

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

**CWP-4021-2016
Date of decision: 31.01.2020**

Dharampal**...Petitioner(s)****V/s.****State of Haryana and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE RITU BAHRI.**

Present: Mr. Aditya Yadav, Advocate
for the petitioner.

Mr. Randhir Singh, Advocate
for State of Haryana.

RITU BAHRI, J. (Oral).

The petitioner is seeking quashing of order dated 22.01.2016 (Annexure P-7) whereby his claim for regularization was rejected. He is further seeking direction to the respondents to regularize his services at par with the juniors keeping in view notification dated 18.03.1996 (Annexure P-1).

The petitioner was appointed as Beldar (Labourer) on daily wage basis on 01.12.1988 in the Sultanpur Bird Sanctuary, District Gurgaon. His grievance is that services of many persons junior to him have been regularized. The petitioner is seeking benefit of policy dated 18.03.1996 (Annexure P-1). Vide order dated 22.01.2016 (Annexure P-7), his claim for regularization was rejected. Hence the present writ petition has been filed.

On notice of this petition, written statement on behalf of respondents No. 1 to 4 has been filed. The respondents have mentioned the

reasons for rejecting the claim of the petitioner in the written statement which are as under:-

- (1) The petitioner does not fulfill the conditions of policy dated 29.07.2011.
- (2) The petitioner is not working against duly sanctioned vacant post.
- (3) The name of the petitioner was not sponsored through employment exchange.
- (4) There is stay of regularization policies of the year 2014 and afterwards.

With respect to non-sanctioned post, this issue has already been considered by this Court in ***CWP-10774-1999 titled as Baldu Ram V/s. State of Haryana***, whereby it has been held that if the employees have been working for more than 10 years service and are still continuing, it is unfair for the respondents to decline their case on the ground of non-availability of post.

With respect to non-sponsored through employment exchange, this issue has already been considered by this Court in ***CWP-11368-2012 titled as Gian Chand and others V/s. Haryana Vidyut Parsaran Nigam Ltd. and others*** and in ***CWP-5926-2000 titled as Vidya Devi V/s. State of Haryana*** whereby it has been held that if a daily wager has been working for more than 10 years to the satisfaction of the Department, his case for regularization cannot be rejected on this ground.

Even if the ground of seniority is not to be taken into account when services of some of the similiary situated employees have been regularized the Department is bound to maintain parity with respect to all the employees and this aspect has already been considered by Hon'ble the

Supreme Court in ***Hari Nandan Prasad and another V/s. Employer I/R to Management of FCI and another***, 2014(2) SCT 234.

Further recently, the Supreme Court in ***Civil Appeal No. 18510 of 2017*** titled as ***Sheo Narain Nagar and others V/s. State of Uttar Pradesh and others*** was considering 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 be 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 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.

In the present case, the respondents are admitting that the petitioner was appointed as Beldar (Labourer) on daily wage basis on 01.12.1988 as this fact has been stated in the writ petition and was not denied in the written statement. In para 3 of the written statement, it is mentioned that initially the petitioner had approached this Court by way of CWP-8950-1990 seeking regularization in view of Piara Singh case 1988(4) SLR 739. This writ petition was disposed of on 09.07.1990 giving direction to the respondents to decide representation within six months. He again approached this Court by way of CWP-13657-1999 which was dismissed as withdrawn on 31.07.2001 with liberty to file civil suit on the same cause of action. However no civil suit was filed by the petitioner. The respondents have admitted in para 4 of the written statement that one Surat Singh, Labourer was regularized as Keeper vide order dated 15.12.1995 keeping in view the award passed by Industrial Tribunal cum Labour Court, Gurugram on 02.02.1994. The petitioner has placed on record representation (Annexure P-2) for regularization of his services and he has given details of his working days that from 12.12.1988 to 31.03.2002 he has been working as daily wager in the Department of Wild Life Inspection of National Park. In 1993, he alongwith others were terminated by the then IFS Sh. Prem Singh Malik and stay was granted by the High Court and those persons who were working with the petitioner have been regularized, whose details are as under:-

Sr. No.	Name of employee	Post	Place of posting
1	Sh. Vikram		Bhindawas Bird Sanctuary
2	Sh. Surat Sngh	Keeper	Sultanpur National Park
3	Sh. Ramdhari	-	Rohtak Division

4	Sh. Kulwant	Keeper	Office Dy. Chief Wilfe Life Warden
5	Sh. Rajender	Keeper	-Do-
6	Sh. Satbir Singh	-	Bhindawas

The petitioner is claiming regularization at par with his juniors mentioned in his representation (Annexure P-2). The respondents have not denied regularization of his junior as per para 4 of the written statement and the contents are being admitted. Once the respondents admit the representation and its contents the obvious conclusion is that petitioner has been working from 1988 till 2002. Keeping in view this fact, the details of the work with respect to only three years i.e. 1993-94, 1994-95 and 1995-96 have been given by the respondents vide Annexure R-1. The respondents have rejected the claim on the ground that he did not work for three years counting from 01.10.1993 to 31.01.1996. The case of the petitioner has been wrongly rejected taking his work period from 01.10.1993 to 31.01.1996 vide Annexure R-1 since as per the Division Bench judgment passed in **CWP-9708-2004 titled as Ajit Singh V/s. State of Haryana and others**, the daily wager has to complete three years as on 31.01.1996 as per policy dated 07.03.1996/18.03.1996 was held to be arbitrary and it is held that daily wager has to complete any three years.

In the present case, as per the representation (Annexure P-2), the petitioner had worked from 12.12.1988 to 31.03.2002. Even if as per details of work given in Annexure R-1, service had to be taken from October 1993, the petitioner completes three years in 1996 and even beyond that he was regularly working till 31.03.2002. Hence, the ground that the petitioner has not completed three years as on 31.01.1996 is rejected.

Moreover other similarly situated employees whose details have been given

in the representation (Annexure P-2) have already been regularized, the Department has to maintain parity for regularization keeping in view the Supreme Court judgment as referred to above.

Hence, writ petition is allowed. Order dated 22.01.2016 (Annexure P-7) is quashed and the respondents are directed to regularize the services of the petitioner as per policy dated 18.03.1996 (Annexure P-1) alongwith all consequential benefits with 6% interest and pass appropriate order 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.

(RITU BAHRI)
JUDGE

31.01.2020
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No