

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

**CM-5749-CWP-2022 IN/AND
CWP-12753-2013 (O&M)
Date of decision: April 25, 2022**

Raghubir and others

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ajay Chaudhary, Advocate for the applicant-petitioners.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

CM-5749-CWP-2022

For the reasons stated in the application, the same is allowed.

Annexure P-10 is taken on record, subject to all just exceptions.

CM-3323-CWP-2018

This is an application filed under Section 151 CPC for disposing of the writ petition on the same terms as in CWP-17150-2015 titled as 'Pawan Kumar & others Versus State of Haryana and others' decided on 24.01.2017.

In view of what is mentioned in the application, it is deemed more appropriate that main case is taken on Board today itself, which was admitted for regular hearing vide order dated 12.12.2014, instead of rendering piecemeal decision. Application stands disposed of.

Main case (O&M)

Petition herein, *inter alia*, is for issuance of an appropriate writ in the nature of Certiorari and Mandamus directing the respondents to regularize the services of the petitioners with all consequential benefits.

2. Petitioners have made following positive averments in Para-2 of the writ petition:-

“2. That the petitioners have been working in the Forest Department on daily wages for more than 20 years with effect from various dates i.e. Raghbir son of Sh Mishra, resident of VPO Dukerkhan Tehsil Narwana, District Jind from 1987, 2. Dhoopa son of Bhale Ram, resident of Bailerkha, Tehsil Narwana, District Jind from 1987, 3. Mam Raj son of Sham Lal, resident of Narwana District Jind from 1987, 4. Jai Bhagwan son of Om Parkash, resident of village Budanpura Tehsil Narwana, District Jind from 01.07.1990, 5. Shamsher son of Darya, resident of Dumerkha Kalan, Tehsil Narwana, District Jind from 01.07.1990, 6. Suraj Bhan son of Sh. Ram Kumar, resident of village Badanpur, Tehsil Narwana, District Jind 1989, 7. Baldeva son of Man Ram, resident of VPO Sunderpura, Tehsil Narwana District Jind 1989.”

3. *Apropos* above, following stand has been taken in the corresponding para of the return filed by the respondents, which reads as under:-

“2. That contents of para No.2 of petition are matter of record. However, length of service is no ground for the regularization of services of the petitioners.”

4. From the aforesaid stand of the respondents in the written statement, it is thus not disputed that the petitioners have indeed been in service w.e.f. their respective dates as specifically given in Para-2 of the petition. They have been in service on daily wages for the past more than 20 to 25 years at a stretch.

5. In this context, reliance has been placed by the learned counsel for the petitioners on the judgment dated 24.01.2017 in CWP-17150-2015

rendered my learned Brother Ajay Tewari, J., (as he then was in this Court),
relevant part of which is reproduced herein below:-

“In my opinion, this argument would not suffice. The issue is as to what is the basis on which the claim of the petitioners rests. No doubt, the claim of their juniors was considered under the policy but now the claim of the petitioners rests on the jurisprudential premise that a benefit which has been granted to their juniors cannot be denied to them, and even if no policy had been framed in the year 2014, the claim of the petitioners would still be alive. In Raj Kumar v. State of Haryana, 2015 (4) SCT 277, this Court held as follows :-

“9. Ultimately, the Single Judge allowed the plea. Against that, the respondents filed LPA No.1903 of 2014, State of Haryana and others v. Jiyaji Sharma, wherein the Division Bench of this Court held as follows:- “3. As we mentioned earlier the appellant was employed with effect from 19.08.1995. The termination of his services on 31.05.1996 were held to be illegal and he was reinstated in service. Thus, as on 31.09.2003, the respondent must be deemed to have been in service. Under the policy of 01.10.2003, the petitioner was entitled to have his services regularized. All other employees similarly situated whose services had not been terminated were in fact granted the benefit of regularization under the policy of 01.10.2003. The termination of the respondent's services having been held to be illegal and having been set aside, he must also be deemed to have been in service on 01.10.2003 and entitled to the benefits of the policy on par with the others. The petitioner cannot be denied the benefits of the policy on par with the others similarly situated for no fault of his namely and on account of the appellants having issued an illegal order of termination. The Supreme Court in Hari Nandan Prasad and another Versus Employer I/R to Mangmt. of FCI and another, held as follows:-

‘However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision’. (Emphasis supplied).”

