

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

CWP-15090-2019 (O&M)
Date of Decision: 20.10.2023

RAJU

...Petitioner

Versus

M/S Y.M.C.A. UNIVERSITY OF SCIENCE AND
TECHNOLOGY, FARIDABAD AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. Dhruv Singh, Advocate
for respondent No.1.

HARSH BUNGER, J.

1. Petitioner (Raju) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 23.01.2019 (Annexure P-10) passed by learned District Judge, Faridabad (exercising the Powers of Educational Tribunal). A further prayer has been made for quashing of order dated 23.02.2011 (Annexure P-12) passed by respondent No.1-University, vide which, the claim of the petitioner for regularization of his services had been declined.

Another prayer has been made by the petitioner for issuance of direction to respondent No.1-University to regularize his services from the date the similarly situated employees were regularized and also to release him (petitioner) all consequential benefits.

2. Briefly, the petitioner claims that he had been regularly working as a *Helper* in the mess of respondent No.1-University since 1987, without

any break. It is stated that vide notification dated 09.08.2018 (Annexure P-2), the YMCA, Faridabad was renamed as J.C. Bose University of Science and Technology, Faridabad. As per the petitioner, the non-teaching Karamchari Sangh, vide its demand notice dated 20.11.2007 raised several demands, including absorption of mess workers in the regular cadre of Class-IV posts. It is the case of the petitioner that the Management accepted various demands of the Association made vide aforesaid demand notice; however, with regard to the demand of absorption of mess workers in regular pay scale, the Management took a stand that mess workers were not the employees of the Institute and accordingly, it was emphasized that the mess contractor should pay minimum wages to the mess workers, as per the Minimum Wages Act.

3. As per the petitioner, since the demand regarding his regularization and other mess workers was not accepted; accordingly, they raised an industrial dispute; whereupon, a reference was made by the Government of Haryana, on 21.06.2011; whereby, the dispute was referred for adjudication to the Industrial Tribunal-cum-Labour Court-III, Faridabad, which culminated into the passing of an Award dated 02.06.2016 (Annexure P-7); whereby, it was held that the reference was not maintainable. However, the liberty was granted to the claimant to approach the appropriate Forum of District and Sessions Judge, Faridabad.

4. It appears that thereafter, the petitioner approached the Court of learned District Judge, Faridabad, seeking regularization of his services as a Helper/Attendant with retrospective effect along with all consequential benefits etc. The said claim of the petitioner before the District Judge, Faridabad was contested by respondent No.1-University.

5. The learned District Judge, Faridabad, vide its judgment dated 23.01.2019 (Annexure P-10) had dismissed the claim of the petitioner, by holding as under :-

“5. I have considered submissions of both the sides and have appraised the record carefully.

6. Annexure P6 is the copy of proceedings which took place before Industrial Tribunal-cum-Labour Court, Faridabad regarding the same matter. It consists of copy of award dated 02.06.2016, whereby reference was held to be not maintainable and the claimants (Non-teaching Karamchari Sang Union) was given liberty to approach appropriate forum of the District & Sessions Judge, Faridabad. Annexure P6 also includes copy of a demand notice dated 20.11.2007, which was served by the Non-teaching Karamchari Sangh (NTKS) to the Director, YMCA Institute of Engineering i.e. predecessor of the respondent University. These demands included demand No.9, which is as under :-

“Mess Workers may be absorbed in regular cadre of Class IV posts.”

7. Claim statement filed before the Industrial Tribunal-cum-Labour Court was also to the same effect as per Annexure P2. Annexure R1 is the minutes of meeting held on 29.04.2008 revealing therein that it was attended by the Union representatives and that of the Management people, so as to consider the demand notice dated 20.11.2007. Demand No.9, as referred above, was considered and it was decided that as the mess workers were not the employees of the Institute, so as per the past practice, the mess contractor may be emphasized that the said mess workers be given minimum wages and other allowances as per Minimum Wages Act.

