

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.292

CWP No.9495 of 2020

Date of Decision: 08.09.2022

Jai Dev

.... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Jai Shru Kaushik, Advocate for
Mr. Ajay Chaudhary, Advocate
for the petitioner.

Mr. Vivek Saini, Addl. A.G.Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the petitioner is seeking the regularization of his services according to the policy dated 29.07.2011 with effect from the date the person similarly situated or junior to the petitioner was regularized.

As per the facts mentioned in the petition, the petitioner was appointed as Water Carrier on part time basis on 13.08.1991 in the Government Ayurvedic Dispensary at Babail. The petitioner continued working as such till the date he attained the age of superannuation. As per the petitioner, the petitioner was entitled for regularization of his services keeping in view the judgment of Hon'ble Supreme Court of India rendered in the case of Secretary, State of Karnataka and others versus Umadevi, (Umadevi-3), (2006) 4 SCC 1, but the respondents did not grant the benefit of regularization to the petitioner despite having 16 years of service upto the

year 2006. The contention of the petitioner is that respondent-State issued a policy for regularizing the services of the employees on 29.07.2011, a copy of which has been appended as Annexure P-3 with the present petition, according to which, an employee who had been working on part time basis and had rendered 10 years of service upto 10.04.2006 is entitled for regularization. The petitioner claims that as per regularization policy dated 29.07.2011, the petitioner was fully eligible for the regularization of his services but no action was taken to grant the said benefit and ultimately the petitioner on attaining the age of 60 years, was relieved from service. Thereafter, the petitioner has filed the present petition with a prayer that the petitioner's claim be considered for regularization of his services in terms of the policy dated 29.07.2011 (Annexure P-3).

After notice of motion, the respondents have filed reply and in the reply, the respondents have not denied the claim of the petitioner with regard to the fact that the petitioner worked with the respondents since the year 1991 onwards but submitted that the service of the petitioner under the policy dated 29.07.2011 could not be regularized as there were not enough sanctioned posts in the relevant category, which was one of the requirement of the policy for regularizing the services of the employees.

I have heard learned counsel for both the parties and have gone through the record with their able assistance.

The only question which arises for consideration before this Court is whether the petitioner could be regularized despite the objection which has been raised by the respondents with regard to the regular sanctioned posts not being available. The said question came up for consideration before this Court in **CWP No.16355 of 2012** decided on

22.07.2016, titled as **Sharda Devi versus State of Haryana and others**. In the said case also, the grant of benefit of regularization of service was denied on the ground that there were no sanctioned posts for regularizing the part time employees. The said question was looked into by the Coordinate Bench and it was held that with regard to the part time employees, who were never appointed against sanctioned posts, the said condition can not be invoked and their cases need to be considered in case they fulfill all the other requisite qualifications. The relevant paragraph of the **Sharda Devi's case** (**supra**) reads as under:-

“It is by now well settled that part-time workers and daily wagers do not hold posts under the Government and Government is within its right to employ daily wagers and part-time workers in the exigencies of work and needs of the administration. This concept of employment of daily wagers etc has been recognized by the Constitution Bench of the Supreme Court in Secretary, State of Karnataka and others v. Umadevi, (Umadevi 3), (2006) 4 SCC 1 in paragraph 2 of the judgment. Besides, Umadevi-3 is to be read in the light of Maharashtra State Road Transport Corporation Ltd. v. Casteribe Rajya Parivahan Karamchari Sanghalana; (2009) 8 SCC 556 and Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI and another; 2014 (2) SCT 234 (SC). And my judgment in Khajjan Singh v. State of Haryana, 2014 SCC Online P&H 10865: ILR (2014) 2 P&H 363 would also help.

Therefore, I would not accept the view that a part-time employee cannot be regularized except against a vacant sanctioned post as known to service jurisprudence where posts are governed by rules. These people stand on non-rule territory and develop rights of security of

labour to root out exploitation at the hands of the functionaries of the State who engage them for very long periods of time and endlessly. As a matter of fact, the Haryana Government policy dated 29.7.2011 itself envisages regularization of part-time workers and therefore, it is not open to the State to argue that part-time workers can be excluded altogether from the concession unless they do not fall within the prescriptions in the policy. The very fact that the petitioner has been working since 1995 [except for the gap period] is sufficient to conclude that there was continued need for part time sweepers in the organization and she filled that gap when she was taken back in service on a settlement arrived at during conciliation proceedings. As far as the impugned memo is concerned, I find no cogent reason to deny the claim of the petitioner by a general order that she does not fulfill all the conditions of the policy only for the reason that she was not initially engaged through sponsorship of employment exchange. The respondents have rejected the case of the petitioner mainly for the reason that the initial appointment is not as per constitutional requirements. This is a specious plea which is noticed only to be rejected. Part-time employment or daily wage service does not strictly fall within the provisions Article 16 of the Constitution of India and such services are in fact governed by the principles of labour law and Industrial jurisprudence and their special rights are preserved in the Industrial Disputes Act, 1947 on the touchstone of victimization and unfair labour practice. If there are no disputed questions of fact to be resolved, then this Court in its writ jurisdiction can well issue directions in equity to the respondents to consider regularization of the services of the petitioner in terms of

the declared policy by treating the gap period as regular since it was occasioned by a wrongful and vindictive act of employer.”

Keeping in view the above, as there is no other objection qua the grant of benefit of regularization of service of the petitioner, the objection being taken by the respondents, can not be allowed to operate so as to deny the benefit to the petitioner.

Further, Hon'ble Supreme Court of India in Civil Appeal No.6798 of 2019 titled as Prem Singh versus State of Uttar Pradesh and others held that where an employee has not been regularized despite having been rendered 30 to 40 years of service and had attained the age of superannuation and they have worked not against any particular project, then their services should be regularized keeping in view the instructions issued by the State under the decision of Hon'ble Supreme Court of India rendered in Umadevi's case (supra). The relevant paragraph No.35 of Prem Singh's case (supra) is as under:-

“There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten

years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.”

In the present case, the petitioner had worked for approximately 25 years before he attained the age of superannuation in August, 2016. That being so, especially in view of the fact that in the year 2006 when the judgment of Hon’ble Supreme Court of India in **Umadevi's case (supra)** laid down the law, the petitioner had more than 10 years of service to his credit and he had worked without there being any protection by any competent Court of law, on this factum itself, the petitioner is entitled to be considered for regularization of his services especially when the instructions dated 29.07.2011 were promulgated keeping in view the judgment of Hon’ble Supreme Court of India in **Umadevi's case (supra)**.

Learned counsel for the petitioner submits that in case the petitioner is extended the pensionary benefits upon his reaching the age of superannuation, the petitioner will not claim any arrears of salary from 2011 onwards till the date he attained the age of superannuation but the petitioner be granted the pensionary benefits along with arrears.

Keeping in view the above, as the petitioner has already foregone the arrears of salary upon regularization from 2011 onwards till 2016, it is directed that the petitioner be treated as a regular employee from the date of instructions i.e.29.07.2011 till the date he attained the age of superannuation but without any arrears of salary and his pensionary benefits be calculated by treating him to be a regular employee from the date of the instructions i.e. 29.07.2011 and he be extended all the consequential benefits along with arrears of pension.

Let this order be complied with within a period of two months from the receipt of copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

08.09.2022
Maninder

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