

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-25591-2015 (O&M)
Date of Decision: March 13, 2020**

Ved Parkash and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Kumar Rana, Advocate,
for Mr. Samrat Malik, Advocate,
for the petitioners.

Mr. Randhir Singh, Addl. AG, Haryana,
for the respondents.

RITU BAHRI, J. (ORAL)

This petition, filed under Article 226 of the Constitution, prays for issuance of a writ in the nature of certiorari quashing the impugned order dated 26/27.11.2015 (Annexure P-7), vide which the claim of the petitioners for regularisation of their services has been rejected. Further, a prayer has been made commanding the respondents to consider the claim of the petitioners for regularisation in light of the policy decision dated 01.10.2003 (Annexure P-1), with all consequential benefits.

The petitioners have claimed that they joined the respondent-Public Relations and Cultural Affairs Department, Haryana, on different dates in the year 1999, as detailed in paragraph No. 2 of the writ petition, as Leader Bhajan Party, Dholak Vadak and Chimta Vadak, and continuing as such without any break till date. They were assigned the work of publicity in the respondent-department, i.e. for the purpose of government

development assessment announced in the State of Haryana. On 01.10.2003 (Annexure P-1), the State of Haryana framed a policy for regularisation of services of ad hoc/contract/daily wage employees who had completed three years service as on 30.09.2003. Vide notification, dated 10.02.2004, it was decided that only those ad hoc/contract employees will be entitled for regularisation w.e.f. 01.10.2003 who were appointed prior to 31.01.1996. Since the claim of petitioners Nos. 5, 10, 11, 13 and 15 was rejected on the ground that they were not appointed before 31.01.1996, they filed CWP No. 10970 of 2005, which was disposed of vide order dated 21.07.2005, with a direction to decide their legal notice. The respondents again rejected the claim of regularisation being not covered under notification dated 10.02.2004. Subsequently, on 25.04.2007 the policy decisions dated 01.10.2003 and 10.02.2004, were withdrawn. Again another notification dated 18.06.2004 was circulated vide letter dated 20.06.2014 (Annexure P-3), regarding regularisation of services of Group 'C' and Group 'D' employees/workers appointed/engaged on contract basis, as also to consider the cases of left over employees under the policies which were rescinded vide letter dated 25.04.2007. The petitioners again approached the respondents for regularisation of their services and also got served demand notice dated 28.06.2015 (Annexure P-5). When no decision was taken by the respondents, the petitioners filed CWP No. 16531 of 2015, which was disposed of vide order dated 12.08.2015 (Annexure P-6), with a direction to decide the legal notice dated 28.06.2015. The claim of the petitioners was again rejected vide

impugned order dated 26/27.11.2015 (Annexure P-7), on the ground that vide letter dated 25.04.2007, regularisation policies have been withdrawn. Hence, this petition.

In the written statement filed by the respondents, the dates of appointment of the petitioners, as stated in paragraph No. 2 of the writ petition, have not been denied and admitted being a matter of record. However, the stand taken is that in view of decision dated 05.05.2015 (Annexure R-2), vide which it was decided to put on hold all the regularisation policies, the services of the petitioners cannot be regularised.

In the replication to the written statement, the petitioners controverted the stand taken by the respondents and have also placed on record a copy of the letter dated 03.06.2016 (Annexure P-11), vide which the decision dated 05.05.2015, to put on hold all the regularisation policies, stood withdrawn.

The petitioners have also filed CM No. 223 of 2019, placing on record copy of the judgment dated 04.10.2018 (Annexure P-12), passed by this Court in CWP No. 2009 of 2016 and other connected matters, as also copy of the instructions dated 21.12.2018 (Annexure P-13), with a prayer to dispose of the present petition in terms of the judgment dated 04.10.2018 (Annexure P-12).

I have heard learned counsel for the parties and perused the paper book.

The petitioners have challenged the impugned order dated 26/27.11.2015 (Annexure P-7), whereby their claim for regularisation has