8. Appellant has failed to place on record any cogent evidence to show that he was employed by the respondent University or its predecessor Institute at any

point of time. Rather, the evidence reveals that he had been working as a mess worker.

9. *Annexure R2 is the copy of order dated 08.12.2010 passed by Hon'ble High Court of Punjab and Haryana in Civil Writ Petition No.21865 of 2010 titled 'Sanjay Kumar and others Vs. Y.M.C.A. University of Science & Technology'. Appellant of this case, namely Raju was Writ Petitioner No.2 before the Hon'ble High Court. Apart from other reliefs, it was also prayed that the respondent University be directed to regularize the services of the petitioners. Same grounds were taken for regularization, as have been pleaded in the present appeal. Hon'ble High Court referred to the Constitutional Bench of Hon'ble Supreme Court rendered in **State of Karnataka and others Vs. Umadevi and others (2006) 4 SCC 01** and disposed of the petition by directing the respondent University to consider the claim of the petitioner for regularization, in accordance with the dictum of the judgment of Hon'ble Supreme Court within a period of three months.*

Annexure R3 is the copy of letter dated 23.02.2011 of the respondent University, which reveals that in the light of the order dated 08.12.2010 of Hon'ble High Court, as referred above, the matter was considered. It was found that the petitioners had misrepresented before the Hon'ble High Court that they were working against sanctioned post in the messes of the University. After noticing that the petitioners, including the appellant, being never the employees of the erstwhile Institute or the YMCA University, so they had no right for regularization of their service.

10. *It is very important to notice that despite this order dated 23.02.2011 passed by the respondent University, the appellant never challenged the same. In this appeal filed in the year 2016, the appellant did not*

even make a whisper of the Civil Writ Petition filed by him alongwith others before Hon'ble High Court, the order dated 08.12.2010 passed by Hon'ble High Court in that Writ Petition and the consequent order dated 23.02.2011 passed by the respondent University. It is, thus, quite evident that the appellant is guilty of concealment of a very material fact from this Court and on this ground itself, the appeal deserves to be dismissed.

11. *The affidavit of Shri Raj Kumar, Professor of the University alongwith the documents annexed therewith, as have been discussed above, leave no doubt in the mind of this Court that the appellant was never the worker/employee of the respondent University or its predecessor Institute. He was simply working in the mess, which was initially being run by the students on cooperative basis and later on from the year 2003 the mess was given to the contractor, who had employed the appellant and the similarly placed workers with him and who was paying the PF. Regularizing the services of the appellant by the University will be clear violation of the dictum of Hon'ble Supreme Court in the **Uma Devi's case (supra)**.*

12. *On account of the aforesaid discussion, it is held that there is no merit in the present appeal. As such, same is hereby dismissed. Parties are left to bear their own costs. File be consigned to records."*

6. A perusal of the afore-said order/judgment dated 23.01.2019 (Annexure P-10) would manifest that as regards the claim of the petitioner for regularization of his services; the petitioner herein along with other workers had filed a Writ Petition (**CWP-21865-2010** titled as **Sanjay Kumar and others vs YMCA University of Science and Technology**), which came to be disposed of by this Court by directing respondent No.1-University to consider the claim of the petitioner and others for regularization in

accordance with the judgment rendered by Hon'ble Supreme Court in the case of *Secretary, State of Karnataka and others vs Umadevi and others (2006)4 SCC 01*. It is further evident that in pursuance of order dated 08.12.2010 (Annexure P-11) passed by this Court in **CWP-21865-2010**, the respondent No.1-University considered the matter and endorsed to the petitioner vide Endst No.Estb/349-54 dated 23.02.2011 (Annexure P-12) that the petitioner and others had infact misrepresented before this Court that they were working against sanctioned post in the mess of the University. It was also noticed that the petitioner was never an employee of the erstwhile Institute or the YMCA University and thus, he had no right to seek regularization of his services. Accordingly, the claim of the petitioner to seek regularization of his services was rejected by the University by holding that the petitioner had never challenged the said order dated 23.02.2011 and the factum of filing of the afore-said writ petition as well as the decision taken by respondent No.1-University in pursuance of order dated 08.12.2010 (Annexure P-11) passed in **CWP-21865-2010**, had been concealed before the District Judge, Faridabad.

