

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

1. **CWP No. 25072-2016**

HAWASINGH AND ANR.

.....Petitioners

vs.

STATE OF HARYANA AND OTHERS

....Respondents

2. **CWP No. 26748-2016**

RAJE RAM AND ANR.

.....Petitioners

vs.

STATE OF HARYANA AND OTHERS

....Respondents

3. **CWP No. 26393-2016**

DALBIR SINGH AND ANR.

.....Petitioners

vs.

STATE OF HARYANA AND OTHERS

....Respondents

Date of decision:-10.02.2020

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. A.P. Bhandari, Advocate
for the petitioners.

Mr. Randhir Singh, Advocate
for State of Haryana

RITU BAHRI, J.(Oral)

This order shall dispose of the above three petitions as common
question of facts are involved in all the petitions wherein petitioners are
seeking issuance of directions to the respondents to regularize their services

as per prevailing policies or from the date when the benefit has been granted to the similarly situated employees, who are juniors to the petitioners, with all consequential benefits. . However, for facility of reference, the facts are being taken from CWP No. 25072-2016.

Brief facts of the case are that petitioners were appointed on daily wage basis by the respondent-department w.e.f 15/03/1986 and 2001 respectively. But instead of regularizing their services as per policies dated 18.03.1996/01.10.2003 (P-2 to P-3), their services were terminated on 20.12.2011 and 01.11.2013. Subsequently, they served demand notice and their cases were referred to the Labour Court for adjudication and the Labour Court on 24.10.2013 and 18.11.2015 (P-4 and P-5 respectively) granted reinstatement with continuity of service and 50% backwages. The petitioners were taken back into service and are working as such. The awards have 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 their services had to be regularized in view of earlier policies dated 18.03.1996/01.10.2003, as the petitioners were in service w.e.f March, 1986 and 2001 respectively. Further the service of similarly situated employee has already been regularized. The petitioner gave legal notice dated 31.05.2016 (P-7) and the respondent-department gave reply to the legal notice (P-8) taking a stand that their cases are not covered under the regularization policies, as they were not appointed against the vacant posts and they have not completed 240 days in a calendar year.

Learned counsel for the petitioners submits that the petitioners

have been given continuity of service vide awards dated 24.10.2013 and 18.11.2015 (P-4 and P-5 respectively), which have not been challenged till date. Their services ought to have been regularized, as per prevailing policies.

Learned State counsel on the other hand while referring to written statement has argued that the petitioners are not entitled for regularization in view of judgment of ***State of Karnataka vs. Uma Devi and others 2006(4) SCC (1)***. Further it has been argued that there are no sanctioned posts on which the services of the petitioners can now be regularized. Learned State counsel has further argued that petitioners had not actually worked for 03 years continuously prior to the date of issuance of regularization policies and their services can be regularized in view of notification dated 18.06.2014, which has been quashed by this Court.

Heard learned counsel for the parties at length.

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 wager 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.”

Reference at this stage can be made to judgments of this Court in a case of ***Umrao Singh and another vs. State of Haryana and another, passed in CWP No. 18246-2012, decided on 23.02.2015 and Lekh Raj vs. State of Haryana and others, passed in CWP No. 11224-2015, decided on 19.10.2015*** wherein it has been held that once the award of the Tribunal granted continuity of service to the petitioner, it would imply that he would be in service, as if the factum of termination had not been 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 regularization as he had completed 03 years service.

Reference at this stage can be made to judgments of the Hon'ble Apex Court in ***Mineral Exploration Corporation Employees Union Vs. Mineral Exploration Corporation Limited & anr., 2006 (3) SCT 802***, and this Hon'ble Court in the case of ***Sukhdev Kaur Vs. State of Punjab, 2002 (8) SLR 349 (P&H)*** and ***Des Raj Vs. State of Haryana & ors., 2003 (4) SCT 264***, whereby a consistent view has been taken that keeping the contingent

workers for a long time, offering regular appointment periodically and abruptly stopping them to take on duty, amounted to unfair labour practices. An employer cannot be allowed to play with the future of the thousands of employees from all benefits available to regular employees. They must be regularised in service after a reasonable time. They cannot be deprived of the benefits of being a regular employee indefinitely.

Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Ramesh Cahandra Singh vs. Khadi and Village Industry Commission, 2018 (1) SCT 1***. The operative part of the judgment reads as under:-

“In our opinion, there was a clear finding by the Industrial Court that the appellant had been in service for the last 23 years. He was appointed in the manufacturing establishment in July 1981. Obviously, he was initially engaged as machine operator but, he was illegally retrenched from service on 9th August, 1986. On 29th March, 1996 he was reinstated and continuity of service was granted. He was reinstated as a watchman and, since then, he had been continuing in service. Thus, by now he is in service for approximately 37 years.

The High Court has erred in observing that only a 5-year service has been rendered by the appellant. As a matter of fact, between 1981 and 1986, he has rendered the service as a machine operator and, thereafter, he was illegally removed from service. Ultimately, removal was held to be illegal, and continuity in service and all benefits had been granted to him. In fact, he is deemed to be in service even during interregnum period of 1986 to 1996, and in the eye of law there was no break in his services.

The case of the petitioners are covered by judgment of this Court in a case of ***Veermati vs. State of Haryana and another, passed in CWP No. 16044-2015, decided on 11.04.2016*** wherein petitioner who was appointed as Beldar on 22.10.1998 was denied regularization as per 01.10.2003 policy, in view of condition No. 8 of notification dated 10.02.2004 whereby it was required that only those Group C and D

employees are eligible for regularization who had been engaged before 31.01.1996. This Court allowed the writ petition and observed as under:-

*“This condition No.8 of the Notification dated 10.02.2004 (Annexure P-2) has come up for consideration before the Division Bench of this Court in case **CWP No.9708 of 2004** titled **Ajit Singh Vs. State of Haryana and others, decided on 04.02.2015** whereby it was held that condition No.8 of the Notification dated 10.02.2004 (Annexure P-2) was held to be unreasonable and arbitrary on the ground that a daily wager, who has three years of service from 30.01.1996 could be entitled for regularization whereas the services of the person like the petitioner, who having over five years of service could not be regularized. The impugned notification could not apply retrospectively to take away the vested rights of the petitioner, whose services had already been regularized prior to the amendment.*

In the present case, the petitioner had been appointed on 22.10.1998 as Beldar on daily wages and has a right to be considered for regularization as per policy dated 01.10.2003, without insisting on the condition No.8 of the notification dated 10.02.2004 (Annexure P-2), which has been quashed, by the Division Bench of this Court.”

In the present case, it is not in dispute that the petitioners were appointed 15/03/1986 and 2001 respectively on daily wage basis by the respondent-department and their services were terminated. They raised industrial disputes and awards dated 24.10.2013 and 18.11.2015 (P-4 and P-5 respectively) were passed in their favour and they were granted continuity of services along with other consequential benefits. No appeal was filed against the awards passed by the Labour Court. Thus, for all intents and purposes, the petitioners were working since 15/03/1986 and 2001 respectively as they were granted continuity of service and their cases for

regularization is covered under prevailing regularization policies dated 18.03.1996/01.10.2003 (P-2 to P-3).

Applying the ratio of the above mentioned judgments, the writ petition is allowed and respondents are directed to regularize the services of the petitioners w.e.f 18.03.1996/01.10.2003 or with effect from the date the services of similarly situated employees or juniors to the petitioners have been regularized along with all consequential benefits.

10.02.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No