

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

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**LPA-837-2018 (O&M)
Decided on : 19.07.2022**

Haryana Vidyut Parsaran Nigam Ltd. & others ... Appellants

Versus

Darshan Singh & others ... Respondents

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

Present: Mr. R.S.Longia, Advocate, for the appellants.

Ms.Divya Sharma, Advocate, for respondents No.1 to 4.

Mr.Hitesh Pandit, Addl.A.G., Haryana, for respondent No.5.

G.S. Sandhawalia, J. (Oral)

Challenge in the present appeal, filed by the appellant-Nigam, is to the judgment passed by the learned Single Judge dated 26.02.2018 passed in CWP-21062-2012. The learned Single Judge while setting aside the communication dated 09.10.2012 (Annexure P-14) directed to consider the claim of the petitioners for regularization of their services in terms of the policy dated 29.07.2011 (Annexure P-6) with all consequential benefits and the arrears of pay were confined to a period of 3 years preceding the date of filing of the petition i.e. 17.10.2012.

The learned Single Judge had noticed that the writ petitioners who are four in number had been employed as Malis and Sweepers between May, 1993 to August, 1995 and had rendered over 20 years of continuous service and their claim had been declined on the ground that their names had not been sponsored by the Employment

Exchange at the time of appointment. Reliance was placed upon the judgment passed by the learned Single Judge in CWP-11368-2012 titled *Gian Chand & others Vs. Haryana Vidyut Parsaran Nigam Ltd. & others*, on 22.04.2014. It is not disputed that LPA-1126-2014 was dismissed on 17.07.2014 and thereafter, SLP(C) No.31306/2014 was also dismissed on 07.01.2015. Reliance was also placed upon another judgment passed in CWP-9825-2015 titled *Madan Lal & others Vs. Haryana Vidyut Parsaran Nigam Ltd. & others*, on 01.02.2018. It is pertinent to notice that we have already dismissed the appeal filed against Madan Lal's case i.e. LPA-1316-2018, on 12.07.2022 and upheld the orders of the learned Single Judge.

The present appeal is a patent case where the Nigam continues to waste the valuable time of this Court and deprive persons the benefits of regularization despite a policy having been put into force and inspite of the fact that exemplary costs have been imposed upon it time and again but it seems that it has not learnt its lesson. The writ petitioners were appointed as per the table given below:

Name	Post	Date of joining	Name of station
Darshan Singh	Part time Mali	04.08.1995	SSE, 66KV Sub. Station, HVPNL Chourmastpur, Ambala
Baldev	Part time Mali	14.02.1995	SSE, 66KV Sub. Station HVPNL, Nalvi, KKR
Naresh Kumar	Part time Mali	04.08.1995	SSE, 66KV Sub. Station HVPNL, Jansui, Ambala
Ramkaran	Part time Sweeper	08.05.1993	SSE, 66KV Sub. Station HVPNL, Nalvi, KKR

The policy dated 29.07.2011 (Annexure P-6) which was issued by the State provided that the employees and workers should have

continued to have worked for not less than 10 years as on 10.04.2006. Relevant clauses of the policy which had been duly adopted by the Nigam on 03.08.2011 (Annexure P-7) reads as under:

“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 of 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.”

Admittedly, juniors to the writ petitioners who were appointed on 01.09.1995, 01.07.1996 and 01.02.1996 have been given the benefit of regularization under the orders of this Court. Reliance can be placed upon the communication dated 05.03.2015 (Annexure P-16) which is in terms of the orders passed in CWP-11368-2012 (Gian Chand's case) and as noticed, upheld upto the Apex Court. It is apparent from the reading of the policy that it would be applicable to the part-time employees also. In spite of that the Nigam continues to take a stubborn stand that the policy is not applicable and at its own convenience when it wishes to. Initially, CWP-13529-1999 titled *Satyadev Vs. Haryana Vidyut Parsaran Nigam Ltd. & others*, decided on 08.12.2000 by the coordinate Bench wherein it was held that if a part-time employee is required to be regularized and made whole time worker if the volume of

work justifies that it should be a whole time job, the condition that he has to be recruited through Employment Exchange or he was fulfilling the age criteria was also held not to be applicable. Relevant portion of the judgment read as under:

“Petitioner has been working as part time water carrier cum mali (a class IV post) since 1.2.1981 with the respondents. When he was appointed on 1.2.1981 on the post of water carrier cum mali, the volume of work might not have been adequate enough as to justify a whole timer on the post of water carrier cum mali. In the course of time if the volume of work on the job of water carrier cum mali has increased to the extent that a whole timer is required, the petitioner cannot be called upon to compete with others for the post of water carrier cum mali. He has to be regularised keeping in view his work and conduct as part time water carrier cum mail. If the post of water carrier cum mali on whole time basis is thrown open for recruitment, everybody eligible will apply for that post and in competition the petitioner might not be able to made the required grade. A part timer is required to be regularised and made whole timer if the volume of work justifies that his should be a whole time job. It was held in CWP No. 10774 of 1999 decided on 4.2.2000 by a Division Bench of this Court that those of the petitioners who have rendered sufficient service with the respondents deserve to be regularised on their respective posts. At the time they claim to be regularised, it cannot be seen whether he was recruited through employment exchange or he was fulfilling the age criteria.

