

1.	CWP-21088-2021 (O&M) Date of decision : April 18, 2022
Mukesh Kumar and others	Petitioners
Versus	
State of Haryana and another	Respondents
2.	CWP-1015-2022 (O&M)
Amit Kumar and others	Petitioners
Versus	
State of Haryana and another	Respondents
3.	CWP-21277-2021 (O&M)
Surender Singh and others	Petitioners
Versus	
State of Haryana and another	Respondents

Present: Mr. Manoj Makkar, Advocate for the petitioners.

Mr. Harish Nain, AAG, Haryana.

LISA GILL, J.

This order shall dispose of CWP-21088-2021, CWP-21277-2021 and CWP-1015-2022 as an identical issue is sought to be raised in all these three petitions. With the consent of learned counsel, petitions have been taken up together for hearing and decision.

Petitioners in these writ petitions seek regularization of their services on the ground that they have been working on contract basis since last more than 10 years. While fulfilling all eligibility criterion and possessing necessary qualifications, petitioners are stated to have been appointed after following due selection procedure. It is submitted that petitioners were selected to the post of Instructors at Industrial Training Institutes in Haryana for a period of six months or till other regular incumbents were available pursuant to advertisement issued by the respondent – department in August, 2011. Their services were extended after every six months as nature of work, it is submitted, is perennial.

Learned counsel for the petitioners submits that petitioners are continuously working as Instructors till date and large number of substantive posts of Instructors are lying vacant. Petitioners possess required qualification as per Industrial Training Department Haryana Field Officers (Group-c) Service Rules, 2013. It is further submitted that similarly situated Instructors earlier appointed on contractual basis in 2008 had filed **CWP-5289 of 2007** titled '**Ashok Kumar and others versus State of Haryana and others**', which was allowed on 24.01.2008. State of Haryana preferred **SLP (C) No. 9230-31 of 2009** challenging said order dated 24.01.2008 wherein the Hon'ble Supreme Court on 13.07.2011 asked the Chief Secretary, State of Haryana to explore the possibility of accommodating said candidates in any other projects or school, looking to their qualifications and sort out the matter on humanitarian grounds. Pursuant to order dated 13.07.2011, an affidavit was filed by the then Joint Secretary, Government of Haryana, Industrial Training Department stating that the Government was prepared to accommodate eligible candidates numbering 258, who fulfil the requisite qualification as per Rules on humanitarian ground in the Industrial

Training Department against vacant post, in case direction is issued to that effect.

Accordingly, said eligible persons were accommodated.

Learned counsel for the petitioners submits that present petitioners have been working since nearly ten years, their appointment was through a proper selection process, with all petitioners fulfilling the eligibility conditions as per applicable Rules, besides availability of the posts in question, therefore, petitioners, it is claimed, are entitled to regularization of their services.

In this respect, it is submitted that representation was submitted by the petitioners but to no avail. However, during the pendency of this writ petition, representation submitted by petitioners in CWP-21088-2021 has been decided on 08.11.2021, copy of which has been attached as Annexure P13 alongwith CM-557-CWP-2022 in said writ petition. Representation of the petitioners has been rejected on the ground that Hon'ble Supreme Court in **SLP(C) Nos. 16389-16415 of 2009** had only directed accommodation of the candidates/employees on humanitarian grounds, therefore, there is no question of regularization of services of the said employees and that no junior of the petitioners has been granted the benefit as there is no regularization policy in existence at this stage.

Learned counsel for the petitioners submits that petitioners' claim has been erroneously rejected and in any case on similar lines as in CWP-5289 of 2007 and SLP (C) No. 9230-31 of 2009, petitioners may atleast be accommodated on humanitarian grounds.

Heard learned counsel and perused the files.

Reference is made to the facts as extracted from CWP-21088-2021 for the sake of convenience.

Petitioners were admittedly appointed on contractual basis as Instructors between November 2010 till September 2011 as per details mentioned

in Para No. 3 of the writ petition. It is a matter of record that service agreement/contract of the petitioners was extended from time to time. Advertisements were issued on 11.06.2019 for filling up the posts in question, which were, however, cancelled. Thereafter, advertisement dated 20.07.2019 was issued by the respondents inviting applications for regular appointment of 3206 posts. Said advertisement has admittedly been challenged by most of the petitioners by filing CWP-35305-2019. Interim order dated 04.12.2019 was passed in the said writ petition whereby it was directed that examinations may go on but further action be not taken by the State, till further orders.

Applications for modification of order dated 04.12.2019 passed in the said writ petition were filed by the State as well as the private respondents, which were decided by a co-ordinate Bench on 10.09.2021 while passing a detailed order and writ petitions were admitted. Order dated 10.09.2021 is reproduced as hereunder:-

“CM-7714 & 10170-CWP-2020
CM-4465-CWP-2021 in CWP-35305-2019

Applications have been filed for modification of the stay order dated 04.12.2019, both by the State and private respondents whereby directions had been issued that the examinations may go on but further action shall not be taken by the State, till further orders.

The petitioners herein are challenging the advertisement No.12/2019 dated 20.07.2019 (Annexure P-17), whereby 3206 posts of the Ministry of Skilled Development & Physical Training has been advertised on regular basis.

The ground for challenge is basically that the petitioners were appointed on contractual basis vide interviews held on 12.01.2011 and had entered into service agreement in the month of August, 2011 with the respondent-State. It is their case that on account of the regularization policy dated 18.06.2014, they could not get favourable consideration as 3 years period of service was required as on 28.05.2014. It is, thus, their case that they are contractual employees

who had served for more than 11 years and therefore, on account of the interim orders passed by the Apex Court on 26.11.2018 in the SLP filed by the State of Haryana (Annexure P-10), which had challenged the setting aside of the regularization policies which had been struck down by this Court on 31.05.2018 (Annexure P-8), they are entitled for the benefit of status quo. It is submitted that in similar circumstances, other orders have been passed by Co-ordinate Benches whereby status quo with regard to service was maintained and therefore, the petitioners should also be allowed to continue.

