

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

**LPA No.688 of 2021 (O&M)
and other connected cases
Reserved on: 22.08.2022 &
01.09.2022
Pronounced on : 02.12.2022**

State of Haryana and others

.....Appellants

Versus

Balwinder Singh and others

.....Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Ankur Mittal, Addl. AG, Haryana,
Mr. Saurabh Mago, AAG, Haryana,
Ms. Kushaldeep K. Manchanda, Advocate, for the appellants.

Mr. Ajay Chaudhary, Advocate for the respondents
(in LPA No. 688 of 2021).

Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate for the respondent (s)
in LPA No.106 of 2021.

Mr. A.P. Bhandari, Advocate, for the respondents
(in LPA Nos. 55, 540, 560, 567 & 573 of 2021).

Mr. Aditya Yadav, Advocate
for the respondent (in LPA No.479 of 2020).

Mr. S.K. Daaria, Advocate for respondent
(in LPA No.802 of 2020) and
for the respondent (in LPA No.8 of 2021).

None for the respondents (in LPA No. 918 of
2020 and in LPA No.45 of 2021).

Mr. J.S. Bedi, Advocate for the respondent (s)
(in LPA Nos.302, 532, 541, 585, 739 and 751 of 2020).

Mr. Dharamveer Phour, Advocate for the respondent (s)
(in LPA No. 916 of 2020 & LPA No.148 of 2022).

Mr. Harish Mehla, Advocate and
Mr. Aseem Monga, Advocate for the respondent
(in LPA No.9 of 2021).

Mr. Bishan Dass Rana, Advocate for the respondent
(in LPA No.818 of 2020).

Ms. Archana Vashisht, Advocate for
Mr. Deepak Sonak, Advocate
for the respondent (in LPA No.152 of 2021).

Mr. Bhupender Ghanghas, Advocate
for respondent No.4 (in LPA No.18 of 2021).

Mr. Abhishek Bansal, Advocate for
Mr. Ravinder Malik (Ravi), Advocate for the
respondents LPA Nos.560 & 573 of 2021).

Mr. J.S. Maanipur, Advocate for the respondent
in LPA No.536 of 2016.

Mr. Nihal S. Chaudhary, Advocate and
Mr. Vikram Sheoran, Advocate for the respondents
in LPA No.444 of 2020.

Mr. Ashok Arora, Advocate for the respondents
in LPA No.508 of 2020.

G.S. Sandhawalia, J.

Present judgment shall dispose of 30 cases i.e.
LPA Nos.688, 540 & 573 of 2021, LPA Nos.740, 739, 751, 802, 479,
918, 916, 818, 302, 541, 532 & 585 of 2020, LPA Nos.8, 9, 18, 45,
55, 152, 818, 560, 567 and 106 of 2021, LPA Nos.171 & 148 of 2022
and LPA No.536 of 2016 and LPA Nos.444 & 508 of 2020.

2. The State's endeavour to deny regularization to Class-IV employees of Category-D, who have served them for almost 4 decades and still continue to serve them, befuddle them thus burdening this Court with repeated rounds of litigation.

3. Firstly, policies of regularization framed by the State itself, on which action is taken selectively leading to a clamour for equality on account of violation of Article 14 of the Constitution of

India has led to the present round of litigation, wherein various Single Bench Judges of this Court while noticing the dereliction of the duties at the level of State had directed regularization. The State continues to deny to these lowly placed employees their place of equality with regard to the benefit of regularization and service benefits.

4. The factual matrix in sum and substance would necessarily have to be noticed, accordingly, regarding the various policies the State has issued and repeatedly gone back and introduced them at its own convenience and then raised arguments that when the case for consideration was put up the said policies were not in force and therefore, put the employees/writ petitioners at a disadvantage while granting the benefit of regularization to a certain set of persons who would be juniors. It is in this matrix the background of the litigation in question has arisen, which primarily in the present case pertains to an innocuous order of directions for considering the case of regularization as per policies dated 18.03.1996 and 01.10.2003 (Annexure P-12) on the strength of the fact that the juniors of the writ petitioners had been regularized vide Annexures P-3 to P-9 on 16.10.2006, 09.01.2007 and 19.02.2007. Another reason which weighed with the learned Single Judge was that in view of the directions issued in **CWP No.17150 of 2015** titled as **Pawan Kumar and others Vs. State of Haryana and others'** the Kaithal Forest Division had regularized the services of the petitioners therein vide

order dated 06.07.2018 and was in the process of regularization of other employees.

5. It is pertinent to notice that the writ petitioners in LPA-688-2021 herein were appointed between the year 1982 to 1986 and had at one point of time been retrenched, which they had successfully challenged before the Labour Court and they had been ordered to be reinstated vide Award dated 27.03.2006. The writ petitions filed by the State had been disposed off, keeping in view the fact that the workmen had been taken back in service and on a consent to the extent that they are entitled only to the 25% of the back-wages, which would be clear from the order dated 19.02.2008 (Annexure P-1). The factum of date of joining and the number of years of service would be clear from the table reproduced in the writ petition itself, which reads as under:-

Sr. No.	Name of the petitioner	Date of appointment	Date of termination	Decision of the Labour Court	No.of years service
1.	Balwinder Singh	1984	Nov.2002	Vide Award dated 27.3.2006, labour Court ordered the reinstatement with full back wages	31 years
2.	Raj Singh	1986	Nov.2002	-do-	29 years
3.	Kundan Singh	1982	Nov.2002	-do-	33 years

4.	Balyat Singh	1986	7.3.2003	Vide Award dated 4.5.2006, labour Court ordered the reinstatement with full back wages	29 years
5.	Sukhwinder Singh	1986	7.3.2003	-do-	29 years

6. It is not disputed that on the issue of equality as such which the State cannot deny, as in **Pawan Kumar's case (supra)** it had chosen to implement the order on 06.07.2018 for 16 of the employees of the said department. The same reads as under:-

“1. Pawan Kumar S/o Sh. Telu Ram R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra.

2.Rajender S/o Garibu Ram R/o Village Tatiann, Teh. Guhla, District Kaithal (Already terminated due to deposing/ adducing false evidence before Hon'ble Labour Court. Therefore, this order shall not be applicable to him).

3. Sh. Dharampal S/o Sh. Ram Niwas R/o Saraswati Colony, Beed Pipli, P.O. Pipli. District Kurukshetra

4. Sh. Vinod Kumar S/o Sh. Sewa Singh R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra.

5. Sh. Siya Nand Anand S/o Sh. Retu Rio Ramgarh Road, Teh. Pehowa, District Kurukshetra

6. Sh. Vijay Pal S/o Sh. Bhagwan Dass R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra.

7. Sh. Gulab Singh S/o Sh. Bhagwana R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra.

8. Smt. Isham Devi W/o Sh. Pawan Kumar R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra.

9. Smt. Salindra W/o Sh. Siya Nand @Anund R/o

Ramgarh Road, Teh. Pehowa, District, Kurukshetra.

10. Sh. Sanju S/o Sh. Paia Ram R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra.

11. Smt. Gian Devi W/o Sh. Amar Sigh R/o Ramgarh Road, Teh Pehowa, District, Kurukshetra. (Expired).

12. Smt. Saneh Lalta @ Santosh W/o Sh. Rajinder R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra.

13. Smt. Bimla W/o Sh. Pala Ram R/o Ramgarh Road, Tel. Pehowa, District, Kurukshetra (Supernuated).

14. Smt. Sunita W/o Sh. Gopal R/o Ramgarh Roud, Teh. Pehowa, District, Kurukshetra.

15. Smt. Ganga Devi W/o Sh. Vijay Pa! R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra.

16. Sh. Pala Ram S/o Sh. Rula Ram R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra (Superanuated).

17. Sh. Amar Singh S/o Sh. Zandu R/o Ramgarh Road, Teh. Pehowa, District, Kurukshetra (Superanuated).

This order is subject to following terms and conditions:

1. They will remain on probation for a period of two years from the date of this order. Their services can be terminated during the period of probation. The probation period can however be extended up to a maximum of three years if considered necessary.

2. Their services are liable to be terminated at one month's notice by either side provided it will be open to the department to pay his/her salary and allowances in lieu of notice or in respect of period by which the notice giver to his falls short of one month. Similarly if he/she wishes to resign his/her post, he/she may do so by depositing one month's salary and allowances in lieu of the notice or in respect of the period by which the notice given by his falls short of one month.

3. This post is sanctioned only for the above named Labourers and will continue till he/she is in service. If he/she does not join this post, the post will be treated as abolished. The post will automatically stand abolished on his promotion, retirement, resignation or death.

4. He/she is required to take an oath of allegiance to the Republic of India

5. He/she is required to submit an affidavit of one living spouse.

6. He/she is required to submit birth certificate, educational qualification certificate and certificate of category (SC, BC, OBC, etc.) to which he belongs. Any wrong information regarding proof of date of birth, category and education qualification shall entail the cancellation of this order against him/her.

7. He/she is required to submit medical fitness certificate from Civil Surgeon, (Distr Kaithal). The joining of services will be on production of medical fitness certificate.

8. On regularization these employees shall be liable to transfer and serve anywhere in the state of Haryana.

9. He/she is also required to deposit Rs. 75/- a service security duly pledged to the Governor of Haryana through DFO, Kaithal.

10. He/she will join duty within 15 days from the date of issue of this appointment order failing which the appointment will be cancelled.

11. The above mentioned employees would be governed by the Rules, Regulations and Instructions issued by Haryana Government from time to time.

12. The antecedents of the above employees shall be got verified, if any adverse report about his/her antecedents is received/comes in to the knowledge of undersigned after the regularization order, This

regularization order shall stand cancelled against him/her.

13. The pay and allowances shall not be liable to be paid to above employees for the period of absent from duty after reinstatement in the service by award of the Hon'ble Labour Court.

-Sd/-

Dy. Conservator of Forests, Kaithal Forest Division, Kaithal.”

7. We have gone through the judgment and record in **Pawan Kumar's case (supra)** passed by the learned Single Judge and found that they were appointed as daily wage labourers between 1979 to June, 2000 and the learned Single Judge had found that the services of all had been terminated on 11.08.2012, which had been set aside by the Labour Court vide Award dated 27.08.2014 and they were reinstated in service with 50% back-wages, whereas juniors to them had been retained and made regular. The argument raised that regularization policies had been withdrawn in the year 2007 was rejected on the ground that once the benefit had been granted to the juniors even in the absence of any policy, their claim would still be alive while placing reliance upon in the case of '**Raj Kumar Vs. State of Haryana', 2015 (4) SCT 277.**

8. As noticed in the case of persons employed 4 to 10 years later, the State has chosen to grant them the benefit of regularization, but continued to deny the same to the writ petitioners. The said claim had been rejected by passing a speaking order dated 06.01.2016 (Annexure P-15), since directions had been issued on an earlier occasion on 05.11.2015 in **CWP No.23724 of 2015**

'Balwinder Singh and others Vs. State of Haryana and others' to decide the legal notice dated 19.08.2015 (Annexure P-10). The Divisional Forest Officer, Kaithal rejected the claim by holding out that the date of initial engagement was not accepted by the Labour Court, which was only to deal with the issue whether the termination of workman was justified or not, which was the fallacious objection raised in as much as the Labour Court had to see the initial date of appointment in order to come to the conclusion whether they had worked for 240 days or not and whether reinstatement could be directed. Similarly objection raised was that the writ petitioners were not appointed on duly sanctioned posts and policies stood withdrawn and the State Government had put on hold all the policy decisions. Reliance was placed upon the judgment of the Apex Court passed in **Secretary, State of Karnataka and others Vs. Uma Devi and others, (2006) 4 SCC 1** and that neither the writ petitioners were covered under the policy dated 29.07.2011, though the consideration was for the benefits of a policy which had been issued at an earlier point of time, whereby only 3 years service was required as on 31.01.1996/30.09.2003.

