

208

2023: PHHC:154267

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Date of decision : 04.12.2023

- (1)

CWP-15503-2013 (O&M)

Naresh Kumar and others

Petitioners
- Vs.
- State of Punjab and others

Respondents
- (2)

CWP-24874-2014 (O&M)

Shanti Devi

Petitioner
- Vs.
- State of Punjab and others

Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Rohit Kataria, Advocate for
Mr. Manu K.Bhandari, Advocate
for the petitioners.

Mr. Arun Gupta, AAG, Punjab.

Mr. Mukul Aggarwal, Advocate
for the respondent No.3.

DEEPAK MANCHANDA, J.(Oral)

1. This judgment shall decide the aforementioned two writ petitions as the issue involved in both the petitions is common and similar facts have been stated in the petitions. To decide the controversy the facts of CWP-15503-2013 have been extracted for adjudication of both the writ petitions.
2. These are two writ petition i.e.i) CWP No.15503 of 2013 filed by Naresh Kumar and others and ii) CWP No.24874 of 2014 filed by Shanti Devi widow of Bishamber.
3. By way of the present petition(s) petitioners have challenged the

aforesaid order dated 12.03.2013 (Annexure P-10) for quashing of the same and further a writ in the nature of mandamus has been sought directing the respondents to regularize the services of the petitioner(s) w.e.f. the date(s) persons junior to the petitioner(s) were regularized in terms of Policy dated 23.01.2001(Annexure P-1) or in the alternative to consider the claim of the petitioners under Policy Instructions dated 17.11.2011(Annexure P-7) read with instructions dated 18.03.2011(Annexure P-5).

4. Brief background as emerged out is that the petitioners of the first writ petition and the husband of the petitioner in the second writ petition, who were appointed on daily wage basis on class IV posts with the respondent No.3 had filed a CWP No. 21732 of 2012 with the prayer for a direction to the respondents for regularizing their services as they were working with the respondents for the last more than 18 years. The said writ petition was disposed of vide order dated 02.11.2012 directing the respondent No.3 to decide the claim made by the petitioners in the demand notice dated 08.08.2012 therein by passing a speaking order within a period of four months from the date of receipt of certified copy of the order. In pursuance of the order dated 02.11.2012 passed by this Court, respondent No.3 passed the order dated 12.03.2013, rejecting the claim of the petitioners for regularization of their services.

5. During the pendency of the writ petition (CWP No. 15503 of 2013) vide order dated 19.09.2017, learned counsel representing respondent No.3 prayed for a week's time to complete instructions and to examine the feasibility of withdrawing the impugned order and passing of order afresh in accordance with law. Thereafter vide order dated 27.09.2017 the respondent-

Corporation was directed to reconsider the claim of the petitioners for regularization in the light of the relevant State Government policies issued on the subject and which have been adopted/followed by the Corporation and to pass final order in such regard containing detailed reasoning within two months.

6. In compliance of the order dated 27.09.2017, office order No. 89 dated 24.11.2017 has been passed by the respondent No.3, denying the claim of the petitioners for regularization stating that the claim cannot be accepted either under the regularization policy of 2001 or 2011.

7. After the passing of the office order dated 24.11.2017, the petitioners filed an application bearing CM No.3651-CWP-2018 in CWP No. 15503 of 2013 seeking amendment of the writ petition in the light of subsequent developments and to assail the order dated 24.11.2017. The said application was allowed vide order dated 17.01.2020, however, no such application for amendment has been filed in the second writ petition i.e. CWP No. 24874 of 2014.

8. It is worthwhile to mention here that as submitted in the amended writ petition in para No.2 that during the pendency of the writ petition, petitioner No.2, namely, Hari Nath expired on 27.04.2014 and petitioner No.5, namely, Raja Ram expired on 12.10.2017. Although an application bearing CM No.3650-CWP-2018 for bringing on record legal representative of petitioner No.2 Hari Nath was filed and the same was allowed, however, neither such application qua petitioner No.5 was filed nor his name depicted in the Amended Memo of Parties and as such there are only four petitioners in Amended CWP No.15503 of 2013.

9. In the amended writ petition quashing of order dated 24.11.2017 (filed as Annexure P-13) has been sought vide which claim of the petitioners of the first writ petition as well as the claim of the husband of the petitioner of the second writ petition namely, Bishambar was again rejected.

