

224 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1.

LPA-553-2019 (O&M)
Date of Decision: 15.02.2024

BOARD OF SCHOOL EDUCATION, HARYANA
Vs. . . . Appellant

RAGHBIR SINGH AND ANOTHER
. . . . Respondents

2.

LPA-473-2019 (O&M)
Date of Decision: 15.02.2024

RAGHBIR SINGH
Vs. . . . Appellant

STATE OF HARYANA AND ANOTHER
. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. K.K. Gupta, Advocate
for the appellant in LPA-553-2019
for respondent No.2 in LPA-473-2019.

Mr. Sandeep Thakar, Advocate
for respondent No.1 in LPA-553-2019
for the appellant in LPA-473-2019.

SANJEEV PRAKASH SHARMA, J.(Oral)

LPA-553-2019 (O&M)

1. This is an LPA preferred against the judgment passed by the Court in CWP-11424-2015 dated 05.12.2018 whereby the Single Bench, after noticing the judgments passed in the case of *Subhash Kumari vs. State of Haryana and others reported in 2017(1) S.C.T. 380* and *Secretary, State of Karnataka and others vs. Uma Devi and others reported in 2006(4) SCC 1*, has found

that the writ petitioner had rendered 31 years of unblemished service with the appellant and directed as under:

*“5.) Having heard the rival contentions of both the learned counsels and in view of the fact that the case of the petitioner was recommended by the then Chairman, I am of the view that the petitioner having rendered 31 years of unblemished service cannot be denied the benefit of regularization. It is not in dispute that the Board has extracted the work from the employee on the same very post to which he has been throughout seeking regularization. It is too late now in view of the judgments *ibid* for the Board to contend that the petitioner does not fulfill the qualifications as he does not have matriculation with second division, though it is not in dispute that he is a matriculate. Even if the petitioner is a simple Matriculate, at this belated stage, he cannot be denied the benefit of regularization on the ground that he does not have a second division in Matriculation, it being settled law that once he has been working on the said post, in the present case for 31 long years, he cannot be denied the benefit on the ground of lacking the qualification. Therefore, it is a fit case where the Board ought to have exercised its power of relaxation in respect of qualification as a special case as is reflected from Regulation 31 of their own Regulations, *ibid*. Admittedly, the petitioner is a matriculate and in view of the judgments cited above he is entitled to be considered for regularization. In view thereof, the respondents are directed to consider the case of the petitioner for regularization by relaxing the condition of matriculation with second division. However, the consequential benefits of regularization are restricted to 3 years prior to filing of the writ petition.”*

2. Learned counsel for the appellant submits that no mandamus can be issued for directing to regularize services, more so as the writ petitioner did not possess the requisite qualifications for appointment on the post of clerk as per the regulations of the Board.
3. We have considered the submissions.

4. This Court finds that the writ petitioner had been engaged initially on 01.03.1984 as a clerk and he was relieved from services on 03.03.1985, whereafter he raised a dispute before the Labour Court, and finding that the retrenchment order was in violation of Section 25F of the Industrial Disputes Act, 1947, he was directed to be reinstated with continuity of service with full backwages vide award dated 05.04.1994. The award was challenged in CWP-3320-1996 and the Court stayed the backwages. Keeping in view thereto, the writ petitioner was reinstated and continued to perform his duties. While serving, he submitted representation to regularize his services. However, after considering his case, it was found that he did not possess the minimum qualification required for holding the post of a clerk which required an individual to have at least second division in matric. The appellants therefore submit that he could not have been regularized.
5. While serving, he attained superannuation in July, 2015. The writ petitioner preferred the writ petition No.11424 of 2015 wherein the Court passed the order supra.
6. Although the learned counsel submits that the petitioner does not possess minimum educational qualifications for appointment as a clerk, we notice that in the case of ***Uma Devi*** (supra), the Supreme Court has held as under:

“43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the

authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

7. In view of above, it was incumbent upon the appellants to have conducted the exercise of regularization of the petitioner after he was reinstated in service as he had put in more than 10 years of continuous service.

8. That apart, it is also noticed that the Haryana Government has issued a notification dated 18.06.2014 directing for regularization of Group C and D employees/workers engaged on contract basis by the Government approved agency provided they fulfil the conditions and prescribed qualification for the post on the date of appointment/engagement. The said conditions also provided that there will be no relaxation in the criteria as laid down above. However, the said conditions would not come in the way of the writ petitioner for regularization, as he was appointed much before the Employees Service Regulations of the Board, introduced in the year 1990. His appointment was from the year 1984 with continuity of service. In 1984, the condition of the qualification of matriculation second division was not available, and therefore it is safe to presume that he was having the requisite qualification for appointment as a clerk in the year 1984, and he continued to perform his duties on the said post.
9. Even otherwise, a person continuing for appointment for 31 years would acquire huge experience which compensates the educational qualifications and the same cannot be ignored for the purpose of considering for regularization.
10. The submission of learned counsel for the appellant challenging the action of the Single Bench to issue a mandamus is also found to be wholly misconceived. This Court while exercising powers under Article 226 of the Constitution of India has ample power to direct the authorities to perform their duties which are required to be done in accordance with law. That also includes directing them for considering candidature of persons for regularization in terms of the judgment passed by the Apex Court in the case of *Uma Devi* (supra).
11. In view of above, the LPA fails and is accordingly *dismissed* with direction to the appellant to comply with the order passed by the Single Bench within

a period of three months henceforth with all consequential benefits to the writ petitioner as directed by the Single Bench.

12. All pending applications also stand disposed of.

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13. In view of the aforesaid, the LPA filed by the petitioner also stands *dismissed*.

14. All pending applications also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

February 15, 2024

Mohit goyal

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| 1. Whether speaking/reasoned? | <i>Yes/No</i> |
| 2. Whether reportable? | <i>Yes/No</i> |