9. The State of Haryana had regularization policies for adjusting the ad-hoc appointments since 12.10.1970 which have been replaced by various instructions and notifications issued by Chief Secretary and as brought to our notice by the State Counsel. On 01.01.1980 also a notification had been made and thereafter another

one was circulated on 03.11.1983 which was also modified at various stages. On 19.01.1984, another notification was issued which talked about regularizing employees who had completed 2 years of service on 15.09.1982 and were in service on the said date. Same was followed up by similar regularization policy dated 16.02.1987 of Class-III employees. It is not disputed that a Division Bench of this Court in CWP-72-1988 titled *Piara Singh Vs. State of Haryana & others* had issued directions for regularization of persons who had put in 4 years of service and for those set of employees who fell within the meaning of ‘workman’ and the same was modified by the Apex Court in **State of Haryana Vs. Piara Singh, 1992 (4) SCC 118.**

10. The first policy dated 18.03.1996 sought to be enforced in the present bunch of cases reads as under:

“No. 6/38/95-2081

Dated 18-3-1996

To

The Chief Secretary to Government Haryana

To

1. All the Heads of Departments Commissioner, Ambala, Rohtak, Hissar and Gurgaon Division, All the Deputy Commissioners and all Sub Division Officers (Civil) in Haryana.

2. The Registrar Punjab Haryana High Court, Chandigarh.

Dated Chandigarh, the 10th March, 1996

Subject:- Regularization of Work Charge Casual Daily rated employee.

Sir,

I am directed to refer to Haryana Government letter No. 6/38/95-2081, dated 7th March 1996 vide which Government had issued instructions that the service of these Work Charged/Casual/Daily rated employee who have

completed 5 years service on 31st Jan 1996 and fulfill other conditions laid therein should be regularized.

2. This matter has further been considered and after consideration it has now been decided to regularize the services of all those Work Charged Casual Daily rated employees who have completed 3 years service on 31st Jan, 1996 and fulfill other conditions laid down in Haryana Govt letter of even number dated 7th March 1996.

3. Accordingly, Government instructions issued vide letter of even number dated 7th March 1996 should be considered as modified to the extent that the Work Charged Daily rated employees with 3 years service on 31st Jan, 1996 instead of 5 years service on 31st Jan 1996 shall be eligible for regularization.

4. This may please be brought to the notice of all concerned.

Yours faithfully

Sd/-

Under Secretary General Administration,
for Chief Secretary to Govt Haryana

A copy is forwarded for information and necessary action to all the Financial Commissioners\Commissioners and Secretaries to Govt Haryana in continuation of Haryana Govt. letter of even number dated 7th March 1996.

Sd/-

Under Secretary General Administration,
for Chief Secretary to Govt Haryana”

11. Vide policy dated 17.06.1997, period of 2 years was prescribed for the purposes of regularization of Group-C employees who were working on ad-hoc basis as on 31.01.1996 and who were on service on that date. Similarly, daily rated employees who had completed 3 years of service on 31.01.1996 and were in service were also to be considered for regularization. The policy reads as under:

No. GSR/41/Const./Art/309/97.- In exercise of the powers conferred by the proviso to article 309 of the Constitution of India read with the proviso to clause 6 of Haryana Government, General Administration Department (General Services), notification No. 523-3GS-70/2068,

dated the 28th January, 1970, and all other powers enabling him in this behalf, the Governor of Haryana hereby specifies such Group C posts, as have been held for a minimum period of two or three years on 31st January 1996, by Group C employees on adhoc or daily rated basis, to be taken out of the purview of the Subordinate Services Selection Board, Haryana. The services of such adhoc/daily rated employees shall be regularised if they fulfill the following conditions, namely:-

1. Adhoc Employees-

- (i) That only such adhoc employees, as have completed two years service on 31st January, 1996, and were in service on that date should be made regular. However, break in service rendered on adhoc basis upto a period of one month may be condoned excluding breaks occurring because of the concerned employee having left service of his own volition or where the adhoc appointment was again a post or vacancy for which no regular recruitment was required or intended to be made i.e.. leave arrangements or filling up of other short time vacancies may not be condoned;
- (ii) that the employees should have been recruited through the employment exchange or directly appointed by the appointing authority after obtaining the non-availability certificate from the employment exchange;
- (iii) that the employees possessed the prescribed qualification for the post at the time of their appointment on adhoc basis;
- (iv) that the work and conduct of such employee shall be of overall good category and no disciplinary proceedings are pending against them, and
- (v) that the employees shall be regularised against the post or vacancies of relevant categories.

However, the employees who have been promoted on adhoc basis pending recruitment by Subordinate Services Selection Board, Haryana, will not be covered

under this decision.

2. Daily Rated Employees:- That only such daily-wagers who have completed three years service on group C posts on 31st January, 1966, and were in service on 31st January, 1996, shall be regularised against their respective Group C posts, provided they fulfill the requisite qualification and were originally appointed on Group C posts and the posts are available. If the posts are not available, they should be got created from the Finance Department or they should be regularised in Group D scale on compassionate grounds like other daily-wagers, provided further that they have worked for a minimum period of 240 days in each year and the break in service in any year is not more than one month at a time.

3. The seniority of adhoc or daily-wager employees so regularised vis-a-vis the Group C employees shall be determined with effect from 31st January, 1996. The inter-se seniority of such adhoc or daily-wager Group C employees shall be determined in accordance with the date of their joining the post on adhoc or daily-wagers basis. If the date of joining the post on adhoc or daily-wages basis by such adhoc or daily wage employees are the same, then an older employee shall rank senior to an employee younger in age. If the date of appointment of the direct recruit and the date of regularisation of adhoc or daily-wager employees are the same, the direct recruit shall be senior.

Sd-

RAM S. VARMA

Chief Secretary to Government, Haryana

12. Vide policy dated 05.11.1999, Group-C posts having been held for minimum period of 15 years of the date of publication of the notification and being in service and whose services were not regularized earlier because of non-fulfillment of educational

qualifications were to be granted the benefits of regularization subject to various conditions.

13. Thereafter, the policy dated 01.10.2003 came into force, which reads as under:

“Notification

The 1st October, 2003

No.G.S.R.24/Const/Art.309/2003.— In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with the proviso to clause 6 of Haryana Government General Administration Department (General Services), notification No. 523-3GS-70/2068, dated the 28th January, 1970, and all other powers enabling him in this behalf, the Governor of Haryana hereby specifies such Group-C posts, as have been held for a minimum period of three years on the 30th September, 2003 by Group-C employees on adhoc/contract or daily wage basis, to be taken out of the purview of the Haryana Staff Selection Commission. The services of such adhoc/contract/daily wage employees shall be regularised if they fulfill the following conditions, namely:

1. Adhoc Employees/Contract Employees:—

(i) that only such Adhoc/Contract employees who have completed three years service on 30th September, 2003 and were in service on that date should be made regular. If the break in service of an adhoc/ contractually employed person has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period Le not more than six months However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same

if the period of such break is more than a period of 30 days;

(ii) that the employees possessed/possess the prescribed qualification for the post(s) held on Adhoc basis/Contract basis;

(iii) that the work and conduct of such employees shall be of overall good category and no disciplinary proceedings/criminal proceedings are pending against them; and

(iv) that the employees shall be regularised, who were originally appointed against the vacant posts;

(v) that only those contract employees shall be regularised who are appointed against sanctioned posts on regular pay scale or on consolidated salary.

However, the employees who have been promoted on adhoc basis pending recruitment by Haryana Staff Selection Commission will not be covered under this decision

2. Daily-Wage Employees (Group-C):—

That only such daily wage employees who have completed three years service on Group-C posts on 30th September, 2003 and were in service on 30th September, 2003 shall be regularised against their respective Group-C posts, provided they fulfil the requisite qualifications and were originally appointed against vacant posts. Provided further, that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days.

3. Daily-Wage Employees (Group-D):—

Only such daily wage employees who have completed three years service Group D posts on 30th September, 2003 and were in service on 30th September, 2003 shall be regularized against their respective Group-D posts provided they fulfil the requisite qualification and were originally appointed against vacant posts. Provided further that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee(s) has been caused for no fault attributable to him such break period should be condoned unless it is of an Extraordinary longer period. However, if the break in service has been caused-due-to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days

4. The seniority of adhoc/contract or daily wage employees so regularised vis-a-vis the Group-C and Group-D employees shall be determined with effect from 1st October, 2003. The inter-se-seniority of such adhoc/contract or daily-wage Group-C and Group-D employees shall be determined in accordance with the date(s) of their joining the post on adhoc/contract or daily wage basis. If the date of joining the post on adhoc/contract or daily wage basis by such adhoc/contract or daily wage employee is the same, then an older employee shall rank senior to an employee younger in age. If the date of appointment of the direct recruit and the date of regularisation of adhoc/contract or daily wage employee is the same, the direct recruit shall be senior.

5. The above policy shall not be made applicable in the case of drivers and conductors of Haryana Roadways. All decisions relating to regularisation of drivers and conductors shall be taken in accordance with Haryana

Transport Department (Group-C) Haryana Roadways Service Rules, 1995, as amended from time to time.

6. To curb the tendency of appointment on adhoc/contract/daily wage basis (in Group-C or Group-D) in future, any such appointment will not be made and if done so, the officers/officials responsible will be liable for strict disciplinary action and recovery shall be made from the officers/officials concerned.

7. Finance Department instructions issued vide letter No. 5/6/92-1B&C, dated 9th January, 1996 is hereby withdrawn.”

14. A perusal of the above would go on to show that for daily wage employees of Group-D Category, 3 years service on 30.09.2003 was the requirement, apart from the fact that requisite qualifications and vacant posts were the conditions with a rider that the employee had to work for 240 days in each year. The same was thereafter amended on 10.02.2004 and for Class-III the condition was put that the fulfillment of requisite qualifications were to be on the date of engagement or on 30.09.2003. Another onerous condition was put that only daily wage employees were to be regularized who had been engaged before 31.01.1996. Relevant portion of the notification dated 10.02.2004 reads as under:-

“(C) in condition number 3.—

(a) for the words "fulfill the requisite qualifications and were originally appointed against the vacant posts", the words, figures and sign “fulfill the requisite qualifications on the date of engagement or on 30-9-2003” shall be substituted

(b) for the figures and word "30 days", the figures and words "30 days in a year" shall be

substituted;

(D) after condition number 7, the following condition shall be added at the end, namely :—

"8. In the case of daily Wage Group C and D employees only those daily wage employees shall be regularized who had been engaged before 31-1-96 provided they fulfill the other conditions."

15. On 13.04.2007 all the four policies were withdrawn including the earlier ones of 1997 and 1999 and duly circulated vide communication dated 29.05.2007 while quashing the regularization already made, which was apparently on account of the judgment passed by the Apex Court in **Uma Devi (supra)**. Relevant portion of the notification dated 13.04.2007 reads as under:-

“Notification

The 13th April, 2007

No. G. S. R. 13/Const/Art. 309/2007.- In exercise of the powers conferred by the proviso to article 309 of the Constitution of India read with the proviso to clause (6) of Haryana Government, General Administration Department (General Services). Notification No. 523-3GS-70/2068, dated the 28th January 1970, the Governor of Haryana hereby rescinds the following notifications issued in relation to regularization of services of adhoc/daily-wage/contract/part-time workers etc. forthwith:-

1. No. G.S.R. 41/Const./Art, 369/97 dated the 17th June 1997
2. No.G.S.R. 101/Const/Art. 309/99, dated the 5th November, 1999;
3. No. G. S. R. 24/Const/Art. 309/2003, dated the 1st October: 2003; and
4. No. G.S.R. 5/Const/Art. 309/2004, dated the 10th February, 2004.

This notification shall not adversely affect the cases where regularization have already been made but are not sub-judice.”

