

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
245 (PROCEEDINGS THROUGH V.C.)**

**LPA-56-2020 &
CM-166-LPA-2020 &
CM-167-LPA-2020 &
CM-168-LPA-2020 &
CM-169-LPA-2020 &
CM-2222-LPA-2020**

Date of decision: 17.11.2020

**MUNICIPAL CORPORATION, CHANDIGARH AND ANOTHER
...*APPELLANTS***

V/S

TARSEM AND OTHERS

...*RESPONDENTS*

***CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA***

**Present: Ms. Deepali Puri, Advocate,
for the appellants.**

**Mr. K.L.Arora, Advocate,
for the respondents.**

**AUGUSTINE GEORGE MASIH, J.
CM-166-LPA-2020**

C.M. is allowed subject to just exceptions. Filing of certified/typed copies of Annexure and record of writ petition is dispensed with and filing of photocopies of the same is permitted.

CM-167-LPA-2020

Prayer in this application is for condonation of 73 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 73 days in re-filing the appeal stands condoned.

CM-168-LPA-2020

Prayer in this application is for condonation of delay of 216 days in filing the appeal.

Upon notice having been issued to the non-

applicant/respondents, reply to the said application has been filed.

Counsel for the appellants, with reference to the contents of the application, has explained the delay which has occurred in filing the appeal. The said application has been opposed by the counsel for the non-applicant/respondents. However, for the reasons mentioned in the application and the explanation submitted therein, we are satisfied that the applicants-appellants have been able to show sufficient cause for the delay and the explanation given therein for the delay is accepted. Application is, therefore allowed. Delay of 216 days in filing the appeal stands condoned.

CM-2222-LPA-2020

C.M. is allowed subject to just exceptions. Reply to the application for condonation of delay in filing the appeal along with documents A-1 and A-2 is taken on record.

LPA-56-2020

Challenge in this appeal is to the judgment dated 20.12.2018 passed by the learned Single Judge in CWP No. 19932 of 2014 titled as Tarsem and others vs. Chandigarh Administration and others, wherein the petitioners (respondents herein) had filed a writ petition seeking regularization of their services from the dates when the persons junior to the petitioners i.e. from Sr. No. 14 to 75 in the Final Seniority List of Daily Wage Safai Karamcharies (Annexure P-3) circulated by the Medical Officer of Health, Municipal Corporation, Chandigarh have been regularized by the appellants. The consequential benefits have also been prayed by the respondents-petitioners apart from seeking quashing of the order dated 15.01.2014 (Annexure P-7) passed by the Medical Officer of Health, Municipal Corporation, Chandigarh-respondent No. 3 (appellant No. 2

herein) declining the prayer of the respondents-petitioners for regularization of their services.

It is the contention of the learned counsel for the appellants that the learned Single Judge has failed to appreciate that there is a distinction as regards the respondents-petitioners viz-a-viz the persons whose names find mentioned in the seniority list of Daily Wage Safai Karamcharies at Sr. No. 14 to 75. It is asserted that the persons at Sr. No. 14 to 75 were appointed on compassionate ground as daily wage Safai Karamcharies whereas the respondents-petitioners were appointed as Cattle Catching Labourers on daily wage basis w.e.f. 01.07.1998 and continued as such on their re-engagement from time to time for a period not exceeding 31 days in one span. On expiry of the term of re-engagement, their services were not continued in the year 1999. 12 of the 15 labourers raised an industrial dispute which concluded in a settlement arrived at on 29.12.1999 before the Conciliation Officer, according to which, these 12 labourers were taken back in service w.e.f. 03.01.2000.

Counsel for the appellants concedes that in the final seniority list, which has been issued in the year 2009 of the daily wage safai karamcharies, names of respondents-petitioners finds mention at Sr. No. 2 to 13 i.e. above that of persons at Sr. No. 14 to 75. It is also not disputed that their date of appointment has been taken as 03.01.2000. The factum of persons at Sr. No. 14 to 75 having been appointed subsequent to the date of appointment of the respondents-petitioners is also admitted. The ground, which has been taken for distinguishing the case of the respondents-petitioners viz-a-viz persons mentioned at Sr. No. 14 to 75 of the seniority list, is that they were appointed as Safai Karamcharies on daily wage basis

on compassionate ground. It is asserted that the duties, which are being performed by the respondents-petitioners, are that of the Cattle Catchers although they have been shown in the seniority list of Safai Karamcharies. Reference has also been made to Note-II at the end of seniority list where it has been specifically mentioned with relation to the respondents-petitioners that they were performing the duties of the Cattle Catchers and will be considered for regularization against the vacant posts of Safai Karamcharies in case the Secretary, Local Govt., Chandigarh accords approval. The position was clarified by the office on re-examination to state that there was no sanctioned post of Cattle Catcher. It is under these circumstances that the services of the respondents-petitioners could not be regularized.

