

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

CWP No.5509 of 2017 (O&M)

Date of Reserve: 18.05.2023

Date of Decision: 07.07.2023

Bimla and others

.....Petitioners

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Shvetanshu Goel, Advocate
for the petitioners.

Mr. Manish Dadwal, Asstt. A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. The petitioners have preferred this writ petition for the issuance of an appropriate writ in the nature of mandamus, directing the respondents to release the service benefits, family pension and financial assistance benefits in view of the Haryana Compassionate Assistance to the Dependent to the Deceased Employee Rules 2006 and release the arrears thereof along with interest.

[2]. The husband of the petitioner No.1 and father of the

petitioners No.2 to 4 was appointed as a water carrier on 05.01.1995 through Employment Exchange on part time basis. The husband (Mahavir Singh) of the petitioner No.1 was appointed against regular sanctioned post. The work and conduct of Mahavir Singh was satisfactory and no adverse remarks were ever communicated to him by the respondents.

[3]. Mahavir Singh along with other employees working on different Class IV posts on part time basis in Ayurvedic Dispensaries in the Rohtak District filed CWP No.8379 of 1999 for regularization of class IV posts on the ground that they were working for the last many years in the respondent-Department and as per regularization Policy framed by the Government of Haryana from time to time they were entitled to the regularization. The aforesaid CWP No.8379 of 1999 titled '*Chand Singh and others vs. State of Haryana*' came up for final hearing along with CWP No.17734 of 1999 titled '*Prahlad & others vs. State of Haryana and others*' on 08.11.2001. During course of proceedings, learned State counsel stated that case of Mahavir Singh and others were considered for regularization of their services on class IV posts in view of policy dated 01.02.1999 and the same was rejected on the ground that Mahavir Singh was not initially appointed on class IV post through the Employment Exchange. The aforesaid stand of the

State particularly at a belated stage was considered to be not justified by the Court and, therefore, the High Court vide order dated 08.11.2001 disposed of the writ petition by directing the State to frame a rational policy of regularization of class IV posts working on part time basis in different Departments in the State of Haryana as the requirement of recruitment of candidate by the Employment Exchange cannot be made applicable at this belated stage particularly when the employees are working for the last more than 20-25 years. Further direction was issued to reconsider the claim of Mahavir Singh for regularization within a specified period. The main order was passed in CWP No.17734 of 1999.

[4]. In furtherance of the order dated 08.11.2001, passed by the High Court in CWP No.17734 of 1999, the Government of Haryana vide letter dated 17.10.2002 relaxed the requirement of recruitment through the Employment Exchange in case of part time class IV employees for the purpose of giving them regular appointment provided they have completed 10 years of continuous service and their work and conduct remained satisfactory. The respondent-State even after letter dated 17.10.2002, filed SLP No.18854 of 2002 with other petitions before the Hon'ble Apex Court. The SLPs were dismissed on 03.01.2011 by the Hon'ble Apex Court.

[5]. Despite dismissal of the aforesaid SLPs, the respondents did not consider the case of Mahavir Singh for regularization of his services in terms of judgment dated 08.11.2001 and instructions/letter dated 17.10.2002 issued by the respondent-State. Mahavir Singh issued a contempt notice on 13.04.2011 for non-implementation of order dated 08.11.2001 passed in CWP No.8379 of 1999 and thereafter filed COCP No.1868 of 2011 in the High Court. In response to the aforesaid petition, the respondent-State submitted that the Government of Haryana has framed a Policy for regularization on 29.07.2011 for regularization of *adhoc*/contract/daily wages/work charged and part time employees. The case of Mahavir Singh was examined by the Department on 14.10.2011 in accordance with the aforesaid Policy of regularization dated 29.07.2011 and the respondents No.3 and 4 had passed the orders that the services of Mahavir Singh cannot be regularized due to non-sanctioned full time posts of Sweepers and Kaharas in the Government Ayurvedic/Unani Dispensaries in the concerned Districts. It was also submitted that Mahavir Singh did not fulfill the terms and conditions of the Policy dated 01.02.1999 which was relaxed by the Government vide letter dated 17.10.2002 because no full time regular Group-D post had been sanctioned by the Government keeping in view the

limited required work of Sweepers and Kahars in the Dispensaries.

[6]. Mahavir Singh and others submitted a demand-cum-contempt notice and also submitted representations along with RTI information dated 02.02.2012 but no decision was taken by the respondent-State for reconsideration of claim in the light of orders passed by the High Court. The respondent-State thereafter rejected the claim of Mahavir Singh on 05.03.2014 on the ground that Mahavir Singh never worked against sanctioned vacant post and post of water carrier was not transferable inter-dispensaries/inter-District.