been rejected. As per the case pleaded by the petitioners, they had joined the respondent department in the year 1999 and are working without any break till date. They have given their respective dates of joining in paragraph No. 2 of the writ petition and claimed regularisation being covered under policy dated 01.10.2003 (Annexure P-1). In the written statement filed by the respondents, the contents of paragraph No. 2 of the writ petition have been admitted being a matter of record. However, the claim of the petitioners has been denied on the ground that vide decision dated 25.04.2007, the regularisation policy dated 01.10.2003 was withdrawn and later on vide instructions dated 20.06.2014 (Annexure R-3), State of Haryana has amended regularisation policy vide notification dated 18.06.2014 and all the policies prior to this date were rescinded. Further stand taken by the respondents is that on 05.05.2015 (Annexure R-2), the State Government had decided to put on hold all the regularisation policies. On the contrary, the petitioners have placed on record by way of CM No. 223-CWP of 2019, copy of the judgment dated 04.10.2018 (Annexure P-12), passed by this Court in CWP No. 2009 of 2016 and other connected matters, and a copy of the letter/instructions dated 21.12.2018 (Annexure P-13), issued by the Chief Secretary to Government Haryana. As per letter/instructions dated 21.12.2018 (Annexure P-13), the Government has taken a policy decision to create posts for diminishing cadres to adjust those employees whose services could not be regularised under the regularisation policies of 2003 and 2004 for lack of sanctioned posts. The respondents,

thus, also cannot take a ground that since there was no sanctioned posts, hence, the services of the petitioners could not be regularised.

It is to mention here that the judgment dated 04.10.2018 (Annexure P-12), passed by this Court in CWP No. 2009 of 2016 (Balwinder Singh and others v. State of Haryana and others) and other connected matters, which has been relied upon by the petitioners for disposing of the writ petition at hands, was set aside by the Letters Patent Bench, vide order dated 18.03.2019, passed in LPA No. 109 of 2019 (State of Haryana and others v. Balwinder Singh and others) and other connected appeals, with the observations that the petitions filed by different set of petitioners claiming regularization on different set of facts and rules were clubbed together without looking into the eligibility conditions, qualifications, rules applicable and the regularization policy; that in some matters, selection of the employees was set aside and affirmed upto the Hon'ble Apex Court and subsequently the same set of employees entered employment through a contractor and their writ petitions for regularization were allowed by the order dated 04.10.2018, and that in most of the cases, the facts could not be brought to the notice of the Court, since no opportunity for filing the written statement(s) was afforded, thus, the matters require individual adjudication in accordance with the facts of each case, the law and the regularization policy in that regard, if any, in existence. Accordingly, the writ petitions were remitted back to be adjudicated afresh after segregating them and if need be by giving an

opportunity to file written statement(s) to the respondents, where such opportunity was not afforded.

Pursuant to the decision of Hon'ble the Supreme Court in the case of **State of Karnataka v. Uma Devi and others, (2006) 4 SCC 1**, the State of Haryana has issued a notification dated 29.07.2011, whereby as a one time measure, benefit of regularization has been extended to those part time employees who have completed 10 years of service as on 10.04.2006. And, a Division Bench of this Court in the case of **Vidya Devi v. State of Haryana, 2004 (6) SLR 470**, has examined this issue in the case of part time employees working in the Education Department for regularization. They had worked for almost 7 years and the Division Bench held that their claim could not be declined on the ground that they do not possess essential qualification. Similarly, in another case of regularization of part time employees, vide judgment rendered in the case of **Umed Singh v. State of Haryana and others, 2001 (3) SCT 79**, it was held that the claim for regularization cannot be denied merely on the ground that the persons claiming regularisation have become over-age. In **Desraj v. State of Haryana, 2003 (4) SCT 264**, this Court has held that the Court does not have right to play with the lives of the employees by adopting questionable method, a part time employee who has completed 5 years become entitled for regularization, and they cannot be denied this benefit that they do not possess 3 years continuous service and requisite qualification. Hon'ble the Supreme Court in the case of **Malathi Das (Retd.) now P.B. Mahishy & others v. Suresh and others, (2014) 13 SCC 249**, has laid down that

parity has to be maintained by the State in regularising the employees and if regularization has been done after the decision of Hon'ble the Supreme Court in Uma Devi's case (supra), the other similarly situated employees cannot be denied regularization on the ground that regularization policies have been withdrawn.

In case of the petitioners, they have been working since 1999 and they have a right to be considered for regularisation of their services under the policy dated 01.10.2003 (Annexure P-1). The argument advanced by learned State counsel that in terms of the policy dated 01.10.2003 (Annexure P-1), the petitioners are required to possess the requisite qualifications for the respective posts, cannot be countenanced, in view of the judgments referred to above.

In view of above, the writ petition is hereby allowed. The respondents are directed to regularise the services of the petitioners as per policy dated 01.10.2003 (Annexure P-1), w.e.f. the dates of their initial appointment, as detailed in paragraph No. 2 of the writ petition, with all consequential benefits. The entire exercise be completed within three months from the date of receipt of a certified copy of this order and this Court be informed of the orders passed in this regard.

(RITU BAHRI)
JUDGE

March 13, 2020

Pk Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO