

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

**226**

**LPA-1316-2018 (O&M)**

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

Versus

Madan Lal & others ... Respondents

**(2)**

**LPA-1337-2018 (O&M)**

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

Versus

Laxmi Devi ... Respondent

**Decided on : 12.07.2022**

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

Present: Mr. D.S.Nalwa, Advocate  
for the appellants in LPA-1316-2018.

Mr.Deepak Balyan, Advocate  
for the appellants in LPA-1337-2018.

Mr.Ashwani Talwar, Advocate, for respondents.

**G.S. Sandhawalia, J. (Oral)**

Challenge in the present two appeals, filed by the appellant-Nigam, which is aggrieved against the orders of regularization passed qua the four employees in question, is to the judgments passed by the Learned Single Judge passed in CWP-9825-2015 titled *Madan Lal & others Vs. Haryana Vidyut Parsaran Nigam Ltd. & others*, on 01.02.2018 and CWP-23642-2015 titled *Laxmi Devi Vs. Haryana Vidyut Parsaran Nigam Ltd. & others*, on 19.01.2018. The respondents herein were aggrieved against the common order dated 05.03.2015 passed by the authorities wherein their case for regularization was rejected primarily on

the ground that the said 4 persons did not make the necessary cut of the requisite period of 10 years of service as on 10.04.2006 which was provided in the policy dated 29.07.2011 which had been duly adopted by the Nigam on 03.08.2011.

Admittedly, the State policy in question was put in vogue in view of the judgment of the Apex Court in **Secretary, State of Karnataka & others Vs. Uma Devi & others, (2006) 4 SCC 1**, whereby the benefit of regularization was to be given as per para 53 to the employees who had worked for more than 10 years. Relevant para reads as under:

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in [State of Mysore vs. S.V. Narayanappa](#), (1967) 1 SCR 128, [R.N. Nanjundappa Vs. T. Thimmiah](#), (1972) 1 SCC 409, and [B.N. Nagarajan vs. State of Karnataka](#), (1979) 4 SCC 507, 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.”

The relevant clauses of the policy dated 29.07.2011 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 28<sup>th</sup> 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, the four employees in question have been working for the Nigam from 01.10.1996, 01.03.1997, 01.07.1996 and 01.10.1997 and are still in service of the Nigam. The Learned Single Judge noticed that one of them (Laxmi Devi) had also approached this Court earlier in CWP-11368-2012 titled *Gian Chand & others Vs. Haryana Vidyut Parsaran Nigam Ltd. & others*, in which the Bench had struck-down condition No.(iii) of the policy to the extent where the condition provided that the appointment should be through the

Employment Exchange. It is not disputed that LPA-1126-2014 was dismissed on 17.07.2014 and the SLP (C) No.31306 of 2014 was also dismissed on 07.01.2015, after which the rejection order was passed by the appellant.

While deciding the fate of the four employees in question, it was noticed that even after the rejection order dated 05.03.2015, the employees had worked for 12 years and the total length of service in the Nigam was 21 ½ years. In such circumstances, it was noticed that in similar circumstances, persons who were marginally short of 10 years, the regularization order was passed, especially keeping in view the fact that continuous service period of service of the employees was ranging from 18 to 27 years. It was also noticed that one Uday Singh who had joined in the year 2000 had been regularized in service. A perusal of the order dated 30.10.2017 would go on to show that he was the beneficiary of a regular appointment in view of case bearing CWP-2326-2011. It has been brought to our notice that he was initially appointed on 24.03.2000, and thus would not have 10 years service as on 10.04.2006. It was in such circumstances, Laxmi Devi's case was allowed with costs of Rs.20,000/- on account of the fact that she had been compelled to come to the Court time and again. Similar reasoning was also adopted while deciding CWP-9825-2015, Madan Lal (supra) along with the bunch, vide judgment dated 01.02.2018 and it was noticed that counterparts were securing regularization while working shoulder to shoulder on the same post of Mali and Sweepers and therefore, directions were issued to

regularize their services.

It is to be noticed that while deciding the writ petitions in Madan Lal's case, the learned Single Judge was also dealing with cases of Uttar Haryana Bijli Vitran Nigam Ltd.

Mr.Nalwa has tried to distinguish that the appointment of Uday Singh was not done with the appellant-Corporation but with another Corporation namely Dakshin Haryana Bijli Vitran Nigam Ltd. and therefore, the reasoning adopted by the Learned Single Judge is not justified as they were separate entities.

Mr.Talwar has brought to our notice that the erstwhile Haryana State Electricity Board was bifurcated on 14.08.1998 into transmission and power generation units which were termed as Haryana Vidyut Prasaran Nigam Ltd.(HVPNL) and Haryana Power Generation Corporation Ltd. (HPGCL). Thereafter, the distribution functions and business was further transferred on 01.07.1999 to Uttar Haryana Bijli Vitran Nigam Ltd. (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL) which are the distribution companies referred to as Discom-I and Discom-II. It is thus submitted that the private respondents were basically employees of the Board and for the purposes of administration and convenience, the functions and duties have been bifurcated. It is pointed out that the appointments were way-back in 1996-1997 in the erstwhile Board which had not been disbanded and therefore, the four employees who have been employed in 1996-1997 prior to disbandment cannot be treated in a different manner. Therefore,

the distinction which has been sought to be drawn that reference to Uday Singh is of no consequence, cannot be taken into consideration.

