

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

**CWP No.3622 of 2017
Date of Decision: 11.02.2020**

Gurmeet Kaur

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ajay Chaudhary, Advocate,
for the petitioner.

Mr. Harish Nain. A.G., Haryana.

RITU BAHRI, J. (ORAL)

Petitioner is seeking direction to the respondents to regularize the services of her husband namely Inderjeet Singh (since deceased) in view of policy decision dated 01.10.2003 (Annexure P-2) or from the date, his juniors have been regularized.

Inderjeet Singh, husband of petitioner, was appointed as Mali-cum-Beldar on daily wage basis in the year 1986. However, his services were terminated in November, 2002. Vide award dated 27.03.2006 (Annexure P-1) passed by the Labour Court, he was ordered to be reinstated with continuity of service along with full back wages. This award was never challenged by the respondent-department.

Learned counsel for the petitioner has referred to the order dated 14.10.2006 (Annexure P-3), whereby some of the employees, junior to

Inderjeet Singh (husband of petitioner), have been regularized w.e.f. 01.10.2003.

Respondents, in their written statement, are not disputing the order dated 14.10.2006 (Annexure P-3). Learned counsel for the respondents has argued that husband of the petitioner was terminated in November, 2002 and as per award dated 27.03.2006 (Annexure P-1), he has been reinstated with continuity of service in the year 2006. Hence, he was not covered under the policy decision dated 01.10.2003 (Annexure P-2).

Heard, counsel for the parties. This aspect has been considered by Hon'ble the Supreme Court in the case of Malathi Dass vs. Suresh and others 2014 (2) CLR 168, wherein it has been held that parity has to be maintained between similarly placed employees having been regularized by the State. Even if, the regularization policies have been withdrawn after the judgment passed in the case of Secretary, State of Karnataka and others vs. Umadevi and others, 2006 (2) SCT 462, the State is duty bound to regularize the services of the respondents on the basis of parity. In paragraph 8 of the judgment it has been held 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.

In a judgment passed by this Court in Krishan and others vs. State of Haryana and others, CWP No. 13039 of 2015 (decided on 20.9.2016), it has been observed as under:-

9. Moreover, this Court is bound to give effect to the law in Hari Nandan Prasad case (Supra) where the Supreme Court reaffirmed the legal position summing up as follows:-

"However, wherever it is found that similarly situated workmen are regularized by the employer itself under some schemes or otherwise and the workmen in question who have approached Industrial/Labour Court are atpar 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.”

12. As a corollary to the above discussion, these petitions are allowed. It is declared that the petitioners have a right to consideration for regularization of their services notionally from the date when juniors were retained in service and regularized and in the direct writ petitions where continuous service is for long years protected by The Fifth Schedule, Entry 10 of the Industrial Disputes Act, 1947 as explained in Khajjan Singh or even by operation of para.53 of Uma Devi case. The principle on which relief is based in these cases is to uphold right to equal treatment within a homogeneous group, the fortunate and the deprived, to achieve social equality among those can be reasonably classified together, as explained with the help of case law in the preceding paragraphs.

Learned counsel for the respondents further argued that husband of the petitioner did not fulfill the qualification and there was no sanctioned post available.

Recently, Hon'ble the Supreme Court in **Sheo Narain Nagar and others V/s. State of Uttar Pradesh and others**, 2018 AIR SC 233 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 (therein) 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 Hon'ble 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.

In the facts of the present case, husband of the petitioner expired on 30.10.2013. His widow i.e. petitioner has not been given any pension. As per award dated 27.03.2006 (Annexure P-1) passed by the Labour Court, husband of petitioner was reinstated with continuity of service along with full back wages. The said award has never been challenged by the respondents. For all intents and purposes, service of petitioner's husband has to be taken as continuous service from the date of termination till he was reinstated. Accordingly, Inderjeet Singh, husband of petitioner, had a right to be considered as per Policy of Regularization dated 01.10.2003 (Annexure P-2). Ratio of the above mentioned judgments is applicable to the facts of the present case.

In view of the above discussion, this petition is allowed and the respondents are directed to regularize the services of Inderjeet Singh, husband of petitioner, as per Policy of Regularization dated 01.10.2003 (Annexure P-2) from the date his juniors were regularized vide order dated 14.10.2006 (Annexure P-3), with all consequential benefits along with

period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

11.02.2020
ajp

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