

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP 9021 of 2017 (O&M)

Date of decision : September 22, 2021

...

Raghbir Singh and others

.....Petitioners

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr.Jagdish Manchanda, Advocate
for the petitioners.

Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Brijesh Kumar, Advocate for respondents no. 2 and 3.

Ms. Shubra Singh, Additional Advocate General, Haryana.

...

H. S. Madaan, J.

Petitioner – Raghbir Singh and 13 others, working against different posts of Kuli, Fitter, Plumber, Mali, Driver, Unloader, Electrician, Helper, Store Boy, Sweeper and Cook etc., with the Karnal Co-operative Sugar Mills Ltd., Karnal, have brought the present civil writ petition, under Articles 226/227 of the Constitution of India, against respondent No.1- the Government of Haryana, through Secretary Cooperation Department, Civil Secretariat,

Chandigarh; respondent No.2- Haryana State Federation of Co-operative Sugar Mills Ltd., through its Managing Director exercising the powers RCS, Haryana, Panchkula and respondent No.3 - The Karnal Co-operative Sugar Mills Ltd., Karnal, District Karnal through its Managing Director, praying for issuance of a writ in the nature of certiorari for quashing of circular/letter dated 16.6.2016 (Annexure P-2), passed by respondent No.2, for the reason that petitioners would be displaced by another contractual replacement through the methodology of outsourcing, ignoring the long tenure service of the present petitioners, who were appointed on daily wages as per seniority list and continuing till date.

2. Another prayer made by the petitioners is for issuance of a direction to the respondents to regularise their services since they are serving in the department on daily wages for the last 22-20 years, against vacant posts, instead of making appointments from other sources, including by way of implementing judgment passed by the Court in the cases of Bhuna Co-operative Sugar Mills, as well as by way of outsourcing.

3. According to the petitioners, they were appointed on daily wages and are with working with Sugar Mills Karnal since 1989-1995; that respondents had prepared a seniority list of the daily wagers on 28.2.2013. the petitioners having completed more than 22-30 years in the Sugar Mills, are entitled to regularization of their services as they have completed more than 22-30 years of service; that Sugar Mills of Bhuna has been closed down; that ex-employees

of that Sugar Mill had filed Civil Writ petitions in the High Court for absorbing them in other Sugar Mills at Rohtak, Palwal, Gohana, Meham, as some of the employees had already been adjusted in HAFED, therefore against the post meant for adjustment of present petitioners, ex-employees of Bhuna Cooperative Sugar Mills were sought to be appointed, although as directed by the High Court, such appointments were to be taken as fresh appointments.

4. The writ petition is being resisted vehemently on behalf of respondents No. 2 and 3 in the joint written reply filed on their behalf. They have raised preliminary objections contending that in pursuance to the orders passed by the High Court, the State Government had written various letters to adjust ex-employees of Bhuna Co-operative Sugar Mills against available vacancies, though the answering respondents did not want to fill up the various vacancies in view of the economic situation in the Mills, but they had to bow down to the directions of the State Government and they appointed various ex-employees of the Bhuna Sugar Mills, against existing vacancies; that respondent No.3 is a seasonal industry with its season running from October/November/December to March/April/May the following year, depending upon availability of the sugar cane and the mills retain a very small regular staff throughout the year; that during the off season, the staff so retained does the work of cleaning/service the machinery and making it ready to work during the season; that during the season the mills recruits various employees both seasonal workers, ad-hoc workers and daily

wage workers; that the petitioners claim to be daily wage workers, therefore, they are not on the employment roll of any organization; that the right to be considered for regularisation would only flow to the employees engaged on temporary basis through the proper procedure and who possess the necessary qualifications; that regularisation cannot be used as a method of back door entry; that the petitioners have not referred to any policy for regularization of their services; that the petitioners seek to challenge the policy of outsourcing, which is basically managerial in nature and it is not open to the petitioners to challenge such policy on the ground of regularization by persons who are not employees of the answering respondents. On merits, the averments in the preliminary objections have been reiterated contending that out of the petitioners, only 3 are matriculate, whereas rest of them do not possess such educational qualification. It being so, a joint petition has been filed to confuse the issue. In the end, such respondents prayed for dismissal of the writ petition.

5. After hearing the rival contentions and going through the record, I find that the writ petition is bound to fail. Admittedly, the petitioners are working on contract basis. Such contractual employees do not have got any vested right for regularization of their services, though their case can be considered subject to some conditions, which include availability of the vacancies/workload, the petitioners fulfilling the necessary qualifications as well as requirement of the employer. It depends upon the policy of the

Government as to whether the contractual employees are to be regularised, if so, after how much service, the eligibility criteria for regularization, the number of such employees to be regularized, etc. On completion of term of contract, such type of contractual employees, cease to be in employment, unless their contract is further extended. In this case, the ex-employees of Bhuna Sugar Mills are sought to be adjusted against the available vacancies. That is being done in compliance with the directions issued by this Court in the writ petitions filed by such ex-employees of Bhuna Sugar Mills and not in some arbitrary manner. The respondents are bound to follow such directions. They are not doing anything wrong in making necessary compliance with the directions issued by the High Court. If such employees occupy the vacancies, then the petitioners working on contractual basis shall have to leave and they cannot find fault with the impugned order or the order terminating their services. It is not the case of the contractual employees being replaced by another set of contractual employees without any rhyme or reason.