A perusal of the order of Uday Singh would on to show that appointment on 30.10.2017 was in pursuance of the directions of this Court in CWP-2326-2011 and the contempt pending out of it namely in Chhabi Lal's case. A perusal of the order in Chhabi Lal's case would go on to show that the petitioners were appointed between 1987-1997 and they were working since then and in such circumstances while placing reliance upon **Anand Walia & others Vs. Haryana Urban Development Authority & others, 2013 (3) SLR 611**, directions were issued to regularize the services which were upheld in LPA-1700-2015 titled *Haryana Vidyut Prasaran Nigam Ltd. & others Vs. Chhabi Lal* on 10.10.2017.

A perusal of the order passed in CWP-5596-2015 titled *Shishpal & others Vs. Haryana Vidyut Parsaran Nigam Ltd. & others*, decided on 08.05.2018 would go on to show that the learned Single Judge had recorded a finding that juniors had been regularized who had been appointed in 1995-1997 whereas petitioners in that case who were appointed on 1993-1997 had not been regularized and it amounts to discrimination. The said order was upheld in LPA-391-2019 on 11.11.2020 and further, SLP(C) No.17278/2021 was dismissed on 12.11.2021. Similarly, in CWP-11209-2015 titled *Surinder Pal Vs. H.V.P.N.L. and others*, decided on 19.05.2017, which was also referred to by the learned Single Judge, regularization had been ordered and again

the appeal bearing LPA-1570-2017 had been dismissed on 25.08.2017 by imposing costs of Rs.50,000/-.

Mr.Nalwa has tried to convince this Court that the judgment suffers from infirmity as it was not in terms of the policy and therefore, the same is liable to be set aside. He has also relied upon the judgment of the Apex Court in **Union of India & others Vs. Ilmo Devi & another 2021 (4) SCT 312**, to contend that the benefit of regularization cannot be granted to persons not appointed on sanctioned posts.

A perusal of the said judgment would go on to show that the issue before the Apex Court was regarding the regularization policy of the Government of India in pursuance of the orders of the Apex Court in Uma Devi's case as per OM dated 11.12.2006. The original applicants before the Tribunal were serving as part-time employees and were not granted the benefit of the same and the Tribunal had also rejected their claim of regularization. However, the Tribunal had directed that a one-time scheme be formulated. The matter had been brought to this Court by both, Union of India and the part-time employees wherein directions had been issued to formulate the policy and place it before the Court. Accordingly, a new policy had been formulated and directions were issued to re-consider the claim as per the new policy dated 30.06.2014. The authorities thereafter had rejected the claim vide order dated 11.09.2014 on the ground that there were no sanctioned posts and the employees had not completed 10 years of service as on 10.04.2006, the date of decision in Uma Devi's case. Resultantly, directions had been

issued to reformulate the policy and take a decision on the sanctioned posts in a phased manner. The said directions were not approved by holding that the High Court could not exercise powers to issue a mandamus to sanction and create the posts and to formulate a particular regularization policy. Resultantly, the said directions were set aside while upholding the directions issued that persons who had completed 20 years as part-time daily wagers were to be granted the minimum basic pay of Group-D posts w.e.f. 01.04.2015 or on completion of 20 years of service, whichever is later. In our considered opinion, the issue as conceded by Mr.Nalwa also is that the policy in question does also apply to part-time workers and therefore the judgment of Ilmo Devi (supra) shall not be applicable.

It is also to be noticed that in **Sheo Narain Nagar & others Vs. State of Uttar Pradesh & others, AIR 2018 SC 233**, a similar issue arose before the Apex Court regarding the regularization not granted by the High Court of Allahabad despite the fact that the Government employees had been working on daily wage basis since August, 1993. The Apex Court noticed that the employees who had rendered service for about 24 years and only on account of the fact that the appointments were irregular but not back-door entry or illegal appointments, the benefit of regularization had to be granted. The decision in Uma Devi (supra) was held to be not properly understood by various State Departments who rather resorted to contractual employment in an exploitive manner. It was noticed that the writ petitions had been dismissed on the ground that the

appointments were illegal and in contravention of the rules and further it was noticed that the said employees had completed 10 years of service and temporary status had been given to them. Resultantly, the orders terminating their services and the judgments of the learned Single Judge and the Division Bench of the Allahabad High Court were set aside by directing regularization. The said judgment would apply squarely in the facts and circumstances of the present case also.

It is in such circumstances, keeping in view the background which has been noticed by the Learned Single Judge and where there is apparent violation of Article 14 of the Constitution of India where persons who have only completed 6 years of service like in the case of Uday Singh, have been granted the benefit of regularization, the Nigam still has chosen to file the present appeals. The same are also barred by 45 days of delay in filing in the case of Madan Lal and 101 days of filing in the case of Laxmi Devi.

Accordingly, keeping in view the above background, we also do not deem it fit to interfere in the orders passed by the learned Single Judge as no sufficient case also has been made out to condone the delay in filing the appeals. The employees who have rendered over 25 years of service as on today and who were employed at the first instance by the erstwhile Board/Nigam itself on their asking, without complying with the terms of the employment by offering employment to others, cannot be short-changed by the Nigam on technicalities. It is also to be noticed that the learned Single Judge was exercising jurisdiction under Article 226 of

the Constitution of India which is a discretionary one and thus, the principles of equity would come into force overriding the strict rule of the policy on the technicalities as argued by Mr.Nalwa. One cannot lose sight of the fact that the private respondents are Class-IV employees who are now at the fag end of their life and also not likely to be employed elsewhere and have served the Board/Nigams to the best of their ability in their youth. Therefore, the benefit which the Learned Single Judge has granted them is not the one which is liable to be set aside, in the peculiar facts and circumstances.

Resultantly, in view of the above discussion, the present appeals are hereby dismissed.

**(G.S. SANDHAWALIA)**  
**JUDGE**

**July 12, 2022**  
*sailesh*

**(VIKAS SURI)**  
**JUDGE**

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