7. It is evident that after the District Judge, Faridabad had rejected the claim of the petitioner by observing that the decision dated 23.02.2011 of respondent No.1-University, rejecting the claim of the petitioner for regularization, had not been challenged; the petitioner has filed the instant writ petition laying challenge to the order dated 23.01.2019 (Annexure P-10) passed by the District Judge, Faridabad as well as challenging the decision dated 23.02.2011 (Annexure P-12) of respondent No.1-University; whereby the claim of the petitioner for regularization of his services had been rejected by the respondent-University.

8. As regards the challenge to the decision dated 23.02.2011 (Annexure P-12) is concerned, learned counsel for respondent No.1 has raised an objection that the same is barred by delay and laches and rightly so in view of the judgment passed by the Division Bench of this Court in the case of ***Er. Darshan Singh Bhullar Vs. Punjab State Electricity Board***” reported as ***2011(3) S.L.R. 287***; wherein, it has been held that the limitation as applicable in a Civil Suit would be applicable to the writ petition also.

9. In the case of ***“Er. Darshan Singh Bhullar (supra)***, it was held as under:-

“ - x - - x - -x-

2. ...The appellant has worked as Trainee Engineer in the shipping Corporation of India from 1982 to 1985 and then applied for direct appointment on the post of Trainee Engineer in the Punjab State Electricity Board- respondent. He was selected and appointed by the Board as Trainee Engineer. In that regard appointment letter dated 27.2.1986 (P.4) would be relevant. From the post of Trainee Engineer he was promoted as Assistant Engineer and then further to the post of Executive Engineer. The claim of the appellant that period of service from 1982 to 1985 spent as Trainee Engineer in the Shipping Corporation of India should be counted for the purposes of qualifying service for promotion has not been accepted on the ground that such claim was not made at the time of appointment in 1985-86. Even when the appellant was promoted as Assistant Engineer or Executive Engineer no such claim was made. Merely because one Gian Singh was given the benefit of service rendered by him in the PWD (B&R), Haryana in pursuance of Regulation 9(4) of Punjab State Electricity Board Service of Engineers (Civil) Regulations, 1965 would not ipso facto mean that the appellant would also be entitled to similar benefits. If any such benefit was available to the appellant then the cause of action had arisen in 1986

*or at any time subsequently when he was promoted as Assistant Engineer. The appellant should have approached the Court within a reasonable time not exceeding three years from the date cause of action had arisen. In writ proceedings, the period of limitation of three years has been read by a judgement of the Constitution Bench of Hon'ble the Supreme Court rendered in the case of **State of Madhya Pradesh v. Bhai Lal Bhai AIR 1964 Supreme Court 1006**. The basic reason is that in writ proceedings the period of limitation cannot be more than the period prescribed for filing a civil suit. Accordingly, we are of the view that the appeal does not merit admission and is thus liable to be dismissed.”*

10. As regards the challenge to the order dated 23.01.2019 (Annexure P-10) passed by the District Judge, Faridabad is concerned; learned counsel for the petitioner submits that the claim of the petitioner has been rejected primarily on the ground that he had concealed the factum of filing the writ petition and the consequent decision dated 23.02.2011 of respondent No.1-University. It is contended that the required documents were handed over to their counsel, who had not put forth the same before the concerned Court; accordingly, the petitioner should not be made to suffer on account of mistake of his counsel.

