

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11539-2017
Decided on 19.10.2023

Karan Singh ... Petitioner

VS.

MC Faridabad ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Abha Rathore, Advocate for the petitioner
Mr. Jagbir Malik, Advocate for the respondent

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondent to regularize the petitioner's services w.e.f. 01.10.2003 with all consequential benefit by modifying the order dated 22.08.2014 (Annexure P6).

(2). The petitioner was engaged by the respondent-Corporation as Tubewell Operator on daily wages in the Municipal Corporation, Fariabad on 12.05.1993. His services were terminated on 28.03.1994. The petitioner raised a Labour Court reference which was answered in favour of the petitioner vide award dated 22.07.1997, reinstating the petitioner with continuity of service with 25% back-wages and pursuant thereto, the petitioner was allowed to join his duty as Helper to Tubewell Operator on 01.04.1998. The services of the petitioner were once again terminated on 20.04.2001 forcing the petitioner to file CWP-6142-2001, however, the said writ petition along other batches of writ petition vide order dated 27.09.2005 (Annexure P3). The said dismissal order passed by this Court was modified vide order dated 24.12.2008 and the petitioner was allowed to continue in service till such time regular selections are made by the respondent.

Eventually, the petitioner was issued appointment letter dated 22.08.2014 (Annexure P6) regularizing his services w.e.f. 01.07.2014 in terms of the notification dated 13.04.2007 and 18.06.2014 issued in sync with the judgment of **Secretary, State of Karnataka and others vs. Umadevi and others, 2006(3) SLR 1.** However, the petitioner's request for regularisation w.e.f. 2007 has not been considered despite various representations prompting the petitioner to approach this Court.

(3). Learned counsel for the petitioner contended that the order dated 22.08.2014 (Annexure P6) deserves to be modified since the Haryana Govt. policy dated 01.10.2003 requires that for regularization under this policy, an employee should complete 3 years of services on 20.09.2003 and be in service on that date. It is submitted that the petitioner is in continuous service from 12.05.1993 and as such fulfills all the requirements for regularization under the policy dated 01.10.2003 in view of continuity of service as ordered by the Labour Court vide award along with the orders passed by this Court (Annexures P2 & P4).

(4). Notice of motion was issued on 24.05.2017 and pursuant thereto, after granting 9 consecutive opportunities and imposition of cost of Rs.7000/- on the officer/official responsible for delay in filing the reply. Ultimately, reply has been filed by the respondent on 23.08.2019 wherein it has been averred that the services of the petitioner could not be regularized under the State Government policies dated 01.10.2003 & 10.02.2004 (as amended) due to non-availability of such sanctioned posts and in view of **Uma Devi's** case (supra) on the issue of regularization of services of temporary/adhoc/daily wage and contract employees etc., the State

Government had withdrawn the policies issued in the years 1997, 1999, 2003 and 2004 regarding regularization of the services of the temporary/adhoc/daily wage and contract employees vide its Memo No.43/31/06-IGSI dated 25.04.2007. Further, the State Government vide notification dated 18.06.2014 had revived all the policies withdrawn on 25.04.2007 but the petitioners could not be considered for the same due to non-availability of sanctioned post in the year 2003.

(5). Learned counsel for the respondent further mentioned that the services of no-similarly situated workman is/was regularized by the respondent-Corporation in pursuance to the 2003 policy. It is further submitted that the State Government vide reference No. 12/105/2014-5K-L dated 13.08.2014 had issued directions to all the Municipal Committees/Municipal Councils/Municipal Corporations of the State of fill up vacant posts of Safai Karamcharis, Sewermen & Tubewell Helpers etc. through direct recruitment. The State Government had also taken decision vide said reference for relaxation in their age upto 55 years for those who have minimum experience of ten years. In view of the above Government decision, walk-in-interviews was conducted by the Corporation on 19.08.2014 and selection committee/several teams were also constituted for the said purpose. Under this exercise, the petitioner including all daily wages employees of the respondent-Corporation had applied themselves for the fresh appointment in reference of advertisement published in newspaper by this corporation and after the recommendation/approval of the Selection Committee, the petitioner alongwith other employees was issued fresh appointment letter on 22.08.2014 and the petitioner had accepted the terms

and conditions of the said letter of appointment and submitted an affidavit/undertaking to the effect that they will not claim any salary/profit for the past service in future and the petitioner joined his duties without any objection.

(6). It is further submitted that the this Court in CWP No.17206 of 2014 (Yogesh Tyagi & Another Versus State of Haryana & others) had stayed the operations of regularization policies observing that the impugned policies run contrary to the mandate as enshrined in **Uma Devi's** case and as such this Court quashed the regularization policy of 2014 against the State Government preferred SLP before the Supreme Court and interim relief has been granted to the stay and now, the SLP is still pending before the Hon'ble Supreme Court of India.