16. On 04.02.2015 in **CWP No.9708 of 2004 'Ajit Singh**

Vs. State of Haryana and others' the Coordinate Bench observed that the introduction of date 31.01.1996 vide impugned amendment dated 10.02.2004 was unreasonable and arbitrary, as it was applying retrospectively to take away the vested rights of the petitioners whose services had already been regularized, since it was a case where their order of regularization was passed on 15.12.2003, which was sought to be reviewed and set aside vide order dated 08.06.2004. Relevant portion of the order dated 04.02.2015 reads as under:-

“Vide notification dated 01.10.2003, services of all daily wagers, who had put in three years of service as on 30.09.2003, were entitled to be regularized. Through the impugned notification dated 10.02.2004, the amendment sought to be introduced to the earlier notification dated 01.10.2003, was that services of only those daily wagers would be regularized, who have been engaged before 31.01.1996. We find the introduction of date 31.01.1996 through the impugned amendment dated 10.02.2004 to be unreasonable and arbitrary because if such an amendment is to be allowed, then the result is that a daily wager, who puts in three years of service from 30.01.1996, would be entitled to regularization of his service, whereas the services of the person like the petitioner, who would have put in over five years of service i.e. From August 1998 till 30.09.2003, would not be regularized.

Even otherwise, the impugned amendment through notification dated 10.02.2004, could not apply retrospectively to take away the vested rights of the petitioner, whose services had already been regularized through order dated 15.12.2003 prior to the amendment. If at all the impugned amendment was to apply, the same could be applied to cases of regularization of service after

the date of the amendment i.e. 10.02.2004.

In view of the above, the impugned order dated 08.06.2004 (Annexure P-11) is quashed.”

17. The State then framed policy dated 29.07.2011 for Group-D employees in pursuance of the judgment passed in **Uma Devi (supra)** wherein Group-D employees had to have 10 years of service as on 10.04.2006 for the grant of the said benefit. The said policy reads as under:-

“Notification

The 29th July, 2011

No. G.S.R. 9/Const./Art. 309/2011.— In exercise of the powers conferred by the proviso to article 209 of the Constitution of India read with the proviso to clause 6 of Haryana Government, General Administration Department (General Services), notification No. 523-3GS-70/2068, dated the 28th January, 1970, the Governor of Haryana hereby specifies such Group C posts, as have been held for a minimum period of ten years as on 10-4-2006, by Group C employees workers on adhoc/contract/work-charged/daily wages and part-time basis to be taken out of the purview of the Haryana Staff Selection Commission.

The services of such Group C and Group D employees/workers appointed/ engaged on adhoc/contract/work-charged/daily-wages and part-time basis shall be regularized if they fulfil the following conditions, namely:—

(i) That the employee/worker should have continued to work for not less than ten years as on 10-4-2006 and is still in service but not under cover of the orders of the Courts or Tribunals, against duly sanctioned vacant posts. The period of continuous break in such service should not be more than one month in a calendar year.

(ii) That the employee/worker possessed the

minimum prescribed qualifications for the post on the date of appointment/engagement

(iii) That the concerned employee should have been appointed only after either his name has been sponsored by the Employment Exchange or has been appointed/engaged on the basis of recommendations made by the Departmental Selection Committee by inviting applications through advertisement against duly sanctioned vacant post.

(iv) That the work and conduct of such employee should have been throughout satisfactory and no disciplinary or criminal proceedings should be pending against him.

(v) That the employee should be regularized against a sanctioned vacant post of relevant category.

(vi) A medical fitness certificate and documentary proof of Date of Birth as per the instructions shall be obtained from the employee concerned.

(vii) His antecedents should be got verified by the police as per the Government instructions if it was not done earlier.

(viii) No relaxation of the criteria as laid down above shall be allowed.

2. A part time employee fulfilling conditions mentioned above shall be regularized against a sanctioned vacant fulltime post of the same category.

3. Such posts are being hereby taken out of the purview of the Haryana Staff Selection Commission.

4. As a result of regularization of Group C -ad hoc/contract/work-charged/daily-wages/part-time employees/workers, the number of available vacancies in the departments may undergo a change and affect the requisitions already sent to Haryana Staff Selection Commission. Therefore, where the vacancies have not yet been advertised, the departments may after calculating at their own level decide now many vacancies are to be

withdrawn from the requisition sent to the recruiting agency and send intimation of withdrawal of vacancies to the respective recruiting agency.

5. However, the regularly recruited employees, who have been promoted on adhoc basis on the direct recruitment posts pending recruitment by Haryana Staff Selection Commission, meaning hereby those employees who have been promoted against the vacancy of such posts, the recruitment of which is within the purview of Haryana Staff Selection Commission, shall not be covered under this policy.

6. The date of regularization shall be deemed to be the date of issuance of this notification. The seniority of the employees shall be fixed from the date the their regularization and they shall be placed below in the seniority to the employees last appointed on the regular basis before the issuance of this notification. However, the inter-se-seniority of such adhoc/contract/work charged/ daily-wages and part-time employees so regularized shall be determined in accordance with date of their joining the post on adhoc/contract/work charged/ daily wages and part-time basis. If the date of joining the post on adhoc/ contract/work charged/daily wages and part-time basis is the same, then an employee who is older in age shall rank senior to an employee younger is age.

7. The benefit of the seniority shall be given to such employees/worker from the date of their regularization. Therefore, such employees shall be entitled to the incentives introduced under the Incentive Schemes like ACP scheme. (wherein regular satisfactory service is required) from the date of their regularization. The pay of such employees shall be fixed in accordance with provisions of the service rules. Since new pension scheme has been introduced by the State Government w.e.f. 1-1-2006, such employees shall be

covered under the provisions of New Pension Scheme (wherein regular satisfactory service is required) from the date of their regularization. The pay of such employees shall be fixed in accordance with provisions of the service rules. Since new pension scheme has been introduced by the State Government w.e.f. 1-1-2006, such employees shall be covered under the provisions of New Pension Scheme.

8. Since this policy is a one time measure on humanitarian ground. therefore, no person shall be entitled to claim it as a matter of right, if found unsuitable due to non fulfilment of the conditions mentioned in this notification.

9. In future, no illegal/irregular appointment/employment on adhoc/ daily wages/work-charged and part-time shall be made against sanctioned posts.

10. Such Group C and D employees/workers, who are not covered under this regularization policy but are still in service, may be given age relaxation as a one time measure, if they complete for regular appointment.”

18. Clause (i) of the abovesaid policy was then amended on 17.01.2012, wherein the break period was explained. The same reads as under:-

“(i) that the employee/worker should have continued to work for not less than 10(Ten) years as on 10th April, 2006 and is still in service but not under cover of the orders of the Courts or Tribunals, against duly sanctioned vacant posts. If the break in service of any such employee/worker has been caused for no fault attributable to him. such break period should be condoned unless it is of an extraordinary longer period i.e. not more than 90 days in a year. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not

condone the same if the period of such break is more than a period of 30 days in a year."

19. The clarification was issued on 18.06.2014 adding a proviso in the withdrawal of notification dated 13.04.2007 that employees who could not be regularized under the four policies issued due to administrative reasons and who are eligible, shall be regularized from the date they were eligible for regularization. The said notification reads as under:-

“Notification

The 18th June, 2014

No. 6/7/2014-IG.S.L— In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with the proviso to clause 6 of the Haryana Government, General Administration Department (General Services), the Governor of Haryana hereby makes the following amendment in Haryana Government, General Administration Department (General Services-1), Notification No. G.S.R. 13/Const /Art. 309/2007, dated 13th April. 2007, namely:—

AMENDMENT

In the Haryana Government. General Administration Department (General Services-1), Notification No. GSR 13/Const/An. 309/2007, dated 13th April, 2007 the following proviso shall be added at the end, namely

"Provided that the left over Group “C” and "D" employees working on adhoc/contract/daily wages/work-charged basis, who could not be regularised under the regularization policy issued vide notifications mentioned at serial No. 1 to 4 above due to administrative reasons but were otherwise eligible, shall be regularized with effect from the date(s) they

were eligible for regularization."

20. Other policies were introduced i.e. dated 16.06.2014 for Group-B employees and dated 18.06.2014 for Group-C and D employees and separate notifications dated 07.07.2014 for Group-B and Group-C & D employees, which were subject matter of consideration in '**Yogesh Tyagi and another Vs. State of Haryana and others'** 2018 (3) SCT 181 wherein the Coordinate Bench had quashed the said policies vide judgment dated 31.05.2018. The said judgment is subject matter of consideration before the Apex Court in **SLP No.33265 of 2018**, wherein interim orders had been passed to maintain status quo, on 26.11.2018.

21. It is pertinent to mention that we are not concerned with the subsequent policies as such of the year 2014 and the subject matter of consideration herein is with regard to the regularization of services of Group-D employees who were appointed in earlier point of time and are seeking benefit of regularization qua the other policies.

22. Mr. Ankur Mittal, Addl. AG, Haryana has vehemently tried to submit that on 05.05.2015 (Annexure R-2 in LPA No.530 of 2020, page no.114) an order was passed to put on hold the policies, which reads as under:-

"Haryana Government

General Administration Department

**Subject: Review of announcements/recruitments/
appointments made by the previous Government after
16.5.2014.**

Will all the Administrative Secretaries to

Government Haryana kindly refer to the subject cited above?

2. The Council of Ministers in its meeting held on 5.11.2014 has taken a decision to review the announcements/recruitments/appointment made by the previous Government after 16.5.2014 Accordingly. Administrative Secretaries were informed vide U.O. No. 9/324/2014 Cabinet, dated 5.11 2014.

3. The matter pertaining to recent Regularisation Policies was further placed in the meeting of Council of Ministers held-on-25.11.2014 review all the regularisation policies issued/revived on or after 16.6.2014 respect of Group B, C and D employees appointed/engaged on adhoc contractual etc. As per decision of the Council of Ministers, the matter being reviewed by the State Government.

4. In view of above circumstances, the Government has decided that all the regularisation policies/revived on or after 16.6.2014 and put on hold. It is, therefore, requested that regularisation of Group B, C and D employees appointed/engaged on adhoc, contractual etc. may not be carried out under these policies till the final decision is taken by the Government in this regard. They are requested to bring these instructions to the notice all concerned under their administrative control for strict compliance in letter and spirit.

-sd

Superintendent General Services-I
for Chief Secretary to Government Haryana

To

All the Administrative Secretaries to Government
Haryana.

U.O No. 6/26/2015-1GS1 Dated 5th May, 2015.”

23. Thereafter, on 03.06.2016 the said order dated 05.05.2015 was withdrawn. The communication dated 03.06.2016 reads as under:-

“Haryana Government
General Administration Department

Subject:- Review of regularisation policies issued on or after 16.6.2014.

Will all the Administrative Secretaries to Government Haryana kindly refer to the subject cited above?

2. Government had put on hold all the regularization policies issued on or after 16.6.2014 vide U.O. No. 6/26/2015-1GS1, dated 5.5.2015.

3. They are informed that the decision dated 5.5.2015 to put on hold all the regularisation policies framed/revived on or after 16.6.2014 in respect of Group B, C and D employees appointed/engaged on adhoc, contractual basis etc. is hereby withdrawn.

4. They are requested to bring these instructions to the notice of all concerned under their administrative control.

Superintendent General Services-1
for Chief Secretary to Government Haryana,
To
All the Administrative Secretaries to Government
Haryana
U.O. No. 6/26/2015-1GS1 Dated 3rd June, 2016”

24. Thereafter, vide interim order dated 02.09.2016, the Coordinate Bench had stayed the regularization policies in **Yogesh Tyagi (supra)**, which reads as under:-

“Having heard learned counsel for the parties, *prima facie* we are satisfied that the impugned policy runs contrary to the mandate of the Constitutional Bench judgment in the **“Secretary, State of Karnataka and others Vs. Umadevi and others”, (2006) 4 SCC 1**. Hence further regularization of services under the said policy shall remain stayed till the final decision. The regularization orders, if any, passed earlier shall be subject

to final outcome of the writ petition.

List on 24.10.2016.