However, I am not convinced with the said argument, moreso, when nothing has been brought on record as to what action has been taken by the petitioner against the counsel to *prima facie* indicate that the said facts were not brought before the Educational Tribunal below, owing to the mistake on the part of the counsel. In fact, in the writ petition, the petitioner has clearly admitted that the said facts were not incorporated either before the Labour Court or before the Educational Tribunal i.e. District Judge, Faridabad.

11. It is sought to be contended before this Court that the District Judge, Faridabad has wrongly concluded that there was no evidence on record to show that the petitioner was employed by respondent No.1-University. It is submitted that the petitioner has specifically stated before the District Judge below that the petitioner had joined the respondent No.1-University in October, 1987 and was also allotted EPF Code and the said fact was not denied by the Management. It is submitted that the petitioner along with other workers were retained by the contractor and they were also given the benefits of ESI and PF.

12. With regard to the aforesaid contention of the petitioner, respondent No.1-University has clarified in its written statement that the petitioner was never employed by the respondent-University or its predecessor Institute at any stage. It is the stand of the University that the petitioner was working as a worker in the University Boys Hostel mess and he was employed by the Hostel Mess Committee and the mess was being run on cooperative basis by the students since its inception. It is also the stand of the respondent-University that the mess workers, including the petitioner, were being paid out of the money collected from students to run the hostel mess and no post of mess worker was ever created either in the Institute or the University. It is also stated that since some of the workers including the petitioner were already working in the mess, they were retained by the contractor as well in his employment and the petitioner continued to work as mess worker employed by the contractor and there is no employer-employee relationship between the University and the petitioner. It has also been clarified by the University that the workers including the petitioner have been extended the benefit of Employee State Insurance (ESI) and Provident

Fund (PF) and after 2003, when the mess started running on contract then to secure the interest of mess workers and prevent any kind of exploitation at the hands of the mess contractor, their existing wages and provident fund contributions were paid by the University and later deducted from the Contractor's monthly mess bill. It is stated that the arrangement continues ever since and a separate register has been maintained for the purpose and these terms were incorporated in the mess contract too. A copy of one such contract for the Session 2003-04 dated 19.09.2003 has been placed on record as Annexure R-1 and the relevant extract thereof reads as under :-

“4. Further 7-8 Mess Workers have already been working in the Mess, employed by Hostel/Mess Committee and are being paid from the monthly mess bill deposited by hosteller students. They are being paid under the Payment of Minimum Wages Act as revised from time to time. PF contribution towards employee's share and employer's @ 12% as per provision of EPF Act 1952 are also being deposited to the office of Regional Provident Fund Commissioner for their PF Account. The existing wages with PF facility of these Mess Workers would be deducted from your monthly mess bill for disbursing the same to them. Existing wages have already been enquired by you from the office at the time of collecting the tender forms.”

In view of the afore-said stand of the University and also the specific term in the contract executed between the University and the Contractor, I am of the considered view that merely by depositing provident fund qua the petitioner, no relationship of employee and employer is created between the petitioner and respondent No.1-University.

13. A perusal of the definition of “Employee” as provided under Section 2(f) along with Section 6 of the Employees Provident Fund and

Miscellaneous Provisions Act, 1952 read with paragraph No.30 of the Employees' Provident Funds Scheme, 1952 would clearly indicate that the responsibility and statutory obligation on the principal employer to remit the PF contributions even in respect of contractor's employees, would not create a relationship of employer and employee between the Management and the Workman. In this regard, reference can also be made to the judgment rendered by the Delhi High Court in the case of *Ranbir Singh Vs. M/s Sh. Ganga Ram Hospital* 2015(23) S.C.T. 904.

14. The petitioner has not referred to any other material to indicate that he was ever employed by respondent No.1-University. Thus, once the petitioner has failed to prove the relationship of employer and employee between the University and the petitioner, no relief can be granted.

15. Considering the totality of circumstances, I do not find any merit in the writ petition and the same is accordingly dismissed.

16. No other point has been urged.

17. All pending application/s, if any, shall also stand closed.

October 20th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No