

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5880-2017 (O&M)

Date of decision: 08.12.2023

Usman & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SS Randhawa, Advocate for the petitioners

Mr. Gaurav Jindal, Addl.AG Haryana

Mr. Mayank Vashisht, Advocate for

Mr. Prateek Mahajan, Advocate for respondent No.3

Sandeep Moudgil, J.

(1). The petitioners have filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondents to consider the claim of the petitioners for regularization in the light of the policy decision dated 01.10.2003 (Annexure P1) along with consequential benefits.

(2). The petitioners were appointed on daily wage basis from June, 1995 to October, 1995 and are continuing as such without any break. One of the petitioners, namely, Ram Kishan (petitioner No.1) was appointed as Tubewell Helper on 14.10.1995. His services were terminated on 30.11.1996. He raised industrial dispute and the Labour Court vide award dated 19.10.2001 accepted the reference in favour of the petitioner No.1 holding his entitled to reinstatement with continuity of service and 50% back wages from the date of demand notice.

(3). In the meantime, the Haryana Government framed a policy dated 01.10.2003 (Annexure P-1) to the effect that those daily wagers who had completed three years' service as on 30.09.2003 are entitled for regularization. The said policy dated 01.10.2003 was withdrawn vide decision dated 25.04.2007 (Annexure P-2), however, the Government of Haryana vide decision dated 18.06.2014 (Annexure P-3) decided to regularize the services of left over cases.

(4). The petitioners approached the respondents to consider their cases for regularization in the light of the policy decision dated 01.10.2003 (Annexure P-1) in view of decision dated 18.06.2014 (Annexure P-3) but the respondents did not consider the case of the petitioners in the light of policy dated 01.10.2003 and regularized the services of the petitioners w.e.f. 22.08.2014 instead of 01.10.2003.

(5). Learned counsel for the petitioners contends that the petitioners fulfilled all the terms and conditions of the policy (Annexure P-1) as they were inducted in service in the year 1995 i.e. much prior to the cut off date of service i.e. 30.09.2003. He further urged that since the Government itself has decided vide decision dated 18.06.2014 (Annexure P-4) to regularize the left over cases, there is no rhyme or reason for the respondents in not considering the cases of the petitioners under the policy dated 01.10.2003 (Annexure P-1). The relevant extract of the policy dated 01.10.2003 (Annexure P-1) reads as under:-

“2. Daily Wage Employees (Group C):-

That only such daily wage employees who have completed three years service on Group-C posts on 30th September, 2003 and were in service on 30th September, 2003 shall be regularised

against their respective Group-C posts, provided they fulfill the requisite qualifications and were originally appointed against vacant posts. Provided further, that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days.

3. Daily-Wage Employees (Group D):-

Only such daily wage employees who have completed three years services on Group D post(s) on 30th September, 2003 and were in service on 30th September, 2003 shall be regularised against their respective Group-D posts provided they fulfill the requisite qualification and were originally appointed against vacant posts. Provided further that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee(s) has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the the Government may not condone the same if the period of such break is more than a period of 30 days.”

- (6). It is further argued that similar controversy has been considered by this Court in **CWP-9873-2013 (Raj Kumar vs. State of Haryana & Ors.)** decided on 07.05.2015 (Annexure P-5) as well as **CWP-11224-2015 (Lekhu Raj vs. State of Haryana & Os.)** decided on 19.10.2015 (Annexure P-6) wherein this Court held that the case of the writ-petitioner was liable to be considered in the light of policy dated 01.10.2003 in view of the decision

in **Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of FCI & Anr. 2014(3) SLR 262.** Learned counsel then submitted that the similarly situated employees who are junior to the petitioners have already been regularized w.e.f. 01.10.2003 and they have been deprived of the same despite fulfilling all requisite conditions of the policy dated 01.10.2003.

(7). Notice of motion was issued on 22.03.2017 and thereafter, vide order dated 04.10.2018, this writ petition as disposed of in terms of the order dated 04.10.2018 passed in **Balwinder Singh & Ors. Vs. State of Haryana & Ors. (CWP-2009-2016).** Instead of considering the case, in the light of aforesaid directions, the respondent-Nigam approached the Division Bench through LPA No.572 of 2019, which was disposed of in terms of orders passed in **LPA No.109 of 2019 dated 18.03.2019 titled as State of Haryana and Ors., vs. Balwinder and Ors.** The Division Bench after hearing the parties being convinced that though the bunch of writ petitions has been decided by the learned Single Judge vide its order dated 04.10.2018, but each matter required individual adjudication, since they involved different set of facts and eligibility conditions, depending upon their qualifications and rules applicable at that point of time. Therefore, regularization policy needs to be examined separately in each case and even in few cases the employees already stand regularized but were claiming it from back date, thus remitted the writ petitions to be adjudicated afresh by the Single Judge after segregating them.

(8). It is in this factual sequence of events; the instant petition came to be heard before this Bench on 22.10.2019 and on the said date, the matter was adjourned in the light of the fact that the controversy with regard to

regularisation of services is still pending consideration before the Supreme court in SLP (C) No.17581 of 2022.

(9). Reply on behalf of respondent No.3 through Jitender Kumar, Corporation Secretary, Municipal Corporation, Faridabad has been filed on 31.05.2019 wherein it has been categorically averred that the petitioners were appointed on different dates in the year 1995 as Helper/Tubwell Operator on a non-sanctioned post and due to non-availability of any vacant sanctioned post, the case of the petitioners could not be considered for regularization under policy dated 01.10.2003 (Annexure P-1) as amended on 10.02.2004.

(10). It is also submitted that initially all the policies framed in the years 1997 to 2004 stood withdrawn in view of *Secretary, State of Karnataka vs. Uma Devi, (2006) 4 SCC 1*, however, the said policies were revived on 25.04.2007 notwithstanding this fact, the case of the petitioners could not be considered as they were not appointed against vacant sanctioned post and due to non-availability of sanctioned post in the year 2003 and as such, no persons has been regularized, as claimed by the petitioners.

(11). Lastly, learned counsel for respondent No.3 argued that the petitioners was neither employed through employment exchange nor by inviting applications through advertisement and are also not working against a sanctioned post and, therefore, are not entitled to be regularized. He also avers, while seeking dismissal of the writ petition to take protection of a judgment of the Apex Court in *Vibhuti Shankar Pandey vs. State of MP & Ors. 2023 AIR SC 832* to contend that for regularization, initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working.

(12). No other arguments have been raised on behalf of either of the parties to the present lis.

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

(14). The matter regarding regularization of the daily wage employee in terms of the policy dated 01.10.2003 (Annexure P-1) has already been considered by this Court in **Ram Rattan & Ors. Vs. State of Haryana & Ors. (CWP-34585-2019)** decided on 19.10.2023 wherein this Court while dealing with similar situation, adjudicated the claim of the petitioners based upon various case laws of the Supreme Court, in favour of the petitioners.

(15). Accordingly, this writ petition is also allowed in same terms and the respondents are directed to consider the case of the petitioners for regularization of service in view of policy dated 01.10.2003 as amended on 10.02.2004 issued by the State Government.

(16). Needless to say that the observations and directions issued in **Ram Rattan & Ors.** Case (supra) shall be applicable in the case of the present petitioners and the respondents shall be bound to comply with the directions issued therein in the present case as well.

(17). Ordered accordingly.

17.07.2023
V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No