6. Learned counsel appearing for the writ petitioners has address the arguments highlighting the assertions made in the writ petition, contending that the petitioners working with respondent No.3 – Sugar Mill, for several years, their services deserve to be regularised and they cannot be left in lurch, while hiring work force by way of outsourcing or adjusting ex-employees of Bhuna Sugar Mills. Therefore, the petition deserves to be accepted. In support of his contentions, he has referred to various judgments :-

- i) Malathi Das (Retd.) Now P.B. Mahishy and others vs. Suresh and others, in Civil Appeal No. 3338 of 2014 (arising out of SLP(C) No. 9573 of 2007), by the Apex Court, decided on 7.3.2014;
- ii) Sanjeev Kumar and another vs. State of Haryana and others, by this Court in CWP No. 26587 of 2017, decided on 14.2.2019;
- iii) Union Territory, Chandigarh and others vs. Thangavel and others 2004(8) SLR 448;
- iv) Roop Lal and others vs. State of Punjab and others 2003 (1) SLR 656;
- v) Anand Walia and others vs. Haryana Urban Development Authority and others 2013 (3) SLR 611;
- vi) Anil Kumar vs. State of Haryana 2015 (3) LLJ 64;
- vii) Maninder Kaur vs. State of Punjab 2003 (4) SLR 771;
- viii) Tek Chand vs. State of Haryana 2001 (3) PLR 1;
- ix) Dharampal and others vs. State of Haryana and others 2006 (2) S.C.T. 504;
- x) Chhabi Lal and others vs. State of Haryana and others, Law Finder Doc Id # 704584; and
- xi) Sukhdev Singh vs. State of Haryana and others 2005 (1) SLR 230

7. However, these judgments are not helpful to the case of the petitioners, due to different facts and circumstances and the context in which such observations had been made.

8. On the other hand, learned counsel appearing for respondents No. 2 and 3 have vehemently opposed such contentions contending that Sugar Mill is a seasonal industry, working from November to March/April or may extend to the month of May, i.e. for a period of 5 months. Therefore, the petitioners could not possibly be in regular continuous service of Sugar Mills. They are daily wagers, getting wages for the day(s) on which they work and are not paid for the day(s) when they did not work. The learned counsel had further contended that some ex-employees of Bhuna Sugar Mills had been adjusted in compliance with the directions issued by the High Court, as per orders of the State Government and the petitioners cannot find fault with such action of the respondents. He has also referred to some judgments in support of his arguments, i.e. *Yogesh Mahajan vs. Prof. R.C. Deka, Director, All India Institute of Medical Sciences 2018 (2) Apex Court Judgments (SC) 56*, wherein it was observed that since appointment of employee on contract basis is not made in accordance with any regular procedure by following necessary rules, no right accrues to such type of employee for regularisation of services and there is no statutory right of a contract employee for renewal of contract from time to time. He had further referred to the judgment by a Division Bench of this Court - *Jyoti and others vs. The State of Haryana and others, in LPA No. 40 of 2021 in CWP 121 of 2021, decided on 14.1.2021.* In that judgment, following principles were laid down :-

“ (i) principle of 'last come first go' is applicable

to a case of retrenchment but not in the case where initial appointment of an employee is against public policy or the employer finds the work and conduct of an employee to be not satisfactory;

(ii) in case the work and conduct of an employee is not found to be satisfactory, then the services of such an employee, although being a senior, pales into insignificance and the services of such an employee can be terminated in accordance with the terms and conditions of such employee;

(iii) a contractual / temporary employee cannot claim any protection against termination so long as the action taken by the authority is not shown to be vitiated by the infirmities viz. illegality, perversity, unreasonableness, unfairness or irrationality and so long as the action is not demonstrably defiant of logic;

(iv) renewal of contract cannot be sought by a temporary / contractual employee as a matter of right as its renewal of employment depends upon the perception of management as to the usefulness of the employee and the need for an incumbent in the position held by such employee.”

9. Learned counsel for the respondents had further referred to judgment by a Co-ordinate Bench of this Court in **Padma vs. Lala Lajpat Rai University of Veterinary and Animal Sciences, Hisar and others, in CWP No. 5663 of 2021, decided on 15.3.2021**, in support of his contention.

10. After hearing learned counsel for the parties, besides going through the record and judgments referred to by them, I find that the writ petition is doomed for failure.

11. Merely on account of the long span of time for which the petitioners are working in Sugar Mill, which is a seasonal industry, does not bestow upon them any right for their being made regular employees. There has to be some specific policy made by the Government or the Controlling Authority, in that regard. There cannot be any automatic regularization of service. Rather, as observed Supra, there are several factors which are to be taken into consideration for that purpose, to say, availability of posts, an employee working on contract basis possessing necessary educational qualifications and expertise for that post, his work and conduct while working on contract basis, etc. Therefore, the petitioners cannot be treated as regular employees, merely for the reason that they are working in the respondent Sugar Mill for a long time. Since Sugar Mill is a seasonal industry, the requirement of manpower varies from time to time. The Mill can certainly hire additional work-force having necessary qualification, experience and expertise, by way of outsourcing and petitioners cannot find any fault with such policy of

the respondent – Sugar Mill and seek that this circular be not acted upon. Similarly, they cannot crave for issuance of writ by this Court, staying the direction already issued by this Court, in case of ex-employees of Bhuna Co-operative Sugar Mills, for their adjustment in other Sugar Mills. The writ jurisdiction is to be exercised in exceptional cases and not in routine. Here I do not find it a fit case to exercise such power.

12. In view of the above discussion, the writ petition stands dismissed.

September 22, 2021
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No