10. The petitioners have filed aforementioned writ petitions under Articles 226 & 227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of order dated 24.11.2017 (Annexure P-13), whereby claim of the petitioners for regularization of their services has been rejected. Further the prayer has been made for issuance of directions to respondents to regularize the services of the petitioners w.e.f. the date persons junior to the petitioners were regularized and further consider the claim under policy instructions dated 17.11.2011 (Annexure P-7) read with instructions dated 18.03.2011 (Annexure P-5) issued by respondent.

11. Brief facts emanated from the present case are that the petitioner Nos.1 to 4 were appointed on daily wage basis on Class-IV posts in the year 1988 as Driver, 1984 as Helper-Saw Mistri, 1984 as Helper-Saw Mistri and 1988 as Helper. It has been averred that on 23.01.2001, the State of Punjab issued a policy for regularization of the services of daily wage workers who had put in three years of service on class-IV posts. The project officer at Patiala under whom the petitioners were working sent information regarding daily wage workers, whose services were required to be continued. In pursuance to the policy mentioned above, one Smt. Pushpa Devi, who was appointed in the year 1993 was ordered to be regularized vide order dated 26.12.2001. Similarly services of one Jagmohan were also regularized in the year 2002, who too was junior to the petitioners. It has been alleged that the respondent-Department did

not make any seniority list before finalizing the cases for regularization of services of the daily wage employees. The policies dated 15.12.2006 and 18.03.2011 were framed by the respondent-Department for regularizing the services of those daily wage Class-IV workers who have rendered requisite service as contained in the policy. Hence this writ petition.

12. Learned counsel for the petitioners contends that respondent No.2 was very well aware about the factual position in as much as that instructions/policy of regularization dated 18.03.2011 would apply to the employees of the Boards and Corporations and the same has been ignored while rejecting the claim of the petitioners. He further contends that it was incumbent upon the respondent No.3 to have taken up the matter with the State Government for approval/sanction of the posts and non-receipt of communication cannot be a ground for rejecting the claim of the petitioners. He further contends that admittedly the petitioners were appointed prior in time than the persons who have been regularized i.e. Pushpa Devi and Jagmohan Singh and as such the action of the respondents is discriminatory. His one of the contention is that the judgment rendered by Hon'ble Apex Court in Uma Devi's case would not be applicable as it is settled law that where persons junior have been regularized, the senior is automatically entitled to be considered for regularization. He submits that the claim of the petitioners seeking regularization of their services have been rejected in violation of the interim directions issued by this Court vide orders dated 19.09.2017 and 27.09.2017.

13. Per contra learned counsel for respondent No.3 while referring to the reply dated 26.05.2022, submits that cases of only those persons to be

considered for regularization, who had completed ten years of service after December 2006. He further submits that vide memo dated 07.12.2001, respondent No.3 sought permission from respondent No.1 i.e. State for regularization of services of daily wage workers, who have completed three years of regular services on the basis of their seniority, irrespective of age and qualification, but same was not considered as in absence of sanctioned post, services of petitioners/daily wage workers could not be regularized. In support of his contention, learned counsel has placed reliance upon the judgment passed by the Hon'ble Supreme Court in *State of Karnataka Vs. Uma Devi and others*", 2006 (3) SLR 1. Learned counsel further argued that the claim of the petitioners for regularization of their services in the light of the relevant policies issued by State and adopted/followed by respondent No.3, their claim was found to be unsustainable as all the petitioners did not possess the requisite qualifications as required under the bye laws of the respondent No.3.

14. I have heard learned counsel for the parties and have perused the material available on record.

15. The sole question before this Court for adjudication is that whether services of the petitioners being daily wage worker can be regularized as claimed in the present petition. A bare perusal of the impugned order dated 24.11.2017 (Annexure P-13) reveals that as per policy dated 23.01.2001, which was formulated for regularization of daily wage workers wherein the petitioners have claimed regularization as per the said policy, it is clarified that no relaxation in educational qualification and ages could have been given while considering the case of regularization of daily wage workers. The said impugned order further reveals that merits and demerits of the petitioners were

dealt separately and mentioned that petitioner No.1-Naresh Kumar, Driver did not have minimum educational qualification for the post of driver, who is working as daily wage driver from August 1987, but his educational qualification was only 7th pass. Similarly, petitioner No.2-Hari Nath, Helper, who worked since 03.06.1992 on daily wage basis, was not possessing minimum educational qualification and his case was rejected for regularization. The case of petitioner No.3-Acche Lal, Helper was also rejected due to minimum educational qualification and claim of petitioner No.4-Skalu, who was working as daily wage Mazdoor for regularization was considered under Sawmill Helper, but was rejected as he was not possessing minimum qualification and there was no regular post of Mazdoor in the Corporation. The petitioners have cited examples of two similarly situated employees, whose services were regularized in the year 2001-2002, but present petition has been filed in 2013 i.e. much after the gap of 12 years, whereas the services of the other similarly situated employees were regularized in the year 2001. Hence petitioners cannot claim parity with those employees.

