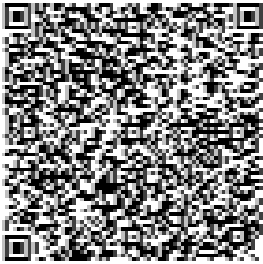


2024:PHHC-063728-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205)

LPA-440-2021 (O&M)
Reserved on : 23.04.2024
Pronounced on : 08.05.2024

State of Haryana & othersAppellant(s)
Versus
Hari RamRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr.Deepak Balyan, Addl.A.G., Haryana, for the appellants.
Mr.Surinder Kumar Daaria, Advocate, for the respondent.

G.S. Sandhawalia, Acting Chief Justice (Oral)

1. The consideration in the present Letters Patent Appeal is to the judgment of the learned Single Judge in CWP-7014-2017 decided on 03.02.2020 wherein directions were issued to regularize services of the writ petitioner as per the policy dated 01.10.2003.
2. The learned Single Judge has placed reliance upon the judgment of the Apex Court rendered in the case of **Hari Nandan Prasad and another vs. Employer I/R to Managmt. of FCI and another**, 2014(2) SCR 955. Resultantly, it was held that once a junior was regularized as such with all consequential benefits, the writ petitioner was also entitled to be regularized with all consequential benefits along with 6% interest. However, arrears to be paid were restricted to a period of 38 months prior to the date of filing of the writ petition.

3. The learned Single Judge had kept in mind the fact that the writ petitioner joined the management on 01.07.1993 but his services were terminated on 01.01.1996. He got reinstatement on 29.11.2004 with continuity of service but without back wages with the appellant-employer which is the Conservator of Forest, South Circle, Gurugram. The reason to order his regularization given was that as there were instances of the employees appointed in the year 1993 and juniors had been regularized as per the policy dated 01.10.2003. Resultantly, the finding was recorded as the appellant-employer was not disputing the said orders that similarly situated persons like Birander Singh had been granted the benefit of the award of the Labour Court who had filed CWP No.9264 of 2004, in which further reliance upon a decision rendered by this Court in CWP No.311 of 1998 titled *Dalip Singh and others vs. State of Haryana*, had been made whereby the benefit of regularization as per the policy dated 01.10.2003 was extended to him on 02.12.2004 (Annexure P-5). Similar benefits having been extended to the employees known as Bijander Singh (Annexure P-6), Yashwanti (Annexure P-7), Smt. Ramesh (Annexure P-8) and Dharambir (Annexure P-9) vide order of even date were kept in mind by the learned Single Judge.

4. The objection of the State as such is that vide judgment dated 22.11.2006 (Annexure R-2), the District Judge, Narnaul had allowed the appeal of the appellant-employer earlier and set aside the benefit of regularization granted by the Civil Court on 29.07.2006 and the same should be the basis for rejection. Counsel for the State has vehemently submitted that the said direction could not be issued once an appeal had been decided in favour of the appellant-employer and the judgment and

decree dated 29.07.2006, granting similar relief of regularization, had been set aside and, therefore, the filing of the writ petition in the year 2017 as such was not justified.

5. A perusal of the paper book would go on to show that apparently an appeal had been filed by the State against the judgment and decree dated 29.07.2006 passed by the Civil Judge (Sr. Divn.), Narnaul, in which suit for declaration and mandatory and permanent injunction had been filed on the strength of the policy letter dated 03.10.2003. The Civil Court had found that the plaintiff had fulfilled the condition of the policy letter dated 03.10.2003 and granted the necessary relief. The lower Appellate Court came to the conclusion that he is not entitled to the benefit of regularization as he did not fulfill the conditions of the policy dated 01.10.2003 and did not have a legally enforceable right of regularization while making a reference to the judgment rendered by the Supreme Court in the case of **Secretary, State of Karnataka and others vs. Uma Devi and others**, 2006(4) SCC 1. Apparently, paragraphs 52 & 53 of the said judgment missed the notice of the lower Appellate Court, which read as under:-

“52. 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.

53. 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 bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

6. The lower Appellate Court took into view that his claim was that he had been taken as a Beldar but before the Civil Court, his case was of Mali-cum-Chowkidar and, therefore, he had failed to show the requisite qualification for the said post and further that he was originally appointed against one of such vacant post. The fact that the appointment of the writ

petitioner as such was against the Aravali Project weighed with the lower Appellate Court.

7. Before the Writ Court, the claim was based upon the letter dated 01.09.2014 issued by the appellants that the leftover Group 'C' and 'D' employees, who could not have been regularized, would be given a chance as such. The said letter dated 01.09.2014 (Annexure P-3) was, thus, the fresh cause of action as such for the writ petitioner to approach the Writ Court while taking the plea of discrimination.

