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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP-6343-2016
DECIDED ON: 25.09.2023

SULTAN SINGH
.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS
.....RESPONDENTS

2. CWP-6388-2016

DALBIR & ORS.
.....PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS
.....RESPONDENTS

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Sonak, Advocate
for the petitioners.

Mr. Sandeep Singh Mann, Additional Advocate General
for the State of Haryana.

Mr. Deepak Balyan, Advocate
for the respondent no.2.

Mr. Amit Khatkar, Advocate
for respondent No.3.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this court has been invoked under Article
226/227 of the Constitution of India for issuance of a writ in the nature of
Certiorari for quashing the impugned order dated 23.04.2013(Annexure P-4)

whereby the claim of the petitioner for regularization has been withheld despite the order dated 17.04.2013 passed in his favour further with a prayer to regularize the services of the petitioner with effect from 17.04.2013.

2. The factual matrix of the case unfolds as the petitioner is working on the post of Runner-Kamdar, in the cooperative sugar mill, Sonepat as daily wager from the last 20 years whereby the respondents have issued instructions dated 16.02.2009 (Annexure P-2) to regularize the services of daily wages employees who have completed more than 10 years of satisfactory services. On the basis of the said instructions, the petitioner being fully eligible applied for the regularization of his services for the post of Runner-Kamdar and his case was considered for regularization by the department vide order dated 17.04.2013 (Annexure P-3).

3. The counsel for the petitioner contends that on the basis of the instructions dated 16.02.2009 (Annexure P-2) the cases of the eligible employees including the petitioner was considered by the department and after due consideration the services of the petitioner was regularized to the said post vide order dated 17.04.2013 (Annexure P-3) but to his utter dismay, he came to know that vide order dated 23.04.2013 (Annexure P-4) his claim for regularization has been withheld.

4. The counsel for the petitioner further contends that the order dated 23.04.2013 has been passed arbitrarily and illegally wherein similarly placed employees have been regularized in the other sugar mills in the year 2013 and the said employees are working on regular basis till date (Annexure P-5). Moreso, the order dated 23.04.2013 is in violation of the

judgment passed by the Constitutional Bench in case of “*State of Karnataka*

vs Uma Devi”, 2006(4) page 1, SCC, wherein the Supreme Court in 2006 issued specific directions to all government instrumentalities to regularize the services of those employees who have completed 10 years of service on duly sanctioned post.

5. In addition, he argues that the respondents are going to fill up the vacant posts of Sonepat Sugar Mill by giving appointments to the retrenched employees of Bhuna Sugar Mill which is totally illegal as the employees of other sugar mills cannot be allowed to take away the legal right of petitioner to adjust employee of other sugar mill.

6. Mr. Deepak Sonak, Advocate appearing for the petitioner further clarifies that the petitioner has approached the respondents time and again for implementing the order of regularization of his services w.e.f. 17.04.2013 but all in vain. Later, the petitioner also made several representations (Annexure P-6 to P-8) to the Government through its union to which respondent no.2 directed the respondent no.3 to take necessary actions as per rules however on the one pretext or the other they are delaying the matter for the reasons best known to them.

7. On the other hand, counsel for the respondent no.3 contends that an announcement was made at the felicitation ceremony organized by the employees of Haryana Sugar Mill, Meham on 20.09.2008 wherein the Hon’ble Chief Minister, Haryana assured that *“The service of daily wagers working in Sugar mills will be regularized against the vacant posts in the mills if they fulfill the qualifications and their work is satisfactory. Unskilled and Semi skilled daily wage workers working against vacant post will be regularized after giving relaxation in qualification if their work is*

satisfactory on these posts” and on that basis a committee was constituted vide letter dated 16.04.2013 SMS/2013-2014/GEN/1409-412 to check the record of daily wagers whose services were to be regularized and accordingly the committee checked the record where finally a letter dated 17.04.2013 was issued to 20 daily wagers for regularization.

8. He further contends that during this process, a letter dated 22.04.2013(Annexure R-3/6) was issued to the sugar mill from Sugarfed that directed the sugar mills to withhold the process of regularization of daily wagers till the receipt of approval/orders from the State Government.

