

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 24035-2016 (O&M)

Date of decision:-31.01.2020

KAMLESH

.....Petitioner

vs.

STATE OF HARYANA AND OTHERS

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Harish Nain, AAG, Haryana

RITU BAHRI, J.(Oral)

The present petition is for issuance of direction to the respondents to regularize the services of the petitioner as per policy dated 01.10.2003 or from the date when the benefit has been granted to the number of similarly situated employees, who are juniors to the petitioner, with all consequential benefits.

Brief facts of the case are that petitioner was appointed as Labourer on daily wage basis by the respondent-department w.e.f March, 1996. On 31.07.2005, the service of the petitioner was terminated and he served demand notice dated 28.11.2005, her case was referred to the Labour Court for adjudication but the Labour Court only awarded a compensation of Rs.36000/- to the petitioner. The award was challenged by the petitioner by filing CWP No. 19912-2011 and the same was disposed of on 18.02.2013 (P-1) by ordering reinstatement to the petitioner with continuity

of service. This order has attained finality as no appeal has been filed by the

respondent-department till date.

The grievance of the petitioner before this Court is now that his services had to be regularized in view of policy dated 01.10.2003, as the petitioner was in service w.e.f March, 1996. Further the service of similarly situated employees has already been regularized, as per information received under RTI Act (P-5). The petitioner gave legal notice dated 11.05.2016 but no action has been taken till date.

Learned counsel for the petitioner submits that the petitioner has been given continuity of service vide order dated 18.02.2013 by this Court and thus, his service ought to have been regularized, as per policy dated 01.10.2003. Further the services of similarly situated has been regularized, as per information received under RTI Act (P-5).

Learned State counsel on the other hand while referring to written statement has argued that the petitioner is not entitled for regularization, as per policy dated 01.10.2003. Further it has been argued that there are no sanctioned posts on which the services of the petitioner can now be regularized. Learned State counsel has further argued that petitioner has not actually worked for 03 years continuously prior to the date of issuance of notification dated 01.10.2003 and he can be regularized in view of notification dated 18.06.2014, which has been quashed by this Court. However, the information received under RTI Act has been admitted in the reply filed by the State.

Learned State counsel has further argued that the petitioner had not worked for 240 days in a calendar year, so his services could not be regularized.

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 non-regularization 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:-

“34. On harmonious reading of the two 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/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 wagger 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.”

In the present case, the services of similarly situated employees have already been regularized, vide Annexure P-5 and the respondents in their written statement had not admitted or denied this fact and submitted that the earlier policies were withdrawn in the light of subsequent notification dated 13.04.2007. A bare perusal of Annexure P-1 further shows that the onus to prove employment from July, 1994 to October 2003

was on the workman. Thus, he filed an application before the Labour Court for summoning the record i.e mustar roll, issue register, cash book etc and the Management was directed to produce the relevant record. One Ramesh Kumar brought some record showing the payments made to the workman in the year 2001 and 2002. He had not brought the mustar roll from June, 2000 to January, 2004. Thus, this Court allowed the writ petition and liberty was granted to the respondent-department to hold an enquiry and fix liability on erring officials who failed to produce the record before the Labour Court.

Keeping in view the fact that it was the official of the department who had not produced the record, therefore, the petitioner was given continuity of service by this Court.

Applying the ratio of the above mentioned judgment, the writ petition is allowed and respondents are directed to regularize the services of the petitioner w.e.f 01.10.2003 or with effect from the date the services of similarly situated employees or juniors to the petitioner have been regularized along with all consequential benefits.

31.01.2020

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No