petitioner in fact shown to be working in the office of the Society in Ambala City.

41. In the judgment cited by learned counsel for the petitioner, in *Jivanlals'* case (supra), the Supreme Court held, in the year 2016, that the order passed by the Government in that case (respondent), to the effect that regularisation of other persons was illegal, and therefore no parity could be sought, was a contention to be rejected in view of the fact that it was seen that many similarly situated persons had been regularised in service upon completion of 10 years service.

Similarly, in *Sheo Narain Nagars'* case (supra), in the year 2018, their Lordships held that where persons had been employed in the year 1993, on contract, their services deserved to be regularised.

Undoubtedly, though not specifically stated in those judgments/orders, their Lordships would have been exercising jurisdiction under Article 142 of the Constitution; however, in the present case, the petitioner having been in temporary service right since 1990, continuing till date, even though the Hostel to which he was originally appointed has ceased to exist completely in the year 2014, in my opinion, he deserves to be regularised even in terms of the observations in *Umadevis'* case, that persons who had put in 10 years of service in the year 2006, and were not otherwise ineligible to be appointed to the posts in question, may be regularised in service upon policies being issued by the relevant Governments.

Thus, simply because the respondent Society (or the State Society) chose not to issue any regularisation policy but still chose to regularise persons with far lesser service, even after *Umadevis'* case, in the

year 2007, as per Annexure P-21, which is admitted by the Society, the petitioner in my opinion, cannot be discriminated against, (with what is held hereinabove in paragraphs 37 to 40, reiterated here).

42. Consequently, this petition is allowed, with the services of the petitioner directed to be regularised from the date that services of other temporary employees were regularised in July 2004, but with actual arrears of the benefits that would fall to the petitioner to only be paid from one year before the date of the filing of the writ petition.

However, he would be deemed to have been granted all benefits w.e.f. July 2004, including for the purpose of pension, with his services for that purpose also to be counted to be 'regular' since July 2004.

March 17, 2020
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes