

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-6138-2016(O&M)
Date of decision: 31.01.2020

Chander Wati and others
V/s. ...Petitioner(s)

State of Haryana and others ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ajay Chaudhary, Advocate
for the petitioners.

Mr. Randhir Singh, Advocate for
State of Haryana.

RITU BAHRI, J. (Oral).

CM-1590-CWP-2020

Application for placing on record office order dated 03.08.2019

(Annexure P-23) is allowed and the same is taken on record.

CWP-6138-2016

The petitioners are seeking quashing of office orders dated 13.01.2005 (Annexure P-4), 05.09.2005 (Annexure P-5) and 27.09.2005 (Annexure P-6) whereby their claim for regularization had been rejected. They are further seeking direction to the respondents to regularize their services as per policies dated 01.10.2003 (Annexure P-1) and 10.02.2004 (Annexure P-2) or from the date when juniors to the petitioners have been regularized.

The petitioners were appointed as daily wager, labourer-cum-mali as per the details mentioned in para No. 3 of the writ petition. They are

seeking benefit of regularization as per policies dated 01.10.2003 (Annexure P-1) and letter dated 10.02.2004 (Annexure P-2) since the Labour Court awarded them continuity of services.

Learned counsel for the petitioners has referred to the judgment passed by this Court in the case of **CWP-23241-2014 titled Smt. Chameli V/s. State of Haryana and others** (Annexure P-22) whereby writ petition seeking regularization was allowed in terms of the regularization policy 1996. LPA-308-2019 filed against the said judgment has been dismissed on 26.03.2019. In compliance of judgment passed in CWP-23241-2014, the services of Chameli have been regularized vide order dated 03.08.2019 w.e.f. 01.02.1996 (Annexure P-23). He further contends that the claim of the petitioners had been rejected mainly by the respondents on the ground that the labour Court award had not attained finality. He submits that the labour Court award had attained finality as per information received under RTI (Annexures P-9 to P-20) and there was no challenge to the labour Court award.

Mr. Randhir Singh, Advocate, Haryana, is not disputing about the labour Court award attained finality. However he argued that the LPA-1451-2015 filed against the order passed in CWP-7905-2011(Annexure P-7), was withdrawn with liberty to avail alternative remedy.

This argument is liable to be rejected as in the present case, the petitioners have placed on record the information received under RTI (Annexures P-9 to P-20). As per this information, the award of the labour Court had attained finality and in this backdrop, the rejection orders (Annexures P-4 to P-6) were passed keeping in view that the labour Court award had not attained finality. This ground is not for rejection of claim

made in the writ petition. Since the Department has regularized the services of Chameli vide order dated 03.08.2019 (Annexure P-23), who is one of the similarly situated employees as the petitioners are, 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 the case of **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.

Keeping in view above observations, writ petition is allowed. The respondents are directed to regularize the services of the petitioners as per 1996 policy alongwith consequential benefits and cost of Rs.50,000/- be paid to each petitioner keeping in view that earlier their claim for regularization was rejected on the ground that labour Court award had not attained finality which is factually incorrect as per the RTI information received (Annexures P-9 to P-20).

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.

(RITU BAHRI)
JUDGE

31.01.2020

Divyanshi

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