A photocopy of this order be placed on the files of all aforesaid connected cases.”

25. Thereafter, on that account vide order dated 15.09.2016

all regularizations were put on hold, which reads as under:-

“Dated Chandigarh, the 15 September 2016

**Subject:-Regarding regularisation policies issued/
revived on or after 16.6.2014.**

Sir/Madam,

I am directed to invite your attention to the above cited subject and to say that all the regularisation policies issued/revived on or after 16.6.2014 were under challenge before the Hon'ble High Court through CWP No. 17206 of 2014 titled as Yogesh Tyagi and another vs. State of Haryana and other similarly situated court cases i.e. CWP No. 8326 of 2015, CWP No 15853 of 2014 and CWP No. 22592 of 2015. The case was fixed for hearing on 2.9.2016 before the Hon'ble Division Bench.

2. The Hon'ble Court has stayed the operation of all above regularisation policies. A copy of the order of the Hon'ble High Court is enclosed.

3. You are, therefore, notified that no further regularization of services of employees be made under the said regularisation policies issued/revived on or after 16.6.2014 It may also be noted that the regularisation orders if any, issued earlier shall be subject to the final outcome of Civil Writ Petitions.

4. These instructions may please be brought to the notice of all concerned for strict compliance.”

26. Thereafter, on 18.10.2017 it was clarified that policy

dated 29.07.2011 is still in force, which would be clear from reading

of the same, which reads as under:-

“Dated Chandigarh, the 18th October, 2017

Subject: Regarding regularization of Group 'B, C and D
employees

Sir/Madam,

I am directed to invite your kind attention to the subject cited above and to say that regularization policies issued/revived on or after 16.6.2014 have been stayed by Hon'ble High Court vide order dated 2.9.2016 passed in CWP No.17206 of 2014 titled as Yogesh Tyagi and another Vs State of Haryana & others. In compliance of the order of Hon'ble High Court, a circular alongwith order of Hon'ble Court was issued on 15.9.2016 vide which it was notified that no further regularisation of services of employees be made under the regularisation policies issued/revived on or after 16.6.2014 till the decision of the court case.

2. The State Government had also issued regularisation policies vide instructions bearing No.6/50/2007-1GSI, dated 29.7.2011 in respect of Group B employee and notification No.G.S.R.9/Const./Art.309/2011, dated 29.7.2011 in respect of Group 'C and 'D employees appointed/engaged on adhoc/contract/ work charged/daily wages. These policies are still in existence as there is no stay of any court of law on the operation of these two policies.

3. Therefore, Group 'B', 'C' and 'D' employees who are eligible under these policies, issued on 29.7.2011 can be considered for regularisation.”

27. On 04.10.2018 the learned Single Judge had disposed off a bunch of 54 cases of regularization, lead case of which was **CWP No.2009 of 2016 'Balwinder Singh and others Vs. State of Haryana and others'** by observing that it would be unfair to decline

regularization due to non-availability of post and being over age, once juniors had been regularized, while placing reliance upon the judgment passed in **Malathi Das (Retd.) now P.B. Mahishy & others Vs. Suresh and others, (2014) 3 SCC 24**. It was also noticed that the questionable methods were being adopted by the State regarding the issue of regularization.

28. On 21.12.2018 the Chief Secretary, Haryana wrote for creation of posts for regularization under the policies of year 2003-2004 that posts may be created of diminishing nature to adjust the employee and the Finance Department had been asked to give its advise for creating posts under the regularization policies of 2003-2004. It was also noticed that the same practice would be applicable in respect of regularization policies dated 17.06.1997 and 05.11.1999. The payment of arrears of regular pay scales were restricted to 38 months. The said communication reads as under:-

“MOST URGENT

Subject: Creation of posts for persons regularized under the regularization policies of year 2003-2004.

Will the Additional Chief Secretary to Government, Haryana, Finance Department kindly refer to the subject noted above?

2. It is intimated that vide Government notification No.GS.R. 13/Const/Art.309/2007, dated 13.4.2007. the regularization policies No. G.S.R.41/Const/Art.309/97, G.S.R. 101/Const/Art.309/99, G.S.R.24/Const/Art 309/2003 and G.S.R. 5/Const/Ant 309/2004, dated 17.6.1997,

5.11.1999, 1.10.2003 and 10.2.2004 respectively were rescinded. Thereafter, these policies were revived vide Notification No.6/7/2014-1GSI, dated 18.6.2014 by Government.

3. Further in pursuance of Hon'ble High Court interim order dated 6.4.2018 in CWP No. 15887 of 2018- Purushotam Das Vs State of Haryana wherein matter of creation of diminishing cadre post for persons regularized under 2003-200-1 policies No. G.S.R.24/Const/Art. 309/2003 dated 1.10.2003 and 10.2.2004 was under consideration with the State Government.

4. The State Government has considered the matter and decided that wherever the Administrative Department/Boards/Corporations /Autonomous Units are regularizing persons under the above mentioned regularization policies, the Administrative Department, with approval of Finance Department, may create some posts of diminishing nature to adjust such employees.

5. The Finance Department is hereby advised to give concurrence for creation of posts of diminishing cadre as and when any Department/Board/Corporation/Autonomous Unit submits a case for creating a post for any employee proposed to be regularized under the regularization policies of 2003 and 2004.

6. The same practice would also be applicable in respect of regularization policies dated 17.6.1997 and 5.11.1999. However, payment of the arrears of regular pay scale may be restricted to 38 months prior to the date of actual regularization order and other benefits may be granted to the employees.

Superintendent, General Services-I
for Chief Secretary to Government
Haryana

To

The Additional Chief Secretary to Government

Haryana, Finance Department

U.O. No. 6/20/2018-IGSI Dated, Chandigarh the 21" Dec., 2018

A copy is forwarded to the following for information and necessary action:

Superintendent, General Services-I
for Chief Secretary to Government
Haryana

To

1. All the Administrative Secretaries to Government,
Haryana,

2. All the Heads of Departments, Haryana.

U.O. No. 6/20/2018-IGSI Dated, Chandigarh the 21" Dec., 2018”
29. However, on account of an appeal having been filed in
the lead case of CWP No.2009 of 2016 bearing LPA No.109 of 2019,
the Chief Secretary on 31.01.2019 wrote to all departments while
referring to its earlier communication dated 21.12.2018 that since
there was a stay dated 25.01.2019, appeals be filed against the
regularization orders relating to the employees of the department and
that the cases of the employees for regularization are required to be
considered as per the final directions of the Hon'ble Division Bench.

The said communication reads as under:-

“From

The Chief Secretary to Government Haryana.

To

1. All the Heads of Departments of Haryana and all the
Divisional Commissioners of Haryana.
2. All the Deputy Commissioners in Haryana.
3. The Registrar, Punjab & Haryana High Court,
Chandigarh.
4. All the Managing Directors, Board/Corporation of
Haryana.

Dated, Chandigarh, the 31st January, 2019

Subject: Stay of judgment dated 4.10.2018 passed in CWP
No.2009 of 2016- Balwinder Singh and others Vs.
State of Haryana and others- Reg. Regularization of
services of employees.

Sir/Madam,

I am directed to invite your attention to the subject cited above and to say that vide even U.O. No. dated 21.12.2018 the State Government had decided that wherever the Administrative Departments/Boards/Corporations/Autonomous Units are regularizing persons under the regularization policies dated 17.6.1997, 5.11.1999, 1.10.2003 and 19.2.2004, the Administrative Departments, with approval of Finance Department, may create some posts of diminishing nature to adjust such employees.

Now, Learned Advocate General, Haryana has brought to the notice of State Government that vide interim order dated 25.1.2019 in LPA No. 109 of 2019 (O&M) titled as "State of Haryana & others Vs. Balwinder Singh & others passed by the Hon'ble Division Bench of Punjab & Haryana High Court has stayed the order dated 4.10.2018 passed by the Hon'ble Single Bench of Punjab & Haryana High Court in CWP No. 2009 of 2016 titled as "Balwinder Singh & others Vs. State of Haryana & others regarding regularization of employees.

Therefore, you are requested to file Appeals against the regularization orders if any passed by the Single Bench of Hon'ble High Court relating to employees of your department.

It is reiterated that cases of the employees for regularization are required to be considered as per final direction of the Hon'ble Division Bench of High Court.

Yours faithfully

Superintendent General Services-I,
for Chief Secretary to Government
Haryana.”

30. The appeals filed against the said order were allowed on 18.03.2019 by the Bench of the learned Chief Justice, lead case of which was **LPA No.109 of 2019 'State of Haryana and others Vs. Balwinder Singh and others'** primarily on the ground that the matter would require individual adjudication with regard to facts of each case, the law and regularization policy and liberty was also given to club the cases which are based on identical facts where the employer were common. Relevant portion of the order dated 18.03.2019 reads as under:-

“3. Learned counsel for the parties are not at issue that the matters require individual adjudication in accordance with the facts of each case, the law and the regularization policy in that regard, if any, in existence.

4. In view of the facts and circumstances noticed above as also the concession given by the learned counsel for the parties, it would be expedient and in the interest of justice that the impugned judgement dated 04.10.2018 is set aside and the writ petitions are remitted to be adjudicated afresh by the learned Single Judge after segregating them and if need be giving an opportunity to file written statement(s) to the respondents, where such opportunity was not afforded. And we so order. However, it would be open to the learned Single Judge to club such petitions which are based on identical set of facts and circumstances and where the employer is common.

5. With the aforesaid observations and directions, the appeals stand disposed of. Needless to observe that the

learned Single Judge shall make an endeavour to decide the writ petitions on merits as expeditiously as possible.

6. Office is directed to place the matter before the learned Single Judge on 09.04.2019 when learned counsel or the parties cause appearance.

7. Till the matter is placed before the learned Single Judge, all interim orders which were operative in any of the writ petitions, shall continue to remain in operation.”

31. Resultantly, the matters are before this Court on account of the learned Single Judges again having decided the cases in favour of the employees in various writ petitions decided on various dates.

32. Mr. Ankur Mittal has mainly relied on three principles to argue that there has to be an active policy in force, on the basis of which directions can be issued for regularization and on account of the fact that a new policy dated 29.07.2011 had come into force, the learned Single Judge was in error in issuing directions to consider the case of the employees under the policy dated 01.10.2003. Reliance was placed upon the judgment of the Apex Court in '**Maharashtra State Road Transport Corporation and another Vs. Casteribe Rajya Parivahan Karmchari Sanghatana**', (2009) 8 SCC 556 to argue that Article 226 of the Constitution of India could not be used for issuing orders of regularization. Resultantly, it was argued that on the ground of parity, the learned Single Judge was not justified in directing consideration for regularization while placing reliance upon the judgment of the Apex Court in '**The Managing Director, Ajmer Vidhyut Vitran Nigam Ltd., Ajmer and another Vs. Chiggan Lal**

and others', 2022 (2) SCT 176.

33. It is further the case of the Mr. Mittal that the learned Single Judge was in error while placing reliance on the judgments passed in **Casteribe Rajya Parivahan Karmchari Sanghatana (supra)** and **'Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another', (2014) 7 SCC 190**, since those cases pertained to power of the labour Courts to direct regularization. It is submitted that the matter has now been referred to a Larger Bench as per the judgment in **'Oil and Natural Gas Corporation Vs. Krishan Gopal and others', 2020 (1) CLR 535.**

34. He placed reliance upon the judgment rendered by one of us (G.S. Sandhawalia, J.) in **'Gurpreet Kaur Vs. Panjab University and others', 2018 (1) SCT 90** and also placed reliance upon the judgment of the Coordinate Bench passed in **'Hardev Singh and others Vs. State of Punjab and others', 2013 (2) SCT 363.** He further pointed out from LPA No.560 of 2021 that one of the writ petitioners was appointed as per his own pleaded case in the year 2001 and, therefore, was never covered under the provisions of Policy-2003 and, therefore, directions could not have been issued in his case. Whereas Mr. Bhandari has submitted that an affidavit had been filed in the year said case before the learned Single Judge and persons who had been recruited in the year 2003 were also regularized.