8. In the written statement filed, it was admitted that the petitioner's case was not liable to be considered for regularization in view of the order dated 22.11.2006 passed by the District Judge, Narnaul (Annexure R-2) and it was in such circumstances, no action was being taken. Rather the factual position of the labourers working on the muster roll were informed to the higher authorities and in the absence of any appeal having being filed against the order dated 22.11.2006, the writ petitioner was, thus, not granted benefit.

9. In **State of Haryana and others vs. Balwinder Singh and others**, 2023(2) R.C.R. (Civil) 336, we had dilated on the issue of retrenchment being done, the reinstatement being ordered by the Labour Court and the right of regularization to be considered in the case of forest department. It was noticed that there is a legal right as such for regularization. The relevant observations read as under:

“118. Thus keeping in view the judgment in **State of Karnataka Vs. M.L.Kesari & others**, (2010) 9 SCC 247, we are of the considered opinion that the learned Single Judges were well justified in directing consideration for regularization as the claim was on the basis of the policies which were in effect and were supplemented by others. The persons had worked for the requisite

period of time and were seeking regularization as per the policies which were invogue at that point of time and they were not continuing in service on account of any litigation and did not have any interim orders in their favour. The Apex Court had noticed that the true effect of the directions passed in Uma Devi (supra) was that persons who had been continuing for the period of 10 years without interim orders of the Tribunals and the employer had not undertaken the exercise of regularization within 6 months of the decision in Uma Devi (supra) then the exercise was to be taken for the limited view and it would not disentitle the employees for their right for regularization as a one-time measure. Appointment of persons which was illegal and irregular was clarified to the extent that the illegality would be only if the appointee did not possess the required minimum qualifications and the irregularity would be if the person had been selected without undergoing the process of open competitive selection but had the prescribed qualifications. In the present cases we are dealing with cases of Class-IV employees employed as Beldar/Mali/Labourer and, therefore, the said legal impediment would not come in the way. Relevant observations reads as under:

5. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned

posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

6. The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

7. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/adhoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of

continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

8. The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.

9. These appeals have been pending for more than four years after the decision in Umadevi. The Appellant (Zila Panchayat, Gadag) has not considered the cases of

respondents of regularization within six months of the decision in Umadevi or thereafter.”

10. While placing reliance on this, we are of the considered opinion that the argument raised by the State that the judgment of the learned District Judge, Narnaul had set aside the order passed by Civil Judge (Sr.Division), whereby the claim for regularization was rejected, is not liable to be accepted, in the peculiar facts and circumstances. The said order of the District Judge cannot be said to be holding the field in view of the law laid down in **Balwinder Singh (supra)** which has been further upheld by the Apex Court in **State of Haryana vs. Khajjan Singh**, SLP No. 9965 of 2016. Even otherwise, the fresh cause of action had arisen on 01.09.2014, vide which the State itself had issued instructions that the leftover Group ‘C’ and ‘D’ employees, who could not have been regularized, would be given a chance as such but because of the misreading of the judgment rendered in **Uma Devi’s case (supra)** by the lower Appellate Court, the writ petitioner cannot be prejudiced of regularization of his services. The said instructions refer to the notification dated 18.06.2014 which reads as under:

“Notification

The 18th June, 2014

No. 6/7/2014-IG.S.L— In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with the proviso to clause 6 of the Haryana Government, General Administration Department (General Services), the Governor of Haryana hereby makes the following amendment in Haryana Government, General Administration Department (General Services-1), Notification No. G.S.R. 13/Const /Art. 309/2007, dated 13th April. 2007, namely:—

AMENDMENT

In the Haryana Government. General Administration Department (General Services-1), Notification No. GSR 13/Const/An. 309/2007,

dated 13th April, 2007 the following proviso shall be added at the end, namely

"Provided that the left over Group "C" and "D" employees working on adhoc/contract/daily wages/work-charged basis, who could not be regularised under the regularization policy issued vide notifications mentioned at serial No. 1 to 4 above due to administrative reasons but were otherwise eligible, shall be regularized with effect from the date(s) they were eligible for regularization."

11. We are of the considered opinion that the learned Single Judge is well justified in granting the benefit of regularization on the strength of the similarly situated persons who have been granted the benefit of regularization vide Annexures P-5 to P-9. We do not see any tangible reasons to interfere in the order of the learned Single Judge who has taken a plausible view. It would be a travesty of justice if the writ petitioner is denied the benefit of regularization, whereas his similar situated persons have already been granted the benefit and the denial is only on account of misreading of the judgment of the Apex Court since the policy of regularization was already in place and it was a legally enforceable right.

12. Resultantly, in view of the above discussion, the present appeal is hereby dismissed keeping in view the facts and circumstances mentioned above. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

08.05.2024
Sailesh

Whether speaking/reasoned : Yes
Whether Reportable : Yes