

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 8650-2016 (O&M)

Date of decision:-31.01.2020

MANGAL SINGH AND ANR.

.....Petitioners

vs.

STATE OF HARYANA AND OTHERS

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rakesh Nagpal, Advocate
for the petitioners.

Mr. Randhir Singh, Advocate
for State of Haryana

RITU BAHRI, J.(Oral)

The present petition is for issuance of direction to the respondents to regularize the services of the petitioners as per policy dated 07.03.1996/18.03.1996 (P-1 and P-2) or from the date when the benefit has been granted to the number of similarly situated employees, who are juniors to the petitioners, with all consequential benefits.

Brief facts of the case are that petitioners were appointed as Chowkidar and Permanent Labourer respectively on daily wager basis by the respondent-department on 20.08.1983/02.06.1987. Thereafter, State of Haryana has framed a policy dated 07.03.1996/18.03.1996 for regularizing the services on adhoc basis, daily basis who had completed three years of service as on 31.01.1996.

The grievance of the petitioners before this Court is now that their services have not been regularized till date by the respondents despite

the fact that they have been appointed in the year 1983 and 1987 and further

the services of similarly situated and juniors to the petitioners have been regularized. The petitioners gave representation for regularization but their services were terminated. Hence they raised industrial disputes and awards dated 09.11.2012 and 22.08.2013 were passed in their favour and were granted continuity of services with all other consequential benefits. The petitioners were then taken back into service. The awards had attained finality as the department had filed CWP No. 12317-2013 and CWP No. 101-2015 and both petitions were dismissed on 30.05.2013 and 07.01.2015.

Learned counsel for the petitioners submits that the petitioners have been given continuity of service vide labour Court awards their services ought to have been regularized, as per policy dated 07.03.1996/18.03.1996 (P-1 and P-2). Further the services of similarly situated and juniors to the petitioners have been regularized, as mentioned in para No. 6 of the writ petition. The petitioners served a legal notice dated 06.08.2015 (P-4) but no action has been taken till date.

Learned State counsel on the other hand while referring to written statement has argued that the petitioners are not entitled for regularization, as per policy dated 07.03.1996. 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 have not actually worked for 03 years continuously prior to the date of issuance of notification dated 07/18.03.1996 and they can be regularized in view of notification dated 18.06.2014, which has been quashed by this Court.

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 nonregularization 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.”

In the present case, the services of similarly situated employees have already been regularized and the respondents in their written statement had not admitted or denied this fact and submitted that the policy dated 07.03.1996 was withdrawn in the light of subsequent notification dated 13.04.2007.

Applying the ratio of the above mentioned judgment, the writ petition is allowed and respondents are directed to regularize the services

of the petitioners with effect from the date the services of similarly situated employees or juniors to the petitioenrs have been regularized along with all consequential benefits.

31.01.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No