(7). Heard learned counsel for the parties and gone through the record.

(8). The Supreme Court in a case of **Secretary, State of Karnataka and others vs. Umadevi and others, 2006(3) SLR 1** wherein it has been held that no mandamus can be issued to regularise and absorb those in regular service who were engaged on daily wages/adhoc without following the procedure prescribed by the Rules applicable for recruitment. In paragraph 26, it has been held as under:-

"26. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the

employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment."

(9). In **Union of India and others vs. Vartak Labour Union, 2011(2) SLR 414**, the Supreme Court quashed the judgment delivered by a Division Bench of the Gauhati High Court wherein a direction was issued to regularize employees of Union who had put in about 30 years of service with the BRO. However, the Supreme Court gave a directions to the Union of India to consider enacting an appropriate regulation/scheme for absorption and regularization of the services of the casual workers engaged by BRO for execution of its on-going project.

(10). A Division Bench of this Court in **Union of India and others vs. Surinder Pal and others, 2012(3) SLR 433** affirmed the decision of the learned Single Judge giving direction to the respondents to frame a scheme in terms of the directions issued by Supreme Court in **Vartak Labour Union's** case (supra).

(11). In **State of U.P. and others Vs. Putti Lal (2006) 9 SCC 337**, the employees claimed regular wages keeping in view the fact that they have been working on daily wage basis for number of years. The High Court allowed the writ petition holding that all daily wage workers, who have rendered 10 years of service should be regularized by making appropriate scheme. In terms of proviso to Article 309 of the Constitution, rules were framed for regularization of daily wage employees. In the aforesaid case, a three Judges' Bench of Supreme Court upheld the order that daily wagers discharging the similar duties as those in the regular appointment would be entitle to draw at the minimum of pay scale being received by their counter-

parts and would not be entitled to any other allowances or increment so long as they continue as daily wagers. After returning such finding, the Court observed as under:

"6. ... The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the Court to indicate as to how many posts would be created for the absorption of these daily-wage workers. Needless to mention that the appropriate authority will consider the case of these daily-wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned, as we have stated in the case of the State of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counterpart in the Government until his services are regularized and he is given regular scale of pay."

(12). This Court in **Ram Rattan & Ors. vs. State of Haryana & Ors.** **(CWP-34585-2019)** decided on 19.10.2023 dealt with similar issue of the nature involved in the present case and while relying upon various case laws of the Supreme Court, this Court accepted the claim of the writ petitioners for regularization of their services observing that public employment is a facet of right to equality envisaged under Article 16 of the Constitution and that State is although a model employer, its right to create posts and recruit people, therefore, emanates from the statutes or statutory rules and that non regularization into service of such part-time employees who have put in their whole life in the service of the respondent-Nigam, would tantamount to violation of fundamental rights of equality before law and equality of opportunity in matters relating to employment under the State, as enshrined

under Article 14 & 16(1) of the Constitution. Following directions were issued by this Court:-

(32). *In addition to the above, even principle of natural justice, too demand that the petitioners cannot be denied the benefit of regularization of services when their similarly placed employees have been granted the said benefit.*

(33). *Accordingly, the respondents are directed to consider the case of the petitioners for regularization of service in view of the policy dated 01.10.2003 as amended on 10.02.2004 issued by the Government of Haryana and to pass necessary orders regularizing their services, within a period of one month from the date of receipt of certified copy of this order. The petitioners shall also be entitled to all the benefits of regularization and consequential relief to which they are eligible including the arrears of salary.*

(34). *This case is also being peculiar wherein Class-IV employees are forced to undergo multiple round of litigation for their claim to which they became eligible in the year 2003 and are fighting for their legal rights for two decades, this Court cannot close its eyes to the pain and sufferings and the harassment with which this strata of society has been dealt with, needs to be compensated, though cannot be done so by any means after such a long number of years, the respondent No.3 shall pay 6 % interest per annum on the arrears from the date it became due till the date of its realization to which the petitioners are found entitled on regularization into service.*

(13). The present writ petition stands allowed in terms of the judgment dated 19.10.2023 passed in **Ram Rattan & Ors.** case (supra) with a direction to the respondents that the observations and directions issued in **Ram Rattan & Ors.** case (supra) shall be *mutatis mutandis* applicable in the

present case and the respondents shall be bound to adhere to the directions, as referred to above.

(14). Ordered accordingly.

19.10.2023
V.Vishal

(Sandeep Moudgil)
Judge
Yes/No
Yes/No

- 1. Whether speaking/reasoned?
- 2. Whether reportable?