16. One more fundamental issue which has fallen for consideration of the Constitutional Bench of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Uma Devi and others, 2006 (2) SCT 462 (SC)** has been cited before this Court. It has now been laid down that no writ of mandamus could be issued to the State or instrumentalities of the State requiring them to regularize the services of an employee unless it is shown that his appointment to the service was consistent with the provisions of Article 14 and 16(1) of the Constitution. In other words it is required to be shown by the petitioners that there was an advertisement issued for filling up

the posts and competing claims of all the persons available in the market were taken into consideration while selecting the petitioner. If there is any irregularity which might have cropped up in the aforementioned process, one time concession has been granted to the Union of India/State Governments or instrumentalities of the States to frame a policy in respect of those employees who have continued with them regularly for a period of 10 years. However, the Hon'ble Supreme Court has categorically held that the procedure for appointment has to be consistent with Article 14 and 16(1) of the Constitution and the same is held to be the basic structure of the consideration. In other words any appointment made by back door entry cannot be held to confer any right on an employee, who from the day one is aware about the nature of his appointment and the consequences which may flow from such appointment.

17. In a recent judgment reported in ***“Union of India v. Ilmo Devi and others” 2021 (12) Scale 66***, the Apex Court was examining the judgment passed by this Court whereby this Court modified the order of the Central Administrative Tribunal and directed to re-visit the whole issue, complete the exercise to reformulate their regularization/absorption policy and take a decision to sanction the posts in a phased manner. The Supreme Court after considering the law laid down in Uma Devi's case (supra) and also in ***Dr.Ashwani Kumar v. Union of India and Anr. (2020) 13 SCC 581, State of Karnataka and anr. v. Dr.Praveen Bhai Thogadia, (2004) 4 SCC 684, Anuradha Bhasin v. Union of India and ors., (2020) 3 SCC 637, Oil and Natural Gas Corporation v. Krishan Gopal and others (2020) SCC Online SC 150, State of Maharashtra and anr. v. R.S.Bhonde & Ors. (2005) 6 SCC 751*** held as under:-

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The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.

8.5 *Even the regularization policy to regularize the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory directions to do so. In the case of R.S. Bhonde and Ors. (supra), it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularization is done.*

8.6 *In the case of Daya Lal & Ors. (supra) in paragraph 12, it is observed and held as under:-*

"12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) *Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.*

(iii) *Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.*

(iv) *Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.*

(v) *Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.*

[See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1], M. Raja v. CEERI Educational Society [(2006) 12 SCC 636], S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279], Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680] and Official Liquidator v. Dayanand [(2008) 10 SCC 1.]

8.7 *Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay*

for equal work."

18. Thus, as per the aforementioned law laid down by Hon'ble Supreme Court, this Court does not find much weightage in the submissions made by the learned counsel for the petitioners and is of the view that as the regularization of services was only a one time measure as per the policy/instructions dated 15.12.2006, therefore, petitioners are not entitled for the same. Further, as regard the claim of the petitioners as per policies dated 18.03.2011 and 17.11.2011 (Annexures P-5 and P-7, respectively), as pointed out by the counsel for the respondents, cases of only those persons were to be considered for regularization, who have completed ten years of service upto December 2006 and that services of daily wage workers in the Corporation could be regularized only against sanctioned post. Moreover, petitioners were recruited without following selection process, any advertisement and also not against permanent post and thus not entitled to claim benefit on the basis of said instructions.

19. Consequently in light of the above, this Court is not inclined to exercise powers under Article 226 of the Constitution of India and finding no merit, both the writ petitions are dismissed.

20. The pending application(s), if any, also stand(s) dismissed.

(DEEPAK MANCHANDA)
JUDGE

04.12.2023
vanita

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