35. Mr. R.K. Malik, Senior Advocate appearing in LPA No.106 of 2021 also pointed out that for its employees, the Forest Department had recommended regularization under the 2003-Policy while referring to Annexures P-5 to P-10 and, therefore, there is no substance in the appeal and the same is liable to be dismissed, keeping in view the directions issued by the Coordinate Bench while remanding the matter on 18.03.2019.

36. Counsels for the employees, on the other hand, submitted that once there was a policy in place, the writ petitioners were seeking the enforcement of their legal rights which is being settled and even the Apex Court recognized the said aspect that a Mandamus could be issued in favour of the employees once there was an enforceable legal right as per the policy framed by the Government itself and referred to para No.52 of the judgment of Uma Devi (supra). Similarly, it is contended that in Malathi Dass (Retd.) (supra), directions had been issued wherein State had been held to comply and regularize the services of the respondents who had been left out in view of the fact that certain legal rights had accrued to them prior to the judgment in Uma Devi (supra). Apparently, in view of the interim order passed in CWP-4618-1996 titled *Sanjeev Dev Vs. State of Haryana*, the process on the said policy of 1996 was kept on hold. The said writ petition was eventually dismissed on 07.12.1996 and accordingly, directions which had been issued on 08.04.1996 were withdrawn on 15.05.1997 and the process of

regularization of ad hoc and daily wages in accordance with the Government instructions dated 17.03.1996 and 18.03.1996 were brought in force once again. On 01.02.1999, in view of the directions issued in CWP-15602-1996 titled *Mange Ram & others Vs. State of Haryana*, on 24.02.1998 and the policy was drawn up regarding regularization of Group-D employees wherein 5 years continuous service on the date of issuance of the instructions was prescribed with various conditions such as the employee should have been recruited through the Employment Exchange or directly appointed by the appointing authority after obtaining the non-availability certificate from the Employment Exchange and with the prescribed qualifications and the work and conduct being satisfactory.

The issue which arises for consideration is regarding the power to issue a writ of mandamus on the question of a legal right which is enforceable

37. The recognized and accepted principle regarding the issuance of a writ of mandamus is that a right which could be enforced on account of the authorities not doing their duty which they are required to do as per the statute or an enforceable policy as such. Reliance can be placed upon the judgment of the Apex Court passed in **Anandi Mukta Sadguru Shree Mukta Jeevandasswasi Suvarna Jaya Vs. V.R. Rudani and others, AIR 1989 SC 1607**. In the said case the dispute was regarding the right of teachers to get salary which had been allowed by the High Court of Gujarat. The

maintainability of the writ petition before the High Court was challenged on the ground that institution set up under the Trust Act is not amenable to the writ jurisdiction of the High Court being a private institution. The argument was rejected by holding that service conditions were binding upon the management and the aided institution was discharging public function by way of imparting education to students, subject to rules and regulations of the affiliating university. It was, accordingly, held that Courts are not bound hand and foot by the previous law and a writ could be issued to any person or authority for the enforcement of any of the fundamental rights and for any other purpose keeping in view the nature of the duty imposed upon the body. It was also held that mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found and technicalities should not come in the way of granting the relief. Relevant portion of the said judgment reads as under:-

“22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative 'Act 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies effecting the rights of the people should not be put into

water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.”

38. The argument, thus, raised by counsel for the State that the writ Court would not have such jurisdiction to issue orders for consideration for regularization is an argument of despair. It is to be noticed that the writ petitioners before the writ Court were asking for their legal rights as per the policies framed by the State prior to the decision passed in the case of **Uma Devi (supra)**. It is not disputed that thereafter, also the State had framed policy in pursuance of the directions of this High Court to grant the benefit to similarly situated set of persons. Thus, it does not lie in the mouth of the State to hold out to the contrary. Rather the Apex Court recognized the right to seek the legal right to be permanently absorbed once there was a policy in place in **Uma Devi (supra)**. The Constitution Bench in that case was dealing with the cleavage of opinion arising out of the Division Bench of Karnataka High Court and had noticed that by virtue of the directions issued by it earlier in **Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and others Vs. State of Karnataka and others, (1999) 2 SCC 396**, the High Court of Karnataka had issued directions while granting the relief of regularization. It was in such circumstances, held that in the absence

of any scheme, consideration for regularization by virtue of provisions under Article 226 of the Constitution of India was not permissible since in that case the employees could not show that they had any enforceable right to be permanently absorbed. Relevant para of the judgment reads as under:

“52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College* [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.”

39. In the case of **Godavari Sugar Mills Ltd. Vs. State of Maharashtra**, (2011) 2 SCC 439, the issue before the Apex Court

was regarding the claim for recovery of interest on the compensation payable as per the Award granted under the Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961. The High Court had denied the said benefit on the ground that it was for enforcement of a money claim. Resultantly, it was held that the said finding was not justified, since the High Court while enforcing fundamental or statutory right had the power to give consequential relief by ordering payment of money realized by the Government without the authority of law and it involves a question arising out of public law functions on the part of the State or its authorities. Access to justice was provided by way of a public law remedy under Article 226 of the Constitution of India, which could not be denied. Accordingly, reliance was placed upon the judgment passed in **Sanjana M. Wig Vs. Hindustan Petroleum Corporation Ltd., (2005) 8 SCC 242** while allowing the special leave petition.

40. Recently the Apex Court in the case of **Anil Kumar Vs. Union of India and others, (2019) 5 SCC 91** set aside the orders of the Patna High Court which had denied that the claim for appointment on Group-D posts which was to be considered by granting an age relaxation, if required by noticing that there was a binding policy circular formulated by the Union of India in the Ministry of Railways. It was held that the grant of appointment to persons displaced as a result of acquisition is a matter which is within the purview of the policy discretion. Relevant portion of the

said judgment reads as under:-

“20. For the above reasons, we have come to the conclusion that the rejection of the claim of the appellant was contrary to the terms of the binding policy circular formulated by the Union of India in the Ministry of Railways. Undoubtedly, the grant of appointment to persons displaced as a result of acquisition is a matter which is within the purview of the policy discretion. No mandamus can lie in the absence of a policy. However, where a policy has been laid down by the Union government as in the present case, the terms of the policy can be enforced. The rejection of the claim of the Appellant was for extraneous reasons and based on irrelevant considerations. Government in the Ministry of Railways formulated a policy. The failure of implementation results in a failure of social justice. The policy circulars were substantive attempts to enhance social welfare. Denial of benefits to the appellant has led to a long and tortuous road to justice.”

41. Thus, keeping in view the settled principles of law the argument raised by Mr. Mittal that the writ petition is not maintainable for the enforcement of the policies of the State is without any basis. More so when the claim is based upon the principle of violation of Article 14 of the Constitution and similarly situated persons have been granted the benefit under the same policies, whereas the writ petitioners were wrongly denied the said concession. Though it was the duty of the State officials to act upon the policies of the State itself.

Continuity of Service

42. The common thread in most of these cases from the facts narrated above is that the writ petitioners were in service at the same point of time and had served for a considerable period and were reinstated by order of the Labour Court. The award of reinstatement carried benefit of continuity of service, though backwages have been denied in certain circumstances to the extent of 50%, either on concession or on the settled principles that the employees would have worked elsewhere. Underlined principles, thus, would be that the writ petitioners would be deemed to be in service from the date of their initial appointment on the reinstatement. It was, thus, the case of the writ petitioners that the eligible persons were to be considered for regularization in view of the regularization policies in force and which had to be implemented by the officials of the State Government. Facts are going to be noticed in detail in all cases that the termination orders were passed after 15 years of service at the behest of the State Government officials and some of the employees after the Award were at the fag end of service, who had worked for over 30 years. Therefore, to deny them regularization on the technical ground that there was no availability of sanctioned posts would be in contradiction to the fact that their services were being used for over 30 years and now it is not for the State to turn around to say that the work is not available which would be wholly unjustified.

43. In **Nihal Singh & others Vs. State of Punjab & others, (2013) 14 SCC 65**, the Apex Court while issuing directions for

regularization of the Special Police Officers, keeping in mind the limitations as imposed by the Constitution Bench in Uma Devi (supra) had held that the State could not take the defence that there were no sanctioned posts for the appellants and it is for the State to create them by a conscious choice on the basis of some rational assessment. The judgment passed by this Court was set aside and necessary directions were issued by holding that the persons had been appointed by the competent authority. Relevant portion of the judgment reads as under:

19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are

discharging functions similar to the functions that are being discharged by the appellants.

20. No doubt that the powers under section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

“4. ... The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to

continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called “litigious employment”, has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over.”

44. Merely because the policies were withdrawn at the time when the claim was made for reinstatement would not take away the right which had fructified to them on account of having continuity of service and, therefore, the argument which has been raised by the counsel for the State that earlier rules, regulations and instructions 2003 onwards were not in force is without any basis. Similar

argument raised by the counsel for the State pertaining to the Department of Irrigation in LPA-836-2013 '**The State of Haryana Vs. Mohammad Farookh & another**' was rejected, wherein the employees had been engaged as daily wagers in July 1990 and on 01.11.1992 and whose services had been terminated in the year 1998. The learned Single Judge had directed regularization from the date the juniors were regularised by noticing that though the policy circular dated 01.10.2003 had been withdrawn, but similarly situated persons had been made regular and, therefore, deemed fixation was to be there on account of the continuity of service given by the Labour Court and the workmen were treated to be in service from 30.09.2003. Relevant portion of the judgment dated 30.04.2013 passed in LPA-836-2013 reads as under:-

“It is true that the policy circular dated 1.10.2003 was later on withdrawn by the State Government on 9.5.2007 after the decision of the Hon'ble Supreme Court in State of Karnataka versus Uma Devi and others, 2006 (4) SCC 1. The fact remains that before withdrawal of the policy, hundreds of daily wagers/contractual employees were made regular under the said policy. The respondents were also in service before withdrawal of the abovestated policy and in view of the Labour Court's Awards which have attained finality, they shall be deemed to be in service on 30.9.2003. As regard to the qualifications, the learned Single Judge has found and rightly so that there are no rules/instructions prescribing any qualification for the post of Beldars. Similarly, the fact that the respondents were appointed in the years 1990 & 1992 and had rendered more

than 8 and 6 years service, respectively, as daily wagers before their retrenchment, is sufficient enough to infer that they were appointed against regular work. That apart, it is not the case of the appellants that no daily wager/contractual employee engaged after the years 1990-92 was made regular.

No interference with the impugned order is thus, called for.

Dismissed.”

45. It is also to be noticed from the above sequence of events as reproduced above in paragraph Nos. 8 to 26 that the State itself had issued notification on 13.04.2007 withdrawing the four policies starting from 18.03.1996 including the one dated 01.10.2003. Thereafter, it had issued necessary notification dated 18.06.2014 wherein it was specific provided that the left over Group C and D employees working on ad hoc/ contract/daily wages/work-charged who could not be regularized under the regularization policy as per the earlier four notifications due to administrative reasons, but were otherwise eligible were to be regularised with effect from their date of regularization. Thus, the State was well aware that on account of various contingencies certain set of persons had not been granted the benefit, whereas similarly situated persons had been granted the benefit. Therefore, an exception was made after the decision rendered in **Uma Devi (supra)** to ensure that persons who had been left out be also granted the benefit as granted to their juniors. The Apex Court also had left a window open to the State for providing an exception which would be clear from the underlying

para in Uma Devi's case (supra), same reads as under:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

46. A three Judge Bench of the Apex Court in **Official Liquidator Vs. Dayanand and others, (2008) 10 SCC 1** while noticing the observations in **Uma Devi (supra)** also held that where employees have legitimate expectations which have been deprived by

the administrative authority, which in the past had been permitted and that there are some rational grounds for withdrawing it on which he had been given an opportunity to comment. Relevant observations made in **Uma Devi (supra)** read as under:-

“The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either

(i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.”