As regards the regularization of the services of the persons mentioned at Sr. No. 14 to 75 of the seniority list of Safai Karamcharies, it is stated by the counsel that a decision has been taken by the Municipal Corporation in its 40th meeting held on 28.09.2000 where it was stated that in view of the hardship being faced by the family members of the deceased employee, the eligible family member shall be employed on daily wage basis in case number of such persons exceeds the prescribed limit of 5% of vacancies in a year falling under direct recruitment quota in any Group-C/Group-D post. The persons so recruited on compassionate ground on daily wage basis shall be adjusted against the regular post to be available under the said quota in future. It is in view of this position that the persons at Sr. No. 14 to 75 were regularized against the available vacant post in the year 2009. On this basis, it is asserted that the judgment passed by the learned Single Judge cannot sustain and deserves to be set aside and the writ petition dismissed.

On the other hand, learned counsel for the respondents-petitioners, at the very outset, states that the respondents-petitioners have given their willingness for regularization of their services as Safai Karamcharies regardless of the nature of the duties performed by them from the date their juniors have been regularized which fact finds mention in the impugned judgment passed by the learned Single Judge. The factum that the respondents-petitioners were hired against the post of Safai Karamcharies in the year 1998 and that they have been assigned the job of Cattle Catcher and after their termination, because of the settlement, they were re-appointed on the said post, they are concededly working against the post of Safai Karamcharies although may be performing the duties of Cattle Catcher. One of the reasons, which have been assigned for not regularizing the services of the respondents-petitioners, is that there is neither any designated nor sanctioned post named and styled as Cattle Catcher. This objection would, thus, not sustain. The factum of the respondents-petitioners being senior in the seniority list having been admitted, they had a prior right for consideration for regularization of their services irrespective of the nature of appointment. Merely because the persons at Sr. No. 14 to 75 have been appointed on compassionate ground, they would not have a prior right of appointment especially when the respondent-petitioners are senior to them in the seniority list. He, therefore, states that the respondents-petitioners being in service for almost 20 years, they have rightly been granted the benefit of consideration of their claim for regularization of the services on parity with their juniors who have been regularized. Prayer has, thus, been made for dismissal of the present appeal.

We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings and the records of the case.

The admitted facts are that although the respondents-petitioners are performing the duties of Cattle Catchers but they have been appointed against the post of Safai Karamcharies and are getting the salary as has been fixed for the said post. Merely because there is no sanctioned post of Cattle Catcher and, therefore, their services cannot be regularized, would not be a ground which would cut ice in the light of the fact that the respondents-petitioners have conceded that they would be satisfied if they are regularized as Safai Karamcharies. The objection, thus, of the appellants with regard to non-availability of the post of Cattle Catcher as a reason for non-consideration of the claim of the respondents-petitioners for regularization is unsustainable especially when they have always been treating them to be working against the post of Safai Karamcharies which is further fortified from issuance of the Final Seniority List of Daily Wage Safai Karamcharies in the year 2009(Annexure P-3) where the names of the respondents-petitioners exist at Sr. No. 2 to 13. In the said seniority list, the respondents-petitioners are senior to the persons whose services have been regularized.

The second ground, which has been taken by the counsel for the appellants, is that the persons mentioned at Sr. No. 14 to 75 of the Seniority List (Annexure P-3) had been appointed on compassionate ground and, therefore, form a class apart. The said plea cannot be accepted as that may be a good ground for initial inception into service for appointment as a daily wage employee but once you are a part of the service, all employees

have to be treated uniformly. Protection of Article 14 comes into play and the appellants were very much aware of the right of the respondents-petitioners being senior in the said list as is apparent from Note-II of the Final Seniority List (Annexure P-3) of the Daily Wage Safai Karamcharies. The claim of the respondents-petitioners was also sought to be considered against the vacant posts of Safai Karamcharies, against which posts they were performing their duties as Cattle Catchers.

It is not the stand of the appellants that the work and conduct of the respondents-petitioners is, in any manner, not satisfactory nor is it the case of the appellants that they do not want the services of the respondents-petitioners. The reason as to why their services have not been regularized is the non-availability of the post of Cattle Catcher which impediment, as held above, would not be an obstacle.

In view of the above, we do not find any reason to interfere with the order passed by the learned Single Judge dated 20.12.2018.

The present appeal, therefore, stands dismissed.

CM-169-LPA-2020

In view of the dismissal of the main appeal, the present application has been rendered infructuous and the same is disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

November 17, 2020

pj

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No