9. The counsel for respondent no.2 vehemently argues that the petitioners has no legal right to challenge the order dated 23.04.2013 whereby the order dated 28.10.2013 was already conveyed to the Sugar Mills at that time declining the regularization as per the order dated 17.04.2013 wherein the Government declined the proposal on the ground that at present, 212 daily wagers are to be regularized against 49 semi skilled and 163 unskilled vacancies as per staff strength of the sugar mills approved by the State Government in 2001, but notwithstanding this, sugarfed vide letter dated 07.03.2012 revised the staff strength of all the Cooperative Sugar Mills where it was found that a total of 2212 employees (1324 unskilled, 453 semi skilled, 112 skilled and 323 clerical/supervisory) were surplus meaning thereby the question of vacancies of unskilled categories in the sugar mill at present does not arise.

10. Further, he strenuously argues that indeed no policy of regularization of daily wagers is under consideration therefore the petitioners cannot claim regularization as a matter of right and even their claim is

merely on the basis of letter dated 17.04.2013 which was only a communication and not an order passed by the competent authority. He also press upon the fact that after the decision of the Hon'ble Supreme Court in ***"State of Karnataka & Others vs Uma Devi" (2006) 4 SCC 1***, another judgment titled as ***"State of Rajasthan and Ors. vs Daya lal and Ors"***, reported in ***2011 (2) SCC 429***, in which the Hon'ble Supreme court held that the Hon'ble High Court in exercising the powers under Article 226 of the Constitution of India would not issue directions for regularization, Absorption or Permanent appointment unless the employee had been appointed in pursuance of a regular recruitment process in accordance with relevant rules and authority acted in process and appointed against sanctioned vacant post and even otherwise also the Hon'ble Supreme Court has held that 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/her any right to be absorbed into the service.

11. Heard the counsels with their respective parties.

12. The matter has come up to this court where the petitioner is aggrieved vide an order dated 23.04.2013 wherein his claim for regularization has been withheld and similarly placed persons have been regularized in other sugar mills. Mr. Sonak supports his argument by referring a landmark judgment passed by the constitutional Bench in ***State of Karnataka vs Uma Devi 2006(4) Page 1 SCC*** wherein the Apex court has issued specific directions to all Government instrumentalities to regularize the services of those employees who have rendered 10 years service and in the present case, the petitioner has delivered his services from the past 20

years whereas on the other hand the counsel for the respondent rebuts the contention of the petitioner by referring a judgment of the Apex court titled as “*State of Rajasthan and Ors vs Daya Lal and Ors*” 2011(2) SCC 429, wherein it has been held that the Hon’ble High Court in exercising the powers under Article 226 of the Constitution of India would not issue directions for regularization, absorption or permanent appointment unless the employee had been appointed in pursuance of regular recruitment process and further while relying upon the letter 17.04.2013, the counsel for the respondent submits that it was merely a communication and not an official order as such.

13. The court is of the considered view that from perusal of Annexure P-2 dated 16.02.2009, it is sufficiently clear that the Managing Director (Sugarfed) had issued directions for regularization by relying upon the order dated 06.02.2009 and by no stretch of imagination the respondent authorities can step back by taking a plea that the order dated 06.02.2009 was a mere communication, else the other similarly placed persons would not have been regularized who are till present working as regular employee.

14. This court opines that the order passed for non-regularization of the service of the petitioner in the present case dated 23.04.2013 (Annexure P-4), is a violation of the fundamental rights of equality before law and equality of opportunity in matters relating to employment under the State, as enshrined under Article 14 and Article 16 of the Constitution, respectively. The principles of natural justice, too demand that the petitioner cannot be denied the benefit of the regularization of services when his similarly placed fellow employees have been granted the said benefit as has been held by the

Apex court in “*Om Prakash Banarjee vs State of West Bengal and ors*”,
Civil Appeal No.4210 of 2023.

15. In view of the aforesaid facts, the present writ petition stands
allowed.

25.09.2023

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>