[7]. Mahavir Singh assailed the order dated 21.03.2011 and 05.03.2014 in CWP No.6200 of 2015. The writ petition was allowed by the High Court on 11.03.2016 and the respondents were directed to pass appropriate order for regularization of services of Mahavir Singh in view of policy dated 29.07.2011 and 18.06.2014 framed by the respondent-State. The amount of Rs.20,000/- as cost(s) was also imposed upon the Department. The respondent-Department thereafter passed an order dated 26.10.2016 and admitted the claim of Mahavir Singh and held that Mahavir Singh was entitled for regularization of his services. The aforesaid CWP No.6200 of 2015 was decided in

terms of detailed order passed in CWP No.5021 of 2015 titled '*Chand Vs. State of Haryana and others*'. While deciding the writ petition, the Court was of the opinion that petitioner-Chand had already put in long service of 26 years approximately and in the last policy dated 18.06.2014 there was no condition that sanctioned post in the same category of which the employees working. The only condition is that the employee should have worked for not less than 3 years as on 28.05.2014 and is still in service. In view of information available on record there were 45 posts of Group-D employees which were vacant. The writ petition was allowed and the orders dated 14.10.2011 and 05.03.2014 were set aside. A direction was given to the respondent-State to pass speaking order for regularization of services of the petitioner-therein as per policy dated 29.07.2011 and 18.06.2014. Cost(s) of Rs.20,000/- in each case i.e. Rs.1 lakh was imposed upon the respondents and the same was ordered to be paid to the petitioners in those cases. Thereafter the Department proceeded to pass an order dated 26.10.2016 preparing final seniority list of the eligible employees showing Mahavir Singh at seniority No.162. Mahavir Singh and Ishwar Singh were found to be eligible to be regularized and others were not found eligible as they did not possess the requisite qualification. The claims of Mahavir Singh and aforesaid Ishwar

Singh were ordered to be considered as per the Government regularization Policy on their turn as per seniority list. Due to pendency of CWP No.17206 of 2014 titled '*Yogesh Tyagi and others vs. State of Haryana*' the claim of Mahavir Singh was not considered at that stage.

[8]. Ultimately Mahavir Singh died on 28.10.2016 leaving behind the petitioners as his legal representatives. Mahavir Singh was 54 years of age at the time of his death and one of the petitioners was entitled for compassionate appointment. The claim was espoused. Even a representation was filed on 20.01.2017 but the same has not been adhered to till date despite a legal notice served upon the respondents on 16.02.2017. After the demise of Mahavir Singh, an amount of Rs.3 lakh has been sanctioned to the family of deceased Mahavir Singh in view of instructions dated 27.11.2014 under the terms and conditions of Policy for providing financial assistance to the family of deceased person working in Government Department / Boards / Corporation / Public Undertakings under Haryana Government on Adhoc, Daily Wage, Contract basis through Service Providing Agency. These instructions were also made applicable to the guest Teachers appointed under Government schools vide letter dated 28.07.2016.

[9]. As per stand taken by the respondents No.1 to 3, the aforesaid amount of Rs.3 lakh has been paid to the family of Mahavir Singh. So far as service benefits as well as pension benefits are concerned, the respondent-State has taken a stand that a seniority list of part time employees was prepared by the Department and as per the vacant sanctioned post, the services of eligible part time employees would be regularized as per their seniority list. As per policy, Mahavir Singh was considered and found eligible and placed at Sr.No.260 in the seniority list. The cases of all part time employees were considered as per seniority list and 45 posts were filled as per seniority list by the eligible persons and the case of Mahavir Singh was also considered but he could not be regularized in view of his seniority position. The persons upto Sr.No.155 have been considered for regularization. As Mahavir Singh had already expired on 28.10.2016 at the time of preparation of the seniority list on 31.07.2018, therefore, the services of Mahavir Singh could not be regularized.

[10]. Learned counsel for the petitioners vehemently submitted that in view of long legal battle, the respondent-State vide order dated 26.10.2016 decided that Mahavir Singh Water Carrier along with Ishwar Singh Water Carrier was eligible to be regularized but the implementation was deferred owing to

pendency of CWP No.17206 of 2014. After the demise of Mahavir Singh, there is no legal impediment in grant of benefits arising out of Haryana Compassionate Assistance to the Dependents of Deceased Employee Rules 2006.

[11]. Learned counsel for the petitioners further submitted that the stand of the respondent-State is not justified in respect of availability of sanctioned vacant post. It is not disputed that Mahavir Singh was appointed in January 1995 and since then he remained in job till his death. The stand of the respondent-State is that there was no regular sanctioned post available cannot be appreciated in the light of judgment rendered in **Anand Walia and others vs. Haryana Urban Development Authority and others, 2013(3) SLR 611** wherein this Court held as under:-

“9.....As far as availability of sanctioned posts is concerned, in my opinion, considering the fact that the petitioners had been working in the establishment for the last more than 12 years itself shows that the work available is of continuous nature. We are living in the era of technology. Every record is being computerised. HUDA is the only wholly controlled agency in the State for urbanisation. It has developed urban estates in almost all the cities of the State and is controlling lacs of plots.