6. Apart from aforesaid, from perusal of the impugned order, it transpires that the claim of the petitioners for regularization was rejected on the ground that regularization policies promulgated by the State from time to time were since withdrawn after the decision of the Apex Court in the case of **Secretary, State of Karnataka and others versus Umadevi and others**, reported as (2006) 4 SCC 1, including the regularization policy of 2003, compliance of which has been sought by the petitioners in this writ petitions, and therefore, petitioners are not entitled to seek any regularization. Learned State counsel has also placed reliance on **Umadevi's case (supra)** and submits that the impugned order has, therefore, rightly been passed and the petitioners are not entitled to regularization. In the context of **Umadevi's case (supra)**, I have already recorded an opinion in my earlier judgments in CWP-1711-2012 and CWP-11219-2009.

7. Relevant part of my earlier judgment dated 05.08.2019 rendered in CWP-1711-2012 is reproduced as below:-

“30. In Khajjan Singh's case (supra), the scope of Uma Devi's judgment and applicability thereof was gone into threadbare by my learned brother Rajiv N. Raina, J. and respectfully I am in complete agreement with his views expressed as below :

“62. xxxx

However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.” (emphasis added)

63. xxx

The clamour for regularization on principles of unfair discrimination is now louder for passing of favourable office orders of regularization in cases coming via the Industrial Tribunals and Labour Courts giving rise to a demand for application of constitutional law principles re: discrimination. I may say that any minor discrimination is not unfair because it may suffer reasonable restrictions as are permitted by the law. That is why I have dwelt only on unfair discrimination which is judicially unacceptable, but not mere discrimination which may suffer reasonable restrictions. But the position here is unacceptable because it is not legally justified to break a homogenous group as under artificially. Failing which non-regularization of left over workers/the unfortunate group as now defined in Hari Nandan Prasad would amount to hostile and invidious discrimination. Therefore the equilibrium has to be restored by granting the status quo ante from the dates counterparts secured benefit of regularization by administrative orders passed without judicial intervention. The Supreme Court holds in Hari Nandan Prasad that "...the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision".

65. High Court Judges bound by Constitutional limitations in article 14 as elsewhere in the law are enjoined to erase unfair inequality resulting from adverse State action or inaction and would remain under oath while discharging judicial duties to strike down unfair discrimination the moment they find its ugly head rearing from case papers placed before them. They would remain bound to kill the weed before it grows on the meadow of article 14. Article 14 to say the least is the heart of the law pumping sap into the capillaries of the Constitution so that it grows well nourished and well tended into a Banyan tree with its root system pervading all things. After South Africa won its freedom the emblem of it Constitutional Court became the Banyan Tree.

66. Any unfair discrimination practiced by the State has to be dealt with by the strong arm of the law by firm affirmative action in order to remove unfair discrimination and not to promote it so that rights of no citizen go un-redressed. It would be a crying shame to leave the petitioners deserted and feeling that article 14 was not meant for them and only for the 'haves'. Subverting consciously the equality clause in article 14 would be an anathema to

the Constitution. Judges may as well then pack up their bags and go home.