47. Merely on account of a subsequent policy framed by the State, which was subject matter of challenge and was eventually struck down in **Yogesh Tyagi (supra)**, it would not lie in the mouth of the State that it had to comply with the issue of the interim orders passed by this Court which had nothing to do with the policies, which were in force earlier and were not subject matter of challenge which was only qua policies dated 16.06.2014, 18.06.2014 and 07.07.2014, which would be further clear from the communication dated 03.06.2016. Though initially the State had issued a letter dated 15.09.2016 directing that no further regularization of service of employees be made, but it was clarified on 18.10.2017 that policy

issued on 29.07.2011 is still in force.

48. In the earlier round of litigation also where the benefits had been granted of regularization by the learned Single Judge, the Chief Secretary vide communication dated 21.12.2018 had rather directed that creation of posts of diminishing cadre be made. The Finance Department was asked to give its advise for the same and that payment of arrears of regular pay scales were restricted to 38 months prior to the date of actual regularization. Merely because an appeal was filed in one case wherein stay was granted, there was a change of heart regarding the earlier instructions. Thereafter, directions were issued by the learned Chief Secretary on 31.01.2019 that appeals be filed in all cases.

49. Thus, reliance can also be placed upon Malathi Dass (supra) wherein the contempt appeals had been disposed of while binding the appellants to regularize the services of the 74 employees forthwith within a period of 2 months keeping in view the fact that similarly situated persons had been regularized and therefore, the action of the State in not granting regularization could not be held to be sound and justified which is apparent in the present case also once in principle a decision has been taken to create the posts as a dying cadre, keeping in view the instructions issued by the State themselves.

50. It is to be noticed that the litigation which was initiated by the employees was in the nature of reference of industrial dispute

under the provisions of Industrial Disputes Act, 1947 and was not in the nature of an interim order to take continuity in service which would bar them from claiming the said relief as has been held by the Apex Court. Thus, their termination per se was found to be illegal and not sustainable by the Labour Court or by the Writ Court in appeal and they were directed to be reinstated with continuity in service. Therefore, for that reason at various points of time the State could not give effect to its own instructions and relief was sought for regularization. Thus, the employees were justified in claiming the relief of regularization on account of the fact that they got reinstatement by the directions of the Labour Court and thus, continuity of service had been given.

51. Thus, it is apparent that the present round of litigation is based on the shifting stands of the Government, which in principle at one stage had decided to create posts and considered the writ petitioners for regularization. Thus, the judgment passed in **Sheo Narain Nagar and others Vs. State of Uttar Pradesh and others, (2018) 13 SCC 432** can be directly applied upon in the present facts and circumstances to show that how the State Government has misunderstood the judgment passed in **Uma Devi (supra)**. The Apex Court in the said case was dealing with the appeals of the employees, who had been appointed in 1993 and had continued in service till 2014 when their services were terminated. In the interim period they had got issued directions in their favour for regularization, which had

not been acted upon. The termination had been challenged, which was declined by the learned Single Judge and upheld in appeal. The same was set aside by the Apex Court by noticing that they had rendered service for 24 years. It was held that there were only irregular appointments and not illegal appointments and that posts were available. Relevant portion of the said judgment reads as under:-

“8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. 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 be 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 employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra).

9. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002.

As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.”

52. Similarly, a three Judges Bench of the Apex Court in the case of **Rajnish Kumar Mishra and others Vs. State of Uttar Pradesh and others, (2019) 17 SCC 648** had allowed the appeals, wherein appointments were over 12 years and the regularization orders had been withdrawn by the District Judge, who thereafter also withdrew the increments and directed recovery of emoluments paid to the employees. The writ petition was dismissed by the learned Single Judge and, thereafter, services were terminated. The said termination were also upheld by imposing costs which were modified by the Division Bench regarding the deletion of costs. Ultimately, the Apex Court while placing reliance upon the judgment passed in **Sheo Narain Nagar (supra)** has held that appellants had been appointed prior to 2001 when the rules of regularization were amended and when the appellants cases were to be considered for regularization they had put in service for almost 12 years and, therefore, the benefit of regularization could not have been withdrawn which had been granted earlier.

Forest Department Cases

53. We are thus of the view that the cases can be clubbed together department-wise and, therefore, in the present lot we shall decide the cases of the Forest Department and Department of Animal Husbandry. LPA Nos.688, 540 & 573 of 2021, LPA Nos. 740, 739, 751, 802, 479, 918, 916, 818, 302, 541, 532 & 585 of 2020, LPA Nos.8, 9, 18, 45, 55, 152, 818, 560, 567 and 106 of 2021 and LPA Nos.171 & 148 of 2022, LPA No.536 of 2016 pertain to the Forest Department and LPA Nos.444 & 508 of 2020 are pertaining to Department of Animal Husbandry.

Facts of LPA-540-2021

54. The writ petitioner Jaipal was appointed in the year 1996 as Baildar-cum-Mali and his services were terminated on 15.09.2013. He was successful in getting reinstatement by approaching the Labour Court vide an Award dated 25.09.2016 (Annexure P-5) in his favour, whereby he had been awarded continuity in service with 50% backwages from the date of termination till reinstatement. Thus, he sought regularization by filing CWP-9307-2017 which had been allowed vide order dated 10.02.2020 on the strength of the judgment passed in **Pawan Kumar's case (supra)**.

55. The defence of the State in the written statement was that the policies had been withdrawn and there is a delay in approaching the Court to seek regularization as per the policy dated 01.10.2003 and that the policy of 2014 had been quashed.

56. A perusal of the order dated 10.02.2020 passed by the learned Single Judge would go on to show that counsel for the State had submitted that the State was in process of regularization of the employees and thus, directions were issued for regularization with all consequential benefits with 6% interest and benefit be given from the date the juniors to the petitioner had been regularised. Thus, in view of the principles discussed above, once his juniors of 2 years later have been regularized, no case is made out to interfere.

Facts of LPA-573-2021

57. In the present case, the writ petitioner No.1 Krishan Kumar was appointed in the year 2000, whereas writ petitioner No.2-Mohinder was appointed in the year 1998 as daily wager. Service of writ petitioner No.1 were terminated on 16.11.2013 and that of writ petitioner No.2 on 20.09.2013. They were reinstated vide Awards dated 18.11.2015 (Annexure P-5) and 25.02.2016 (Annexure P-6) with 50% backwages. Thus, they sought regularization by filing CWP-9322-2017.

58. The stand of the State was again similar that the policies stood withdrawn and they were not appointed on the duly sanctioned posts and there was a delay to the extent of approaching the Court and that the policy of 2014 had been quashed.

59. The writ petition was allowed in terms of **Pawan Kumar's case (supra)** and the same statement had been given by the counsel for the State that they were in process of regularization of the

employees. The State having taken the service of the employees for a period of 13 to 15 years, now cannot turn around and say that they cannot be considered for regularization as, as of now they have put in over 25 years of service.

Facts of LPA-740-2020

60. The writ petitioner Kamlesh filed CWP-24035-2016 pleading that she was appointed as daily wage labourer in March, 1996 and worked till 31.07.2005 when her services were terminated. She had served a demand notice dated 28.11.2005 and was successful vide the Award of the Labour Court dated 31.03.2010 to the extent of getting compensation of Rs.36,000/-.

61. She had filed CWP-19912-2011 and vide order dated 18.02.2013 (Annexure P-1) the same was disposed of alongwith three other writ petitions, whereby benefit of reinstatement and continuity in service was given alongwith full backwages from the date of receipt of reference. Rather the learned Single Judge was forced to comment upon the conduct of the Forest Department, since the record was not produced before the Labour Court in spite of giving an undertaking to do so. It was noticed by the learned Single Judge that as such was throwing out daily wage workers without following due process of law and leave them to battle it out in Court for year and thus told to accept reinstatement without backwages was unjustified. Thus, regularization was sought as per the policy dated 01.10.2003.

62. The stand of the State was that she had slept over the matter and not entitled for regularization, since she had not worked after March, 1996.

63. The learned Single Judge had decided the writ petition on 31.01.2020 while relying upon the judgments passed in **Malathi Das (supra)** and **Hari Nandan Prasad (supra)** and had come to the conclusion that similarly situated persons had already been regularized vide Annexure P-5, which fact had not been admitted or denied in the written statement. The only defence was that the earlier policies were withdrawn. It was noticed that the official of the department did not produce the record before the Labour Court. Accordingly, continuity of service had been given and directions were issued to regularize the petitioner w.e.f. 01.10.2003. Thus, juniors having been given the benefit from 1996 would entitle her for regularization.

Facts of LPA-739 & 751-2020

64. In the present cases, the writ petitioner Khiali Ram was appointed in the year 1986 on daily wage basis, whereas the writ petitioner-Narata Ram was appointed in the year 1988. Their services were terminated in the year 1998 and 2004, respectively. Khialia Ram was reinstated vide Award dated 16.07.2004 with continuity of service but without backwages. Whereas in the case of Narata Ram reinstatement was ordered with full backwages vide order dated 17.05.2012 passed by the learned Single Judge in

CWP-19271-2009. Thus, they sought regularization by filing CWP Nos.24624 and 24914 of 2016.

65. The stand of the State in both the cases was similar to the extent that policies issued by the respondent-State did not cover the case of the writ petitioners, as the same was applicable on employees who were appointed against sanctioned vacant posts. The writ petitioners were not appointed on sanctioned vacant posts. It was also stated all the policies stood withdrawn after the judgment passed in the case of **Uma Devi (supra)**.

66. Vide a common judgment dated 31.01.2020, the learned Single Judge allowed the writ petitions and the writ petitioners were ordered to be regularized, , in view of the policy dated 01.10.2003 or from the date when their juniors were regularized with all consequential benefits. Thus, the writ petitioners had over thirty years of service when the impugned judgment was passed and no case for interference is made out.

Facts of LPA-802-2020

67. In the present case, the writ petitioner Om Parkash was appointed as Beldar-cum-Mali on 01.07.1982. His services were terminated on 01.01.1994. He was ordered to be reinstated with continuity of service and 25% backwages in view of the Award passed by the Labour Court. Respondents filed writ petition against the Labour Court award which was dismissed by the High Court. Thereafter, in SLP (c) No.9902 of 2000 only the backwages were

stayed and there was no stay in continuity of service vide order dated 12.02.2001. Thus, he sought regularization by filing CWP-13885-2016 on the ground that services of the juniors to the writ petitioner had been regularized by the department.

68. In the reply filed by the respondent-State was similar to the extent that policies issued from time to time did not cover the case of the writ petitioner as the same were applicable on the employees appointed against sanctioned vacant posts. It was also mentioned that the Government stood withdrawn the regularization policies after the judgment passed in **Uma Devi (supra)**.

69. Accordingly, in view of the judgment passed in **Hari Nandan Parsad (supra)** learned Single Judge allowed the writ petition on 22.01.2020 and respondents were directed to regularize the services of the writ petitioner w.e.f. 01.10.2003 with all consequential benefits at par with juniors. The writ petitioner had thus put in 38 years of service when the Learned Single Judge allowed his writ petition and there is no ground made out to interfere.

Facts of LPA-479-2020

70. In the present case, the writ petitioner Dharampal was appointed on 01.12.1988 as Beldar (Labourer) on daily basis in the Sultanpur Bird Sanctuary, District Gurgaon. His claim for regularization was rejected by the respondent-department, vide order dated 22.01.2016 (Annexure P-7). Thus, he sought regularization at par with his juniors as per notification dated 18.03.1996

(Annexure P-1).

71. The stand of the State was that the writ petitioner did not fulfill the conditions of policy dated 29.07.2011 and he was not working against duly sanctioned vacant post. The name of the writ petitioner was not sponsored through employment exchange and there is a stay on the regularization policy of the year 2014 and afterwards.