The entire record thereof pertaining to ownership, transfer or payment of instalments etc. is required to be maintained.

The job is not temporary in nature. The persons are required on regular basis.....”

[12]. Evidently, Mahavir Singh was working as part time Water Carrier and he continued to work for such a long period. It could not be countenanced that the post is not regular in nature. The view expressed in **Anand Walia and others'** case (supra) was also endorsed by the Division Bench of this Court in **LPA No.1700 of 2015** titled '**Haryana Vidyut Parsaran Nigam Ltd. And Ors. vs. Chhabi Lal and others'** decided on 10.10.2017. Special Leave to Appeal No.1857 of 2018 filed against the aforesaid judgment dated 10.10.2017 was dismissed by the Hon'ble Apex Court. The claim of Mahavir Singh had already been acknowledged by the respondent-Department and he was held entitled for regularization of his services as per his seniority. Before implementation of his regularization on his seniority position, he expired.

[13]. Learned counsel further submitted that during course of hearing on 06.09.2022, the Hon'ble Court was pleased to pass the following order:-

*“Learned State counsel seeks a short adjournment, so as to go through the judgment of the Hon'ble Supreme Court of India in '**Prem Singh Vs. State of Uttar Pradesh**” passed in Civil Appeal No. 6798 of 2019 on 02.09.2019, to seek instructions as to whether the*

husband of the petitioner is to be treated as regular in service, so as to grant the family pensionary benefit.

Adjourned to 11.10.2022.

(HARSIMRAN SINGH SETHI)
JUDGE

06.09.2022
Anjal”

[14]. Learned counsel for the petitioners further submitted that perusal of ratio of **Prem Singh vs. State of Uttar Pradesh and others (2019) 10 Supreme Court Cases 516**, would show that the Hon'ble Apex Court after considering the facts of the said case was pleased to pass operative part of the order in para No.36 of its judgment. The same reads as under:-

“36. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be

entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.”

[15]. Per contra, learned State counsel placed reliance upon **Lakha Singh vs. State of Punjab and others, 2016(1) S.C.T. 179** to contend that in view of Division Bench judgment of **Sita Devi vs. State of Haryana, 2013(4) PLR 499** the claim with regard to the family pension after the death of Mahavir Singh is not sustainable as Mahavir Singh was never regularized.

[16]. Having considered the submissions made by learned counsel for the parties, this Court finds that the claim of Mahavir Singh after the judgment dated 11.03.2016 passed in CWP No.5021 of 2015 was accepted and he was held entitled for regularization of his services. It was only the implementation was deferred due to pendency of some writ petition and also in view of his seniority position. So far as entitlement in respect of regularization was concerned, the same was not in dispute. Before implementation of regularization of his service, Mahavir Singh expired. At the time of his death, he was having long service since 1995 to his credit. His services were never terminated. He was working in the establishment for the last so

many years which itself was suggestive of the fact that the work and continuous nature was available and he kept on serving the establishment/Department throughout. In view of this position, the terminology as regards sanctioned post or otherwise cannot be appreciated in the light of observations made in **Anand Walia and others** and '**Haryana Vidyut Parsaran Nigam Ltd. And Ors. vs. Chhabi Lal and others**' cases (supra) against which even the SLP has been dismissed on 29.01.2018 by the Hon'ble Apex Court. The ratio(s) of **Lakha Singh** and **Sita Devi's** case (supra) is not applicable as the claim of Mahavir Singh had already been considered on positive note by the respondent-Department and he was held entitled for regularization on the basis of his seniority. The said order dated 26.10.2016 has to be treated an order of regularization of services of Mahavir Singh as per his seniority position.

[17]. In the light of observations made by the Hon'ble Apex Court in **Prem Singh's** case (supra) as noticed in the preceding paragraphs, Mahavir Singh was entitled for regularization and in fact order of regularization had already been passed on 26.10.2016 but its implementation was deferred owing to the pendency of CWP No.17206 of 2014 as well according to his seniority position. There was no other dispute as regards entitlement of Mahavir Singh.

[18]. In view of above, Mahavir Singh has to be treated as a regular employee in service at the time of his death and one of the petitioners is entitled for the benefit of compassionate assistance under the Policy of 2006. Since, the claim of the petitioners in the said context is still pending before the competent authority, therefore, this writ petition is disposed of by directing the respondents No.2 to consider the case of the petitioners in accordance with law and do the needful preferably within a period of three months from the date of receipt of certified copy of this order.

[19]. With the aforesaid direction, this writ petition is disposed of. All other civil misc. applications, if pending are also disposed of accordingly.

July 07, 2023

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No