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69. xxx

The Industrial Disputes Act is a piece of beneficial social welfare legislation which stands alone and apart from constitutional service law. However, as time passed and departures were made with India opening up to globalization and free enterprise the axis suffered a paradigm shift towards capital and then the Supreme Court spoke in Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192 to turn back the rising tide. A sea change was brought about by a quick series of judgments with Harjinder Singh in the lead. The Court's deep anguish in Courts contributing to emasculating the original scheme of labour laws could not have been expressed with greater pathos than in para. 30-31 which observations are significant in the present context and can be profitably noticed:-

"30. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. *It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private."*

70. *This statement of law is, or what I may call, the re-statement and re-visit of the law, is effectively the summum bonum of humanism in action from the last Court of judicial resort.*

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72. *The tone had been set. Article 19 and 21 were debatable so far as primary review was concerned. Article 14 was impartible. It is not negotiable. In Om Kumar (supra) the question of violation of article 14 was directly answered by the same Hon'ble Judge. This is how both the rulings have to be beaded together, the first exploratory and the other explanatory of primary review jurisdiction while dealing with oppressive infractions of article 14. Therefore, the Court when empowered with primary review jurisdiction becomes the administrator and protector of equality before the law and the equal protection of the laws, so as to give meaningful, instant and ameliorative effect to the fundamental freedoms by not postponing such right deprivations for redress through non-constitutional adjudication, when facts demand and evidentiary proof is not found necessary in the facts and circumstances of a given case. By applying these standards of primary review of administrative action in the present cases where the fortunate ones secured their freedom of regularization without court intervention but which has resulted in hostile and invidious discrimination are declared bad in the eyes of law. The rule of law is clearly against man's inhumanity to man. This kind of deprivation is in contravention of the natural law of equality among citizens who are or have become equally placed in all respects of basic rights possessed by both of them as human beings even if there were no written constitution or statutory law protecting workers against unfair discrimination and*

unfair labour practice inter se of those who deserve equality of treatment with their counterparts obtained through the tardy process of Labour Court trial resulting in favourable awards by the deeming fiction of law, even then the Court must step in to vanquish subjugation of the spirit. No person aggrieved should be turned away thinking the Court failed in coming to aid by restoring the unfair imbalance created by the administrator.

73. On the conspectus of the above facts, law and the thread of judgments read together, and for the various reasons stated interconnecting the judicial decisions, the rights of the petitioners for ante-dated regularization of services are declared in their favour and against the State.”

8. What emerges from the above order is that the Apex Court while rendering **Umadevi’s case (supra)** did not prohibit the State to regularize the services in deserving cases, but issued a caveat that the State should cautious in according the benefit of regularization to the undeserving candidates who have been inducted in service through back-door without any competence. On the contrary, the Supreme Court observed that in the deserving cases, the State should come out with transparent policies so that the benefit of regularization can be accorded in terms thereof in order to avoid any arbitrariness in doing the same.

9. In any case, stand taken in the impugned order flies in the face of the regularization benefits accorded to similarly situated daily wagers vide subsequent orders dated 14.10.2016 and 13.03.2020 (Annexures P-8 and P-10), respectively. The claim of the petitioners though founded on the subsequent regularizations is also based on the allegation that the said persons who have been accorded regularization were junior to them and yet the petitioners who are more senior have not been accorded similar benefit.

10. Claim is also resisted by the respondents on the ground that since no seniority-list is maintained by the Department *qua* the daily wagers, therefore, any reliance of the daily wagers being either junior or senior, is totally insignificant. There seems some merit *qua* the said stand in the absence of any seniority-list. However, what emerges is that concededly regularization was indeed accorded in terms of the orders dated 14.10.2016 and 13.03.2020 (Annexures P-8 and P-10), respectively. No plausible explanation is coming forth as to why the petitioners cannot be accorded the same benefit. There is a stoic silence about this in the return filed to the petition as well as in the impugned order.

11. In the premise, as an upshot of my discussion, petition is allowed. Respondents are directed to reconsider and decide the case of the petitioners in terms of the regularization policy dated 14.10.2016 (Annexure P-8), in terms whereof other daily wagers have been accorded regularization from 01.10.2003 vide order dated 13.03.2020 (Annexure P-10). The petitioners shall be accorded notional benefits including seniority w.e.f. the same date i.e. from 01.10.2003. However, monetary benefits arising therefrom are confined to 38 months prior to the date of filing of the petition. Needful be done within a period of 60 days.

(ARUN MONGA)
JUDGE

April 25, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No