

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 22564 of 2015

Date of decision : February 07, 2020

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Surender Singh and others

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Hitesh Pandit, Addl. A.G, Haryana.

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RITU BAHRI, J.

The petitioners are seeking quashing of the orders dated 11/04/2013 (Annexures P-6 to P-8) by which, the claim of the petitioners for regularization has been rejected.

The petitioners were appointed as labourer on daily wage basis. The services of petitioners No. 1 and 2 were terminated. Both of them raised industrial dispute and the references were answered by the Labour Court in their favour and they were reinstated with continuity of service with full back wages. The awards passed in favour of petitioners No. 1 and 2 were challenged by the respondent-Department through CWP No. 7890 of 2007 and CWP No. 8242 of 2007 which were disposed of by this court by

modifying the award to the extent of entitlement of 25% back wages vide order dated 19/03/2008. The petitioners, at the same time, have given details of the junior workmen who had been regularized vide order dated 14/10/2006 (Annexure P-3). The similar situated employees filed CWP No. 1169 of 2009 titled as ***Ved Pal and others vs. State of Haryana and others*** which was allowed by this court on 10/02/2012.

The petitioners visited the respondent-Department many times with a request seeking regularization from the date their juniors were regularized. Thereafter, the petitioners filed CWP No. 26057 of 2012 titled, '***Suresh and others versus State of Haryana and others***' which was disposed of by this Court by the order dated 21/12/2012 with a direction to respondent No. 2 to consider and decide the legal notice dated 20/07/2012 within a period of 3 months from the date of receipt of certified copy of the order. The claim of the petitioners was rejected by the impugned orders dated 11/04/2013 (Annexures P-6 to P-8).

Upon notice of the writ petition, reply has been filed by the HFS, Divisional Forest Officer (Territorial) on behalf of respondent No. 1 to 4 wherein, stand has been taken that the case of the petitioners for regularization has been rejected by respondent No. 2 on the ground that as per the notifications/policies issued by the Government of Haryana from time to time, the regularization can only be done against the sanctioned vacant post and that too when the public appointment has been done as per the norms and after fulfilling the procedure of advertisement etc. However, in the Forest Department there are no such sanctioned vacant posts. Hence neither the petitioners fall under the policy nor there are any sanctioned posts in the Department. It has been further stated in the written statement

that the petitioners do not fulfill the prescribed conditions for any of the regularization policies of the Haryana State Government which have been reproduced in the written statement as under :

I Such as none of the petitioners had completed 240 days in any of the year;

II. None of the petitioners have completed during their service period working/actual number of years prescribed in those policies;

III. None of the petitioners were in service on the particular date given in the policies;

IV. All the petitioners have more than 30 days break in each year;

V. They were engaged as daily wagers on their presenting themselves without there being any advertisement, as in the Forest Department every post either Group D or Group C is to be filled up after a due process of law which has not been followed;

VI. There was no post of any kind upon which the petitioners were alleged to have been worked as lastly there was no advertisement or compliance of the mandatory conditions prescribed in the Constitution as opportunity of appointment is to be given to every citizen through advertisement.

After hearing counsel for the parties and going through the record of the case thoroughly, the present writ petition deserves to be

allowed.

On this account, 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'***. 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 recently, the Supreme Court in the case of ***Sheo Narain Nagar and others V/s. State of Uttar Pradesh and others, 2018 AIR (SC) 233*** was considering a 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 to 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.

On due consideration of the matter, I am of the view that the stand of the respondents is erroneous and unjustified. Once the award of the labour Court granted continuity of service to the petitioner, it would imply that he would be in service, as if the factum of termination had not intervened. The petitioner would continue to be in service without interruption and if that be so, then in terms of the policy of 2003, he would be entitled for consideration for regularization as he had concededly completed 3 years service. This Court has already taken a similar view in **Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI**

and another 2014(3) S.L.R.262, wherein it has been observed as follows :-

“34. On harmonious reading of the judgments discussed in 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/ad hoc/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 wagger 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 for 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 Article 14 of the Constitution.** Thus, the Industrial adjudicator would be

achieving the quality by upholding Article 14, rather than violating this constitutional provision.”

Keeping in view the above, I am of the opinion that the ratio of the aforesaid decision is straightway attracted to the facts of this case. Once the petitioners were reinstated with continuity of service as per the Labour Court award, the grounds as regards non-availability of the sanctioned vacant posts and non-fulfillment of the prescribed conditions for any of the regularization policies of the Haryana State Government given in the written statement could not be made a ground for denying regularization.

Consequently, the writ petition is accepted and the petitioners are held entitled to regularization in terms of the prevailing policy of the State with all consequential benefit from the date when their juniors were regularized along with 6% interest.

This exercise be completed within a period of three months from the date of receipt of certified copy of this order and this Court be informed of the order passed.

February 07, 2020

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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No