

**C.W.P. No.1038 of 2003(O&M)  
and other connected cases**

**-1-**

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

**C.W.P. No.1038 of 2003(O&M)  
and other connected cases  
Reserved On 20.02.2023  
Date of decision:13.04.2023**

**Surinder Singh and others**

**....Petitioners**

**Versus**

**State of Punjab and others**

**....Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present: Mr. K.L.Arora, Advocate,  
for the petitioners.**

**Mr. Vikas Arora, AAG, Punjab**

**ANIL KSHETARPAL, J.**

1. A batch of 7 connected writ petitions, details whereof are at the foot of the judgment, shall stand disposed of by a common judgment as agreed between the learned counsels representing the parties.

2. On 20.02.2023, Sh. Sandeep Singh, SDE, Division, Faridkot and Sh. Sahil, SDE, Division, Gurdaspur, have submitted that the services of the petitioners in Civil Writ Petition Nos.7560, 2610 of 2010 and 1038 of 2003 have already been regularized.

3. The petitioners are working as Pump Operators, Mali-cum-Chowkidars, Fitter-Helper and Patrolmen in the department of PWD, Public Health, Punjab. They pray for direction to the respondents to consider the

**C.W.P. No.1038 of 2003(O&M)  
and other connected cases**

**-2-**

cases of the petitioners for regularization of their services in terms of the policy instructions dated 23.01.2001. They claim that these petitioners have completed 10 to 14 years in service and hence they are entitled to be considered for regularization in terms of the policy decision on the completion of 3 years of service.

4. A copy of the policy-instructions issued by the Government on 23.01.2001 has been annexed as Annexure P-1 in Civil Writ Petition No.1038 of 2003. The relevant provisions of the policy-instructions are extracted as under:-

- (i) No new posts are ordinarily to be created to absorb and regularise existing work charged/daily wage and other categories of workers. Wherever the full circumstances of the particular situation warrant that new posts may be created, the case should be thoroughly examined, Finance Department should be consulted and approval of the CM should be obtained.*
- (ii) Each Department may prepare a list of work-charged, daily wage and other categories of workers who have completed 3 years service and these lists may be up-dated from time to time. The lists should be prepared strictly as per seniority.*
- (iii) Out of the lists prepared thus, workers should be absorbed/regularised only against regular posts existing in each Department. In the first instance work charged workers should be regularised in the order of seniority. Only when all eligible persons of this category have been*

**C.W.P. No.1038 of 2003(O&M)  
and other connected cases**

**-3-**

*accommodated, cases of daily wage and other categories of workers who have completed 3 years of service in the department may be taken up. The basic idea is that workers belonging to a particular department should be considered for regularisation only against available regular vacancies in that department. The claim of work charged/daily wage/other categories of workers for regularisation will extend only against available vacancies in the department to which these workers belong.*

*(iv) For accommodating work charged/daily wage/other category workers as per the above policy against the existing vacancies the existing instructions requiring permission of the DOP and FD for filling up the vacancies would not apply. Wherever for the absorption/regularisation of workers as per the above policy any Department's own Recruitment Rules come in the WAY such provisions, of the Recruitment Rules will stand relaxed.*

*2. Attention is also invited to Government letter No.4/64/98-4PP3/5871 dated 4.5.1999 vide which a complete ban on recruitment of daily wage/work charged workers was imposed. Wherever any person was employed in violation of these instructions the department may take suitable action against the defaulting officer. It shall be the responsibility of the Head of each department to ensure that no worker employed in violation of the above instruction is allowed to continue.*

**C.W.P. No.1038 of 2003(O&M)  
and other connected cases**

**-4-**

*3. Services of such workers whose services are no longer required, should be terminated by following due process of law project employees and those employees who were engaged for specific works should also be relieved at the earlier possible on the completion of the project/work. The employees, who come within the definition of "workmen" under the provisions of Industrial Disputes Act, 1947 shall be dealt with according to the provisions of the Act. They should first be offered appointment in the other project/work in the Department on the same conditions. If this is agreed their services should be dispensed with after carefully following the procedure laid down in the Act after granting the retrenchment benefit if admissible."*

5. While contesting the writ petitions, the respondents have stated that the cases of the petitioners have been considered for regularization in terms of the Clause-(i) to (iii) and the efforts are being made to regularize their services as and when a regular vacancy against which the petitioner's case can be considered arises. It has been submitted that the claims of the employees who were engaged prior to the petitioners shall be given priority and the aforesaid process will continue like that.

6. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

7. The learned counsels while referring to the policy-instructions issued in the year 2001 submit that the employees are entitled to be regularized on completion of 3 years service and there is nothing available on record to justify the delay made. He submits that once the Government has issued instructions then the same are required to be implemented

without any further delay. In support of his submissions, he relies upon **Gujarat Agricultural University vs. Rathod Labhu Bechar, AIR 2001SC 706, Bhagwati Prasad vs. Delhi State Mineral Development Corporation, (1990) 1 SCC 361, U.P.State Electricity Board vs. PooanChandra Pandey and others (2007) 11 SCC 92 and Buckingham and Carnatic Co. Ltd. vs. Venkatiah and another AIR 1964 SC 1272.**

8. On the other hand, the learned State counsel while contesting the writ petition contends that the policy-instructions adopted by the State are required to be implemented subject to the conditions laid down therein. He submits that the State is making sincere efforts to implement the same in accordance with its terms and conditions.

9. This court has considered the submissions while analyzing the arguments of the learned counsels representing the parties. It may be noted here that in **Secretary, State of Karnataka and others vs. Uma Devi (III) and others, (2006) 4 SCC 1,** a five Judge Bench of the Supreme Court held that it is not appropriate for the Courts to issue directions to the authorities to regularize the services of daily wage workers, adhoc or work charge employees who have been appointed as the back door entrants.

10. As per the Constitutional scheme employment on the civil post is required to be carried out after granting opportunity to all eligible candidates to participate and compete. The procedure of appointment to a civil post is required to be fair, proper and transparent. The regularization of services of the back door entrants results in depriving such opportunity to the eligible candidates to participate and get selected. Hence, such policy

adopted by the State is in the nature of concession and therefore, not at all absolute but conditional. The policy does not create an indefeasible right in favour of the daily wager (back door entrant). There cannot be a vested right or legal right claimed that can be claimed in matters of concession. Hence, such instructions are required to be implemented while keeping in mind the aforesaid concept which is also the basis of the aforesaid judgment passed by the five Judge Bench.

11. After a careful reading of the judgment passed by the five Judge Bench, it is evident that the previous judgments that directed the regularization and formed an opinion contrary to the view of the five Judge Bench are now deemed to have lost their precedent value. Hence, it would not be appropriate to discuss in detail the judgments relied upon by the learned counsel representing the petitioners prior to 10.04.2006.

12. This court has carefully read the judgment passed in **Puran Chand Pandey's case (supra)**. In the aforesaid order, the Supreme Court after noticing that the services of the daily wagers employed by the Society, which was taken over by the Electricity Board, has been directed to be considered for regularization for the benefit of the order dated 28.11.1996. The Electricity Board had taken a decision on 28.11.1996 to regularize the services of its employees working on a daily wage basis before 04.05.1990 on the existing post. The Supreme Court while dismissing the appeal upheld the decision of the Division Bench. Hence, the aforesaid order is not applicable to the facts of the present case.

C.W.P. No.1038 of 2003(O&M)  
and other connected cases

-7-

13. It may be noted here that it is not the stand of the Government that the policy-instructions issued on 23.01.2001 are not being implemented by them. It is not the case of the petitioners that the policy-instructions dated 23.01.2001 have either been infringed or the petitioners' cases are not being considered in accordance therewith. In such situation, particularly in view of the judgment passed by the five Judge Bench in Uma Devi's case (supra), this court does not find it appropriate to issue any directions for their regularization.

14. The writ petitions are hereby dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

April, 2023

(ANIL KSHETARPAL)  
JUDGE

nt

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No