

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24316-2018
Date of decision: 30.01.2020

Jaswant Singh and others

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ram Niwas Sharma, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl.A.G., Haryana.

RITU BAHRI, J. (Oral).

The petitioners are seeking direction to the respondents to regularize their services against the post of Water Carrier/Sweeper (Group-D) keeping in view that services of their juniors have been regularized w.e.f. 29.07.2011 (Annexure P-6).

The petitioners are seeking benefit of the policies dated 01.02.1999 (Annexure P-2), 17.10.2002 (Annexure P-3) and notification dated 29.07.2011 (Annexure P-4). All the above said three polices/notifications deal with regularization of part time Group D employees. The petitioners have placed on record their appointment letters (Annexure P-1 colly) to show that they have been appointed between 01.06.1980 to 03.01.1995 as per details given in para 2 of the writ petition. They have placed on record seniority list of part time Water Carrier and part time Sweeper (Annexure P-5 colly). The services of 23 part time Water Carrier and 22 part time Sweepers have been regularized w.e.f. 29.07.2011

(Annexure P-6) ignoring the seniority list dated 24.05.2018 (Annexure P-5) and hence the present writ petition has been filed.

The petitioners approached this Court by way of filing CWP-21760-2011 which was clubbed with CWP-20861-2011 and was disposed of vide order dated 14.03.2017 (Annexure P-7) to consider the case of the petitioners since similarly situated persons as the petitioners have already been regularized. Their further grievance is that vide advertisement dated 26.08.2018 (Annexure P-8), respondent No.4-Haryana Staff Selection Commission has advertised 18218 Group-D posts which are lying vacant in various departments/Boards/Corporations in the State of Haryana.

On notice of this petition, reply on behalf of respondents No. 1 to 3 has been filed. The stand taken by the respondents in the reply is that as per the policy of regularization dated 29.07.2011 **a part time employee can be regularized against the sanctioned post.** After regularization, they will be covered by new pension scheme introduced w.e.f. 01.01.2006. It is further stated that they have regularized the services of part time Water Carrier and part time Sweeper as per the seniority and eligibility. They have further mentioned the reasons for rejecting the claim of the petitioners in the reply which are as under:-

1. “Sh. Sube Singh, Part Time Water Carrier was not eligible as his name for appointment was not sponsored by Employment Exchange.
2. Sh. Kiran Pal, Part Time Water Carrier was not eligible as his name for appointment was not sponsored by Employment Exchange.

3. Sh. Bishan, Part Time Water Carrier was not eligible as his name for appointment was not sponsored by Employment Exchange.
4. Sh. Jaswant Singh, Part Time Water Carrier was not eligible as his name for appointment was not sponsored by Employment Exchange.
5. Sh. Dayanand, Part Time Water Carrier was not eligible as his name for appointment was not sponsored by Employment Exchange.
6. Sh. Ramdiya, Part Time Water Carrier was not eligible as his name for appointment was not sponsored by Employment Exchange.
7. Sh. Niranjana Nath, Part Time Sweeper was not eligible as his name for appointment was not sponsored by Employment Exchange.
8. Sh. Rameshwar, Part Time Sweeper was not eligible as he is illiterate and not produced any certificate of qualification.
9. Sh. Sunder Singh, Part Time Sweeper was not eligible as his name for appointment was not sponsored by Employment Exchange.”

Mainly two reasons which have been given for not regularizing the services are (1) that their names were not sponsored by employment exchange and (2) one part time Sweeper is illiterate.

On this account, reference can be made to a judgment passed by this Court in ***CWP-3593-2000 titled as Ranbir Singh and others V/s. State of Haryana and others*** (Annexure P-9) placed on record by the petitioners. In this writ petition, it has been held that regularization cannot be denied on the ground that no post is available since the petitioner is working on the post as work was available and it was for the respondents to create necessary post.

With respect to qualification, 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*** has 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 that he is not qualified.

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 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 apporached 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 and the respondents are directed to regularize the services of the petitioners as per notification dated 29.07.2011 (Annexure P-4) keeping in view list dated 29.07.2011 (Annexure P-6) with all consequential benefits alongwith 6% interest.

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

30.01.2020
Divyanshi

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