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

CWP-49-2017 (O&M)

Date of Decision: 29.03.2022

HAWA SINGH

...Petitioner

V/S

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ajay Chaudhary, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, inter-alia, seeks issuance of a writ in the nature of certiorari quashing the part of the order dated 21.12.2016 (Annexure P-8), whereby claim of the petitioner for regularization has been rejected on the ground that all the policies for the regularization have been rescinded.

2. Petitioner was appointed as Beldar on daily wager basis by the respondent-department in March, 1993. Thereafter, on 20.07.1994 the services of the petitioner were terminated. Being aggrieved he approached the Labour Court-cum- Industrial Tribunal which vide award dated 12.08.1999 set aside the termination order and allowed reinstatement, with continuity and all consequential service benefits. In the year 2003, a policy was framed by the Haryana Government which was later modified vide letter dated 10.02.2004. As per the policy, those daily wager employees, who had completed three years service of Group 'D' post on 30.09.2003 and were in service on the said date were entitled to regularization. The said policy was amended and another condition was imposed that only those daily wagers were entitled to

regularization who were in service prior to 01.01.1996. Though the petitioner fulfilled all criteria, yet he was not regularized. During this interregnum, the petitioner filed various petitions to regularize his services. Ultimately in a contempt petition bearing COCP No.82 of 2006 a reply was filed by the respondent-department, wherein a specific stand was taken that the claim of the petitioner had been turned down vide order dated 28.07.2007 (Annexure P-4). The ground taken in the said order was that though the petitioner was eligible for regularization, but in view of the case of “Secretary, State of Karnataka vs. Uma Devi and others”, the petitioner is not entitled to regularization. In the meantime, the State has issued a policy decision dated 18.06.2014 and 20.06.2014 regarding left over cases/or the cases of those employees whose services could not be regularized due to the administrative reasons. The petitioner also filed another writ bearing CWP No.6927 of 2015 to challenge the order dated 28.07.2007 (Annexure P-4) and this Court set aside the said order and gave directions that the respondent-department should pursue the matter for sanctioning of post for the petitioner from the competent authority. However, by taking the same ground as has been taken in the order dated 28.07.2007, the respondent-department passed another order dated 21.12.2016 and has rejected the claim of the petitioner for regularization of his services and that order is being challenged in the present petition.

3. Learned counsel for the petitioner has argued that there were no service rules for the appointment of Class-IV employee, nor the recruitment agency was there and at that time the competent authority for this purpose was only the Executive Engineer. He has further argued that Uma Devi’s case (supra) is not applicable in the present case since it is held therein that settled case with regard to regularization was not to be touched/disturbed and the case

of the petitioner had already been decided and now only the sanction has to be received.

4. Learned counsel for the petitioner, while relying upon the judgment of the Supreme Court in *Hari Nandan Prasad and Another vs. Employer I/R to Management of FCI & Another*, passed in SLP (Civil) No.29635 of 2005, decided on 17.02.2014, has argued that where 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 Article 14 of the Constitution.

5. Learned Deputy Advocate General has not been able to counter these arguments. However, with regard to sanctioning of post by the competent authority, the learned Deputy Advocate General has relied upon the judgment of the Supreme Court in the matter of *The State of Gujarat and others vs. R.J. Pathan and others*, 2022 LiveLaw (SC) 313, wherein it is held that a direction to create supernumerary posts is wholly without jurisdiction.

6. Learned counsel for the petitioner has countered by arguing that the aforesaid decision shall not be applicable to the facts of the case in hand. He has submitted that in the aforesaid case the employees were appointed in a temporary unit which was created for a particular project. However, in the present case, the petitioner was appointed as daily wager and his claim of regularization of service is totally based on the policy dated 01.10.2003 issued by the Government.

7. Heard rival contentions.

8. From document (Annexure P-13), it is crystal clear that juniors to the petitioner have been regularized. One Mrs. Veermati, who is from the same circle, same district & same department had filed a petition bearing CWP No.16044 of 2005, which was allowed on 11.04.2016 (Annexure P-14) and this Court has observed that claim has to be seen under the policy dated 01.10.2003 and services of Veermati, who was appointed on 01.10.1998, has been regularized vide order dated 21.08.2017 (Annexure P-16). Even on the basis of Veermati's judgment, the writ petition bearing CWP No.6484 of 2015 was allowed on 27.04.2018 (Annexure P-17) and in compliance of the same the services of all of the petitioners therein, who are juniors to the present petitioner, have been regularized vide order dated 09.08.2018 (Annexure P-18).

9. When application to place on record the judgments (Annexures P-17 and P-18) was allowed vide order dated 02.07.2021, liberty was specifically given to respondents to file an affidavit giving reasons as to why similar benefit has not been accorded to the petitioner while his juniors as per Annexures P-17 & P-18 have been regularized. In response thereto, though an affidavit has been filed stating that the said employees are juniors to the petitioner but defense is taken that claim of the petitioner has not been considered due to pendency of the instant petition and no such order has been passed in favour of the petitioner as respondents are bound by the judgment rendered in Uma Devi's case (supra).

10. I am of the view that qua the denial of petitioner's claim of regularization, respondents' defence does not stand judicial scrutiny. Reasons are not far to seek. A bare perusal of the record of the case itself would show that wrongly the benefit has not been accorded to the petitioner. Further once the juniors of the petitioner have already been regularized, non-regularization

of the petitioner would amount to invidious discrimination and would be violative of Article 14 of the Constitution of India.

11. That apart, the case of the petitioner is totally covered by the law laid down by the Hon'ble Supreme Court in *Hari Nandan Prasad and Another vs. Employer I/r to Mangmt. of FCI and Another*, as the Hon'ble Supreme Court has clearly held that when similarly situated workmen are regularized by the employer itself under some scheme and the petitioners, who were at that time before Industrial/Labour Court are at par with them, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution of India.

12. Further, after considering both the aforesaid judgments i.e. Hari Nandan Prashad's case and Uma Devi's case (supra), it is clear that three judges bench of the Hon'ble Supreme Court has also considered the issue involved in the present writ petition and passed orders to regularize services of similarly situated employees. This Court in CWP No.18246 of 2012, titled as *Umrao Singh & another vs. State of Haryana and another*, decided on 23.02.2015, held that once the continuity was granted and right had accrued under policy dated 01.10.2003, much prior to the notification dated 13.04.2007, withdrawing the regularization policy dated 01.10.2003, the withdrawal of regularization policy has no effect because it cannot take away the vested right of the petitioner which related back to the year 2003.

13. In the premise, petition is allowed. A writ of certiorari is hereby issued setting aside that part of the impugned order Annexure P-8 whereby the claim of the petitioner has been rejected and it is modified to the extent of directing that the petitioner be regularized according to policy decision dated 01.10.2003 and 10.02.2004 (Annexures P-1 & P-2 respectively). The petitioner shall be entitled to all the consequential benefits as per merit inter se

as his other batch mates who have been regularized except for the monetary benefits for the period during which he did not actually work on the principle of ‘no work no pay’. Requisite orders be passed and communicated to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

14. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 29, 2022
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No