In this case, the petitioner has put in 18 years of service as part timer, his job has to be converted into a whole time job if the volume of work justifies. If the volume of work justifies, the job has to be upgraded to a whole time job and regularised. So, this writ petition is allowed and writ in the nature of mandamus is issued to the respondents to regularise

his services against the post of water carrier or mali and upgrade it to a whole time job provided his work and conduct has been satisfactory. Annexure P-6 is quashed in so far as it has affected the claim of the petitioner for being regularised on the post of water carrier or mali (whole time). Annexure P-7 is quashed. In case of the petitioner, nothing shall be seen while considering his claim to regularisation on the post of water carrier or mali (whole time) except his work and conduct on the post in the past. If his work and conduct on the post has been satisfactory in the past, he shall be regularised on the post of water carrier or mali (whole time) without any demur by the respondents irrespective of what their policy is regularisation of part timers.”

The said judgment has been upheld in SLP(C) No.1857/2018 on 29.01.2018. It is to be noticed that in Gian Chand's case (supra) the admission was in pursuance to the affidavit filed by the Superintending Engineer that there were only 4 persons working against each 15 regular sanctioned posts of Sweepers and Malis and the objection was taken that the petitioners are part-time workers. Relevant portion of the judgment, as reproduced in the order of the learned Single Judge reads as under:

“In response to aforesaid directions issued by this Court, as affidavit of Superintending Engineer, TS Circle, Haryana Vidyut Parsaran Nigam Ltd., Panchkula has been filed in Court today and the same is taken on record. In the affidavit, it has been mentioned that in all 15 regular sanctioned posts of sweepers and 15 posts of Malis are there and only four persons are working. It has also been mentioned that requirement of work is also there. The only objection raised in the affidavit is that the petitioners are part time workers and they do not fulfill condition No.(III) of policy dated 29.7.2011, which has duly been adopted by respondent-Nigam vide letter dated 8.6.2007 and, therefore,

they are not eligible for regularization.

Learned counsel for the respondents submits that the petitioners are not entitled and eligible for regularization as per policy of the State Government.”

Keeping in view the directions and the view laid down in Satyadev (supra), the writ petitions were eventually allowed by noticing that the writ petitioners were working since 1995-1997 and though they had not been employed through Employment Exchange. Resultantly, directions were issued to consider their case for regularization within a period of 3 months. As noticed, the judgment has been upheld till the Apex Court. We have also referred to the table reproduced above to show the discrimination as the writ petitioners were appointed between 1993-1995 and juniors have been granted the benefit of regularization vide communication dated 05.03.2015 (Annexure P-16).

It is also a matter of record that in CWP-17998-1999, Prem Singh & others Vs. Haryana Vidyut Prasaran Nigam Ltd. & others, decided on 22.08.2002, the judgment in Satyadev (supra) was also considered and it was held that the Nigam was under an obligation to frame a policy on regularization which in essence should provide for the object to be achieved. Directions were accordingly issued to formulate and frame policy and also to consider the case for regularization of services of the writ petitioners who had been appointed as part-time Sweepers and Malis since 1987-1997 and had been working without any break.

In such circumstances, we are of the considered opinion that

despite the fact that there were sanctioned posts available in both the categories of Malis and Sweepers, as noticed by the learned Single Judge in Gian Chand's case (supra) the denial on this technical issues that they were not employed against an advertisement or through an Employment Exchange, is unwarranted for. It is not disputed that all the writ petitioners continue to be in service even at this point of time and thus have almost spent 3 decades with the appellant-Nigam who still wishes to discriminate against them and not grant the benefit of regularization. It is to be noticed that in LPA-1570-2017 titled *H.V.P.N.L. and others Vs. Surinder Pal*, decided on 25.08.2017, costs of Rs.50,000/- were imposed. We do not feel why we should not take the same view regarding imposition of costs while dismissing the present appeal.

Resultantly, the present appeal is dismissed and it is directed that the 4 respondents herein shall be entitled for Rs.12,500/- each which shall be paid to them within a period of 2 months from today and the orders of the learned Single Judge dated 26.02.2018 shall be complied with within the said period.

(G.S. SANDHAWALIA)
JUDGE

July 19, 2022
sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No