72. While relying upon the judgments passed in **Hari Nandan Prasad (supra)**, **Uma Devi (supra)** and **Sheo Narain Nagar (supra)**, learned Single Judge allowed the writ petition on 31.01.2020 and respondents were directed to regularize the services of the writ petitioners, in view of the policy dated 18.03.1996 alongwith all consequential benefits.

Facts of LPA-918-2020

73. In the present case, the writ petitioners No.1 Mangal Singh was appointed on 20.08.1983 as daily wager-Chowkidar, whereas writ petitioner No.2-Mubin was appointed on 02.06.1983 as Permanent Labour. Service of writ petitioner No.1 were terminated on 04.11.2005 and that of writ petitioner No.2 on 30.03.2006. They were reinstated vide Awards dated 09.11.2012 (Annexure P-3) and 22.08.2013 with continuity of services. Thus, they sought regularization by filing CWP-8650-2016.

74. The stand of the State was that petitioners were never appointed and as such never terminated by the respondent-

department. There were no sanctioned posts of labourer and they were engaged by a forest guard temporarily.

75. Counsel for the State had submitted that the writ petitioners were not entitled for regularization as per policy dated 07/18.03.1996 as they had not worked for 3 years continuously prior to the date of issuance of notification and they can be regularized in view of the notification dated 18.06.2014, but the same has been quashed.

76. The learned Single Judge had decided the writ petition on 31.01.2020 while relying upon the judgments passed in **Malathi Das (supra)** and **Hari Nandan Prasad (supra)** had come to the conclusion that similarly situated persons had already been regularized, which fact had not been admitted or denied in the written statement. The only defence was that the earlier policy was withdrawn. Accordingly, the writ petition was allowed and respondents were directed to regularize the services of the writ petitioners with effect from the date the services of similarly situated employees or juniors had been regularized alongwith all consequential benefits. Thus, once juniors had been regularized who had been appointed in 1996, necessary directions were rightly given.

Facts of LPA-18-2021

77. In the present case, the writ petitioners were appointed from the year 1983 to 1995 as Daily Wage Labourers-cum-Malis with the Forest Department, Haryana. Their services were terminated

in the year 1992 to 1998, details of which have been given in paragraph No.3 of the writ petition. Petitioner No.1-Chander Wati was reinstated vide Award dated 12.04.2001 (Annexure P-3) with continuity of service and full backwages. Similar orders were passed in the case of other writ petitioners. After passing of the Awards, the writ petitioners requested respondents for regularizing their services in view of the policy dated 01.10.2003 (Annexure P-1) and letter dated 10.02.2004 (Annexure P-2), since Labour Court awarded them continuity of services. Since the requests of the writ petitioners for regularization were not considered, they filed writ petitions, which were disposed of with the directions to consider the case of the writ petitions by passing a speaking order. In compliance of the orders passed by the learned Single Judge, orders (Annexures P-4 to P-6) were passed by the respondent-department while rejecting the case of the writ petitioners. Thus, they sought regularization by filing CWP-6138-2016.

78. The stand of the State was that writ petition was time barred and likely to be dismissed on the ground of delay and laches. That the writ petitioners were never worked against a sanctioned vacant post. They were not entitled for regularization of services under any policy/instructions.

79. Learned Single Judge rightly allowed the writ petition and respondents were directed to regularize the services of the writ petitioners, in view of the appointment of the year 1983 to 1995

alongwith consequential benefits and no fault can be found in the same.

Facts of LPA-9-2021

80. In the present case, the writ petitioner Suresh Kumar was appointed in the year 1999 as daily wage labourer with the Forest Department, Haryana. His services were terminated on 29.04.2000. He was reinstated vide Award dated 14.03.2003 (Annexure P-2) with continuity of service and full backwages. The said award was challenged by the respondent-department by filing CWP-1009-2004, which was dismissed by a Coordinate Bench vide order dated 23.02.2004 (Annexure P-3) and the said award has been upheld upto the Apex Court. Thus, he sought regularization by filing CWP-27155-2015.

81. The stand of the State was again similar that all the policies stood withdrawn and he was only appointed as a casual labourer in the Forest Department. His services could not be regularized as there was no sanctioned post.

82. Learned Single Judge allowed the writ petition, in view of the policy dated 01.10.2003. It was held that the writ petitioner has to be treated at par with other employees, who had been regularized vide order (Annexure P-11) on the basis of the policy of 1996 and in view of the directions issued by the Courts contested upto the Apex Court by the State. Thus, he had 16 years of service on the date of the impugned order.

Facts of LPA No.916 of 2020, LPA No.818 of 2021 and LPA Nos.148 and 171 of 2022

83. In the present appeals, the writ petitioners were appointed in the year 1987 as Beldar-cum-Mali and Chowkidar-cum-Mali. Their services were terminated on 21.04.1998 (in CWP No.16218 of 2016) on 30.09.2000 (in CWP Nos.26894 and 26919 of 2016) and on 16.09.2005 (in CWP No.26991 of 2016). Vide separate Awards passed by the Labour Court they were ordered to be reinstated with continuity of service and 25% backwages in CWP Nos.26894, 26919, 26991 of 2016, whereas in CWP No.16218 of 2016 services of the 50% backwages were awarded. Thus, they sought regularization of services by filing abovestated writ petitions.

84. The stand of the State in all three cases was similar to the extent that policies issued by the respondent-State stood withdrawn. The writ petitioners were not appointed on sanctioned vacant posts and they could not be regularized, in view of the judgment rendered in the case of **Uma Devi (supra)**. Counsel for the State had submitted that the writ petitioners had not completed 240 days in a calendar year from the date of their termination. However, it had been admitted that services of the juniors to the writ petitioners were regularized in view of the judgment passed in **CWP No.9873 of 2013** titled as **Raj Kumar Vs. State of Haryana and others** and other connected matters.

85. Accordingly, learned Single Judge allowed the writ petitions vide a common judgment dated 31.01.2020, in view of the

judgment rendered in the case of **Malathi Das (supra)** and in view of the fact that services of the writ petitioners were regularized in view of the judgment passed in **Raj Kumar (supra)**. The writ petitioners were ordered to be regularized with all consequential benefits at par with their juniors.

Facts of LPA-45-2021

86. In the present case, husband of the writ petitioner Gurmeet Kaur namely Inderjeet Singh was appointed in the year 1986 as Mali-cum-Beldar. His services were terminated in November, 2002. He was ordered to be reinstated vide Award dated 27.03.2006 (Annexure P-1) with continuity of service and full backwages and expired on 30.10.2013. Thus, widow of the deceased employee sought regularization by filing CWP-3622-2017 and parity was sought on the basis of order dated 14.10.2006 (Annexure P-3), whereby juniors to the deceased employee Inderjeet Singh were regularized w.e.f. 01.10.2003.

87. The plea taken by the respondent-State in the written statement was that the writ petition was filed after 14 years in the year 2017 and, thus, the same was time barred and liable to be dismissed on the ground of delay. Counsel for the State had submitted that the deceased employee was reinstated in the year 2006 and, thus, he was not covered under the policy dated 01.10.2003.

88. Vide order dated 11.02.2020 learned Single Judge

allowed the writ petition, in view of the policy dated 01.10.2003. The writ petitioner was rightly ordered to be regularized from the date his juniors were regularized while relying upon the judgment passed in **Malathi Dass (supra)** once he had rendered over 27 years of service and his widow would be entitled for the retiral benefits, which is a recurring right.

Facts of LPA-818-2020

89. In the present case, the writ petitioner Sumer Singh was appointed as Mali-cum-Chowkidar in the year 1985. His services were terminated on 01.06.1996. During the pendency of reference he was taken back into service w.e.f. 01.10.1999 and, thereafter, continuity of service was granted vide Award dated 16.08.2000 (Annexure P-1). Thus, he sought regularization by filing CWP-12859-2017 on the ground that similarly situated persons have been regularized, vide order (Annexure P-10 colly.).

90. The stand of the State was that all the regularization policies stood withdrawn on 25.04.2007 and policy dated 01.10.2003 was not in existence. It was further stated the petitioner was estopped from filing the present writ petition on the same cause of action when civil suit and appeal against the same had been dismissed.

91. Learned Single Judge allowed the writ petition and regularization was ordered with all consequential benefits, in view of the policy dated 01.10.2003. It was rightly held that case of the

petitioner could not be closed keeping in view the fact that civil suit of the petitioner had been dismissed and appeal against the said judgment had been dismissed since the juniors of the writ petitioners had been given the benefit of regularization on 22.12.2016.

Facts of LPA-302-2020

92. In the present case, the writ petitioner Nathu Ram was appointed on daily wage basis in the year 1991. His services were terminated on 07.08.1997. He was ordered to be reinstated with continuity of service and 75% backwages vide Award dated 07.08.1997 passed by the Labour Court. The writ petitioner's services were again terminated on 14.06.2004. He was ordered to be reinstated with continuity of service alongwith 50% backwages vide order dated 23.01.2014 (Annexure P-1) passed by the Labour Court. Thus, he sought regularization by filing CWP-9051-2017 on the ground that services of the juniors to the writ petitioner had been regularized.

93. In the reply filed by the respondent-State it was stated that policies issued from time to time did not cover the case of the writ petitioner as the same were applicable on the employees appointed against sanctioned vacant posts. It was further stated that orders passed by the learned Labour Court does not make anyone entitled for claiming regularization. It was also mentioned that the Government had withdrawn the regularization policies after the judgment passed in **Uma Devi (supra)**. The factum of regularization

of services of the juniors to the writ petitioner had not been denied.

94. Accordingly, in view of the judgment passed in **CWP No.1381 of 2011 'Sukhpal Vs. State of Haryana and others'** (Annexure P-1) learned Single Judge allowed the writ petition on 21.01.2020 and respondents were directed to regularize the services of the writ petitioner w.e.f. 01.10.2003 with all consequential benefits. It was also held that juniors to the writ petitioner had already been regularized despite the fact that two Labour Court Awards were in favour of the writ petitioner. Costs of Rs.2 lakhs were also imposed upon the respondents on the ground that the respondent-department was adopting a pick and chose policy for regularization of services and thus, no case is made out to interfere in the judgment of the Learned Single Judge.

Facts of LPA Nos.532, 541 & 585 of 2020

95. In the present cases, the writ petitioners were appointed between the years 1980 to 1985. Their services were terminated in the year 2004. Vide Awards dated 15.01.2009, 17.04.2009 and 02.01.2009, their claim for reinstatement had been rejected. Aggrieved against the said rejection, they filed CWP Nos.4881, 7837 and 4788 of 2010, respectively. In pursuance to which their reinstatement with backwages (in the cases of Naseeb Singh and Kalyan Singh) and 50% backwages (in the case of Kara Singh) was ordered by the learned Single Judge. Thus, they sought regularization by filing CWP Nos.24241, 24242 and 24243 of 2016

on the ground that similarly situated persons/juniors have been regularized.

96. The stand of the State in all three cases was similar to the extent that policies issued by the respondent-State did not cover the case of the writ petitioners, as the same was applicable on employees who were appointed against sanctioned vacant posts. The writ petitioners were not appointed on sanctioned vacant posts. It was also stated all the policies stood withdrawn after the judgment passed in the case of **Uma Devi (supra)**.

97. Learned Single Judge allowed the writ petitions vide a common judgment dated 28.01.2020 and they were rightly ordered to be regularized with all consequential benefits at par with their juniors, in view of the policy dated 01.10.2003 as they had over 30 years of service. It was also held that once the writ petitioners had been reinstated with continuity of service their cases stood covered by the said policy.

Facts of LPA No.152 of 2021

98. In the present appeal, the writ petitioners namely Surender Singh, Kamlesh and Hargyan were appointed in the year 1988 on daily wage basis. The writ petitioners Surender Singh and Kamlesh were terminated on 13.08.1999 and 09.04.2000, respectively. In view of Awards dated 12.01.2006 and 07.02.2006 both the above writ petitioners were taken back in service with full backwages. Respondent-department filed CWP Nos.7890 of 2007

and 8242 of 2007, by which awards were modified to the extent of entitlement of 25% backwages. Thus, they sought regularization in view of the judgment passed in the case of similarly situated employees i.e. **CWP No.1169 of 2009 'Ved Pal and others Vs. State of Haryana and others'**.

