

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

CWP-8445-1995 (O&M)

Date of decision: 10.08.2023

Desh Pal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. K.S. Dadwal, Advocate for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)
CM-7039-CWP-2019

Allowed as prayed for subject to all just exceptions.

Main Case

1. The petitioner was appointed as a Sweeper in June 1992 on daily wages on Deputy Commissioner rates. He continued to perform his duties regularly on daily wage basis. A policy decision was taken by the Punjab Government, vide order dated 18.01.1995 to regularize the services of employees who have completed 240 days of service as on 31.12.1994 but in spite of representations made, he was not regularized nor was he placed in the regular pay scale.

2. The petitioner, therefore, has preferred this writ petition and relies on the law as laid down by the Supreme Court in the **State of Haryana vs. Piara Singh**, 1992 (4) SCC 118.

3. The facts of the petitioner being appointed on Rs.30/- per day and thereafter increased to Rs.43/- per day have not been denied by the respondents. However, the applicability of the circular issued by the State Government regarding regularization, vide notification dated 18.01.1995 has been disputed by the respondents stating that the same is not applicable on daily wage employees but would apply to *ad hoc* employees against regular vacancies. The respondents stated that the case of the petitioner is distinguishable from the case of *ad hoc* employees who were appointed against regular vacancies. The respondents have placed on record the order by which the petitioner was initially engaged wherein it is stated that there is no sweeper for the newly hired office building at Sector-44 B, Chandigarh and it was proposed to hire sweeper on DC rates. The orders issued by the Government of Punjab, Department of Local Government have also been placed on record by the petitioner subsequently whereby one clerk and driver, have been permanently absorbed as employees in the Municipal Council. Similar other orders of absorption have also been placed on record. The proceedings of the meeting as published by the Director, Department of Local Government, Punjab dated 14.11.2011 reflect that a decision has been taken to regularize those other daily wagers, work charge etc., employees who are working and completed 10 years of service as on December, 2006.

4. The petitioner having been working regularly as daily wager continuously from 1992 would be, therefore, entitled to claim regularization on completion of 10 years of service as a sweeper on daily wages.

5. In “Secretary, State of Karnataka and Others Vs. Umadevi

(3) and Others”, 2006 (4) SCC 1, the Supreme Court held as under:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappal, R.N. Nanjundappa and B.N. Nagarajant and referred to in para 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 the courts or of tribunals. The question of regularisation 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 aboveresferred 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 regularise 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 the 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

6. Thus, this Court finds that the petitioner would be entitled to be considered for regularization in terms of the judgment passed by the Apex Court also. Accordingly, this Court allows the writ petition and directs the respondents to regularize the services of the petitioner in terms of the decision taken by the State Government to regularize employees

who have completed 10 years of service and also in terms of the judgment passed in Uma Devi's case (supra). The necessary order shall be passed within a period of two months henceforth and all consequential benefits of regularization and placing the petitioner in regular pay scale shall be ordered considering the nature of work being performed by the petitioner being at the lowest echelon of the society. This Court deems it appropriate to direct the respondents to release the actual payments to the petitioner from the date of regularization i.e. on completion of 10 years of service i.e. from 2002. After placing him in the pay scale, he shall be paid arrears after deducting the amount already paid to him on daily wage basis.

7. If during the pendency of this writ petition, the petitioner has attained superannuation, he would be deemed to have retired against a regular post and would be entitled for retiral benefits and pension too. The said exercise shall also be conducted within a period of two months thereafter.

8. No costs.

9. Pending CM(s), if any, stand(s) disposed of accordingly.

10.08.2023

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(SANJEEV PRAKASH SHARMA)
JUDGE

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