It is the case of Senior Counsel for the petitioners, Mr.Bhan, that advertisement No.5, 6 & 7 were issued on an earlier occasion to fill up the said posts on 26/27.12.2018 (Annexures P-11 to P-13). It is submitted that in view of the interim orders passed on 04.02.2019 in Ram Parshad case (Annexure P-14), which had protected the petitioners on account of the orders passed by the Apex Court, the State had cancelled advertisement Nos.5, 6 & 7 on 11.06.2019 (Annexure P-15). It is, thus, submitted that the advertisement dated 20.07.2019 (Annexure P-17) whereby 3206 posts have been advertised is to the detriment of the petitioners, without adjusting the petitioners.

In the considered opinion of this Court, petitioners are contractual employees. If the State is going ahead to appoint regular persons, in pursuance of the advertisement, the benefit of the status quo as has been ordered by the Apex Court qua said persons cannot be extended to the petitioners in a blanket manner. The same would go to the persons who had sought regularization and were entitled for, it is on the strength of the earlier policies. Admittedly, the petitioners were not seeking any relief for regularization on the basis of the policies of 2014 and had not got any interim protection and the protection awarded by the Apex Court cannot be deemed to be extended to them. It is only on account of the subsequent advertisement issued, the petitioners have got a cause of action. In such circumstances, it would not be appropriate for the selection process to come to a grinding halt on that account. Even on account of the judgment passed in Hargurpartap Singh Vs. State of Punjab &

others 2007 (13) SCC 292 only gives the right to the carry on as contractual employees and not to be replaced by another set of similarly situated persons and does not give a licence to them to continue and put the regular selection at hold.

In such circumstances, the applications for vacation of stay are justified and the order dated 04.12.2019 is, accordingly, modified to the extent that the State will be entitled to complete the selection process, in pursuance of the advertisement dated 20.07.2019. However, the same shall be subject to the final decision of the writ petitions. However, this would not mean that the State has a licence to dispense with the services of the petitioners immediately. As and only when the selection process is completed of and the regular persons are duly selected, it would be open to the State, at that stage, to dispense with the services of the petitioners in a phased manner, on the joining of the regular candidates, as per the advertisement dated 20.07.2019. The said selection process shall, however, be subject to the final decision of the writ petitions.

Admitted.

Photocopy of this order be placed on the record of each connected case.”

It is to be noted that **SLP (C) No(s).15629-15631 of 2021** challenging order dated 10.09.2021 was dismissed by the Hon’ble Supreme Court with the following observations:-

“ Having heard learned counsel for the parties, we are not inclined to interfere with the impugned interim order which refuses to grant stay of the selection process, in pursuance to the advertisement dated 20.07.2019. However, we direct that the respondent(s), before terminating the service of the petitioners, will give them one month’s notice to enable the petitioners to approach the High Court in the pending petition. Contention raised would be considered in accordance with law. If deemed appropriate, the writ petition itself may be taken up for hearing. We clarify that we have not commented on the merits.”

Copy of the said advertisement has been subsequently sought to be placed on record as Annexure P-9 alongwith CM-16416-CWP-2021.

Learned counsel for the petitioners is unable to deny that almost all petitioners barring may be a few have earlier challenged advertisements issued by the respondents seeking applications for various posts of Instructors in 16.08.2011, which was ultimately withdrawn by the respondents as well as advertisement dated 20.07.2019. It is further not in dispute that a co-ordinate Bench vide order dated 10.09.2021 in CWP-35305-2019 and CWP-12822-2020 in which some of the petitioners are admittedly parties, has specifically allowed applications for vacation of stay filed by the respondent – State and directed that the State would be entitled to complete the selection process in pursuance to advertisement dated 20.07.2019, which would be subject to final decision of pending writ petitions. Said order has been upheld by the Hon'ble Supreme Court.

It is to be noticed that it is in this sequence of events that present writ petitions have been filed seeking regularization of their service. However, none of these facts find narration in this writ petition. It is only by way of subsequent applications, when certain queries were put to learned counsel for the petitioners and facts brought to notice by learned counsel for the State, who was on advance notice that these facts were set forth. Be that as it may, though this writ petition could be dismissed on this ground itself, however, it is a settled position of law that mere length of service by itself does not vest an employee with a right to seek regularization. It has been held by the Hon'ble Supreme Court in **Union of India and others versus Ilmo Devi and another 2021 AIR (Supreme Court) 4855** that mere length of service does not vest an employee with a right to seek regularization and that too in the absence of any specific policy to the extent. It is held by the Hon'ble Supreme Court that framing of a scheme is no function of

this Court, being the sole prerogative of the Government and there can be no issuance of a direction in this regard. Argument that direction should be issued to consider petitioner’s case for adjustment etc. on humanitarian grounds is also devoid of any merit as admittedly petitioners do not have any vested right to continue on the posts in question. Therefore, there can be no issuance of a mandate in this respect. Once the petitioners have accepted the contractual nature of their employment, the terms and conditions of which are clear, in my considered opinion no direction for regularization or permanent continuance of part time temporary employees can be issued.

No other argument has been addressed.

Writ petitions are, accordingly, dismissed.

Pending applications, if any, are disposed of, accordingly.

April 18, 2022
rts

(LISA GILL)
JUDGE

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