99. The stand of the State in the written statement was similar that regularization policies have been withdrawn. It was further stated that regularization can only be done against sanctioned vacant posts and that there were no such sanctioned posts available in the Forest Department.

100. Learned Single Judge allowed the writ petition vide judgment dated 07.02.2020, in view of the judgment passed in **Sheo Narain (supra), Hari Nanda Parsad (supra)**. Accordingly, respondents were directed to regularize services of the petitioners w.e.f 01.10.2003 alongwith all consequential benefits from the date when the juniors were regularized as the principle of equality would be applicable.

Facts of LPA Nos.567, 560 of 2021 and LPA No.55 of 2021

101. In the present appeals, the writ petitioners were appointed between the years 1983 to 2003. The services of the writ petitioners were terminated on 20.12.2011 and 01.11.2013 (in CWP No.25072 of 2016), on 19.09.2008 and 01.03.2013 (in CWP No.26393 of 2016) and on 07.04.2009 and 29.11.2011 (in CWP No.26748 of 2016). Vide separate Awards passed by the Labour

Court, Ambala they were ordered to be reinstated with continuity of service and 50% backwages. Thus, they sought regularization by filing abovestated writ petitions.

102. The stand of the State in all three cases was similar to the extent that policies issued by the respondent-State stood withdrawn. The writ petitioners were not appointed on sanctioned vacant posts and they could not be regularized, in view of the judgment rendered in the case of **Uma Devi (supra)**. Counsel for the State had submitted that the writ petitioners had not actually worked for 3 years continuously prior to the issuance of regularization policies and their services could not be regularized in view of the notification dated 18.06.2014, which had also been quashed by this Court.

103. Learned Single Judge allowed the writ petitions vide a common judgment dated 10.02.2020 in view of the earlier judgment passed in **CWP No.16044 of 2015 'Veermati Vs. State of Haryana and another'** and the writ petitioners were ordered to be regularized with all consequential benefits at par with their juniors, in view of the policy dated 18.03.1996 and 01.10.2003.

Facts of LPA-8-2021

104. In the present case, the writ petitioner Sahib Kaur was appointed as Beldar-cum-Mali in the year 1985. Her services were terminated on 01.04.2000. She was ordered to be reinstated with continuity of service and 50% backwages w.e.f. 13.11.2000 vide

Award dated 21.01.2008 passed by the Labour Court. Thus, she sought regularization by filing CWP-3229-2017 on the ground that similarly situated persons as well as juniors to her had been regularized as per Annexures P-7 and P-13.

105. In the reply filed by the respondent-State they did not dispute RTI information given (Annexure P-7). It was also mentioned that the Government had withdrawn the regularization policies. Counsel for the State had argued that the petitioner did not fulfill the qualification and there was no sanctioned post available.

106. Learned Single Judge rightly allowed the writ petition on 11.02.2020 and regularization was ordered, in view of the policy dated 01.10.2003 with all consequential benefits at par with juniors who had been regularized as per Annexure P-7 as the petitioner had 35 years of service by then.

Facts of LPA No.106 of 2021

107. In the present appeal, the writ petitioners were appointed between the years 1988 to 1992 on daily wage basis. The writ petitioners are stated to have worked for more than 10 to 20 year and their appointments were made according to Haryana Forest Manual against sanctioned posts. The writ petitioners had approached this court by way of CWP No.17508 of 2014 claiming regularization and the same was withdrawn and their case was not considered again in view of the judgment passed in **Yogesh Tyagi (supra)**. Thus, they sought regularization by filing CWP No.13294 of 2015.

108. The stand of the State in the written statement was that claim of the writ petitioners was denied on the ground that notification dated 18.06.2014 was challenged before this Court and operation of the same had been stayed and there were no sanctioned posts available.

109. Learned Single Judge allowed the writ petitions vide judgment dated 31.01.2020. It was held that respondents were correct in not regularizing their services as per notification dated 18.06.2014 keeping in view the judgment passed in **Yogesh Tyagi (supra)**, however the petitioner was entitled for regularization as per policy dated 01.10.2003 alongwith all consequential benefits.

Facts of LPA No.536 of 2016

110. In the present case the employee Sita Ram had been appointed as Beldar-cum-Mali on 01.01.1988 and continued to work till 08.04.1998. He had raised the industrial dispute on account of the fact that in vide demand notice dated 28.04.1998 his service had been wrongly terminated and his juniors were still working.

111. The Labour Court, Rohtak vide Award dated 04.01.2006 had accepted the plea on account of the fact that the entire record had not been produced and even the management had failed to file the written statement and, therefore, directed reinstatement on the previous post with continuity of service.

112. His request for regularization was rejected on 14.01.2013 on the ground that he alongwith other was not originally appointed

on the vacant post and that the policies of 01.10.2003 and 10.02.2004 had been withdrawn. It was, however, admitted that out of the 15 cases which were being dealt with, 7 labourers had been regularized on 14.10.2006 in light of the Policy of 2003. Resultantly, the claim was rejected on the ground that the legal notice was served on 18.02.2012 but not received and the notice received on 14.12.2012 was being replied and on account of delay the claim was rejected. Subsequently the writ petition was filed by the wife since the employee had expired on 18.01.2013.

113. The learned Single Judge vide order dated 14.05.2015 noticed that similarly situated employees who were stated to be junior had been regularized, in pursuance of order passed in LPA No.582 of 2013, on 18.07.2014 (Annexure P-7). A perusal of which would go on to show that the regularization was done from 01.10.2003 and the said employees had also been given the benefit of reinstatement by various awards of the Labour Court. Thus, it has been rightly held that the claim of the writ petitioner could not be denied on the ground that he was not physically present on the role of establishment and, therefore, the benefits were directed to be granted of regularization from the date when his juniors were regularized.

114. The above facts would go on to show that similarly situated persons who had also been retrenched and put back in service were given the benefit of 2003 Policy and, therefore, we are of the considered opinion that the order of the learned Single Judge

does not suffer from any infirmity.

Cases pertaining to Department of Animal Husbandry

Facts of LPA No.444 of 2020

115. The learned Single Judge vide order dated 27.02.2020 directed regularization in terms of policy dated 01.10.2003 keeping in view the fact that the employee had joined on daily wage as Chowkidar w.e.f. 01.05.1998. He had worked till 30.06.1999 and retrenched and the juniors had been retained and he was thus reinstated vide award dated 28.05.2004 with continuity of service but without any back wages by the Labour Court. It had been pleaded that on 29.04.2005, respondents had regularized the services of 9 similarly situated persons w.e.f. 01.10.2003 vide Annexure P-3. The defence in the written statement was that the said persons were appointed at an earlier point of time and they were senior and they fulfilled the terms of the policy. There was no seniority of daily wage labourers in the Department. Thus, on the principle of similarity the benefit was granted keeping in view the fact that there was a policy in force and parity was to be maintained with respect of all employees once the benefit of continuity had been given by the Labour Court. Thus, it was directed that the employee who had completed 22 years of service and only on account of the fact that his services had been retrenched, benefit had been denied to him and therefore, he was entitled for consideration on account of continuity of service granted to him and learned Single Judge was correct in

granting the said benefit.

Facts of LPA No.508 of 2020

116. The learned Single Judge had, thus, granted the benefit of regularization vide order dated 05.03.2020 as per the policy dated 01.10.2003 by noticing that the writ petitioner was appointed on daily wages on 01.01.1994 and worked till 31.10.1994 and an award dated 02.04.1996 had come in his favour and he was duly regularized with full back wages. His services were again terminated on 01.08.2002 and he was successful on 04.08.2003 before the Labour Court and he was taken back in service again with the benefit of continuity of previous service and joined on 03.11.2003. Similarly situated persons had already been regularized as per policy of 2003 and therefore, the benefit was granted. It is thus apparent that on account of wrongful termination and other persons having been given due regularization vide Annexure P-4 and one Satbir was appointed in 1994 which would be clear from the averments made in para No.8 of LPA-444-2020.

117. In LPA-508-2020, the benefit was granted vide judgment dated 05.03.2020 since the employee was initially appointed on 01.01.1994 and worked till 31.10.1994. He had been reinstated vide award dated 02.04.1996 and second reinstatement took place on 01.08.2002 and a compromise had taken place on 24.10.2003 under Section 12(3) of the Industrial Disputes Act, 1947. He was given continuity of service but no back wages which would

be clear from Annexure P-2. In such circumstances, regularization was sought again on the ground that juniors had been regularized and his case had been rejected on the ground that the terms of policy dated 01.10.2003 were not fulfilled without noticing the fact that there was unfair labour practice time and again dispensing with the service. Therefore, keeping in view these factors the learned Single Judge had directed consideration for regularization vide impugned judgment dated 05.03.2020 keeping in view the fact that 9 others had been duly regularized vide letter dated 29.04.2005. Thus, no fault can be found in the order of the learned Single Judge.

118. Thus keeping in view the judgment in **State of Karnataka Vs. M.L.Kesari & others, (2010) 9 SCC 247**, we are of the considered opinion that the learned Single Judges were well justified in directing consideration for regularization as the claim was on the basis of the policies which were in effect and were supplemented by others. The persons had worked for the requisite period of time and were seeking regularization as per the policies which were invogue at that point of time and they were not continuing in service on account of any litigation and did not have any interim orders in their favour. The Apex Court had noticed that the true effect of the directions passed in Uma Devi (supra) was that persons who had been continuing for the period of 10 years without interim orders of the Tribunals and the employer had not undertaken the exercise of regularization within 6 months of the decision in Uma

Devi (supra) then the exercise was to be taken for the limited view and it would not disentitle the employees for their right for regularization as a one-time measure. Appointment of persons which was illegal and irregular was clarified to the extent that the illegality would be only if the appointee did not possess the required minimum qualifications and the irregularity would be if the person had been selected without undergoing the process of open competitive selection but had the prescribed qualifications. In the present cases we are dealing with cases of Class-IV employees employed as Beldar/Mali/Labourer and, therefore, the said legal impediment would not come in the way. Relevant observations reads as under:

5. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But

where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

6. The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

7. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who

were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

8. The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of

any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.

9. These appeals have been pending for more than four years after the decision in Umadevi. The Appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularization within six months of the decision in Umadevi or thereafter.”

119. The Apex Court in **State of Jharkhand and others Vs. Kamal Prasad and others, (2014) 7 SCC 223** while dismissing the appeals of the State and upholding the judgment of the High Court, regarding the regularization orders in favour of the Junior Engineers who had been working for 29 years was held to be legal and by holding that they were covered under the exceptions made in **Uma Devi (supra)**. Resultantly, while placing reliance upon the judgment passed in **Olga Tellis & others Vs. Bombay Municipal Corporation & others, (1985) 3 SCC 545**, it was held that the High Court had rightly come to the conclusion that the action of the State was arbitrary and it shocked the conscience of the Court that the persons had worked for 29 years and had been discharging permanent nature of duties. Therefore, it was held that the judgment could not be vitiated on account of any erroneous finding or suffering

from any error in law.

120. Thus, we are of the considered opinion that a window had been kept open by the State that the policies dated 17.06.1997, 05.11.1999, 01.10.2003, 10.02.2004 were to be applied to persons who had not been regularized and, therefore, it does not lie in the mouth of the counsel for the State to argue that the policies stood withdrawn. The learned Single Judges were justified in issuing directions for consideration. As noticed above the claim is based on a legal right for seeking issuance of a writ of mandamus and in such circumstances it cannot be said that the learned Single Judges were in error in allowing the writ petitions. Accordingly, the appeals filed by the State are dismissed. All pending civil miscellaneous applications, if any, are also disposed of.

(G.S. SANDHAWALIA)
JUDGE

02.12.2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes
Yes