



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.105

LPA-1649-2024 (O&M)

Date of decision : 13.08.2024

Uttar Haryana Bijli Vitran Nigam Ltd. and others

..... Appellants

Versus

Babli Devi and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr.Hitesh Pandit, Advocate, for the appellants.

Ms.Divya Sharma, Advocate, for respondent No.1.

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DEEPAK SIBAL, J. (Oral)

(1) The present intra court appeal has been filed by the Uttar Haryana Bijli Vitran Nigam Limited (for short, the Nigam) to challenge judgment dated 16.11.2023 passed by a learned Single Judge of this Court allowing respondent No.1's claim for regularization of her services.

(2) A few relevant facts may be noticed.

(3) On 12.12.1992, respondent No.1 joined the Nigam as a Sweeper on part time basis. Even today she serves the Nigam as a Sweeper on the same terms. In the meanwhile, in the year 2018, she petitioned this Court seeking regularization of her services which petition of hers, through the impugned judgment, has been allowed by a learned Single Judge of this Court.

(4) Before us, the only objection raised is that through the impugned judgment respondent No.1's services could not have been directed to be regularized because on 12.12.1992 she had not been appointed against a regular sanctioned post and that even today there was no regular sanctioned post against which she was working. Therefore, the regularization policy of the State dated 29.07.2011,



which also applied to the Nigam, could have not been applied to her case.

(5) In the light of the undisputed factual position that respondent No.1 has rendered unblemished service for over 31 years and that even today she continues to serve the Nigam, we are not inclined to interfere with the impugned judgment through which the Nigam has been directed to regularize the services of respondent No.1. Simply for the reason that the Nigam has permitted respondent No.1 to serve it for over three decades raising a presumption that the post against which respondent No.1 was and is serving was regular in nature and that her services were also required by the Nigam on a regular basis. To hold otherwise would tend to encourage the unfair practice of exploitation of Class-IV employees who would be kept as daily wagers for over three decades which, is at the least, not expected from an instrumentality of the State like the Nigam.

(6) In the case of Chabbi Lal and others, a similar objection, as taken by the Nigam in the present case, was raised by the Haryana Vidyut Parsaran Nigam Limited (for short, HVPNL). This was in response to a petition filed by Chabbi Lal and others through which they claimed regularization on the ground that they, like respondent No.1, had served the HVPNL as Sweepers etc., on part time basis, for 18 to 27 years. A learned Single Judge of this Court rejected HVPNL's objection and allowed the petition filed by Chabbi Lal and others being CWP-2326-2011-*Chhabi Lal and others vs. The State of Haryana and others* by holding as follows: -

“Similarly in the present case also the petitioners are working as Sweeper, Mali and Chowkidar. Once they have continued to work for such long period it cannot be countenanced that the posts are not regular in nature. No contrary judgment has been cited. No other argument has been raised by the learned counsel for the petitioners.

In the circumstances, this petition is allowed. The impugned orders are



set aside and the respondents are directed to regularize the services of the petitioners.”

(7) The afore referred judgment of the learned Single Judge was challenged by HVPNL through an intra court appeal being LPA-1700-2015-*Haryana Vidyut Parsaran Nigam Ltd. and others vs. Chhabi Lal and others* which appeal was dismissed by a Co-ordinate Bench of this Court on 10.10.2017. The operative part of such judgment reads as under: -

“Therefore, the only argument upon which the learned counsel for the appellants falls back is the non-availability of regular vacancies which according to us is a failing argument considering the long period of employment of the workmen. It is unacceptable that the State as a model employer should be permitted to resort to such unfair labour practices and dishonest pleas of non-availability of regular vacancies while extracting work from workmen for almost three decades. It is for the State to form a coherent policy in this regard. Their own act of adhocism make the people face uncertainties of life and employment after three decades of service. The appeal deserves dismissal, more particularly, when it is barred by delay of 74 days which has been attributed to the procedures reflecting the callous attitude of the appellants.”

(8) The HVPNL challenged the judgment of the Division Bench in *Chabbi Lal’s* case (supra) before the Supreme Court through SLP No(s).1857/2018-*Haryana Vidyut Prasaran Nigam Ltd. and others vs. Chhabi Lal and others*” which was also dismissed on 29.01.2018.

(9) Similarly, in a bunch of petitions in which the lead case was CWP-9825-2015-*Madan Lal and others vs. Haryana Vidyut Prasaran Nigam Limited and others* a learned Single Judge of this Court considered a similar matter as the present one and rejected the objection of the employer therein with regard to the non-availability of sanctioned posts. Accordingly, regularization of the services of the petitioners therein was directed on the ground that they had served as Sweepers etc. for over two decades. The operative part of the said judgment reads as follows:-



When confronted with the contention advanced by the State that though the petitioners are working as Malis, Sweepers etc. for over two decades but their cases for regularization could not be considered since there were no regular sanctioned posts, this Court in CWP No. 2326 of 2011, titled 'Chhabi Lal and others Vs. The State of Haryana and others' decided on 20.05.2015 rejected the argument holding that once they have been allowed to work for such a long period of time, it cannot be countenanced that the posts were not regular in nature. The Single Bench relied on an earlier judgment rendered in 'Anand Walia and others Vs. Haryana Urban Development Authority and others', reported as 2013 (3) SLR 611 quoting paragraph 9 of that judgment to the following effect:

“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 urbanization. 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 of payment of installments etc. is required to be maintained. The job is not temporary in nature. The persons are required on regular basis....”

Further, learned counsel for the petitioner also relies on my judgment in CWP No. 23642 of 2015, 'Laxmi Devi Vs. Haryana Vidyut Prasaran Nigam Limited', decided on 19.01.2018 in which the respondent Nigam was party facing the same issue and was represented by Mr. R.S. Longia, Advocate who appears in this case as well. The Court after noticing the judgment in Secretary, State of Karnataka and others Vs. Uma Devi and others, 2006 (4) SCC 1 and looking to the total length of service in the Board and Nigam comprising of over 21 years held that it would appear unfair and inequitable to dismiss the case of the petitioners on the sheer technicality of the law even when the petitioners therein had not completed 10 years of service on 10.04.2006 which is the date of pronouncement of judgment in Umadevi case (supra).

Relying on the decision in Chabbi Lal's case (supra) in CWP No. 11209 of 2015 titled 'Surinder Pal Vs. Haryana Vidyut Prasaran Nigam Limited and others' decided on 19.05.2017 against which LPA No. 570 of 2017 has been dismissed on 25.08.2017 and also in 'Khajjan Singh and others Vs. State of Haryana', 2015 1 S.C.T. 604, I had allowed similar claims for regularization of services.

In the present case, the claim has been rejected for the reason that the petitioners do not fulfill the terms and conditions of the policy of 2011 since they have not worked on sanctioned posts. This argument has been ruled out in those cases and the present one as well as the element of reasonableness in Article 14 has to be applied in this case, if not the discriminatory part of Article 14 since the respondent-department has insisted that the petitioner has been unable to point out the name of person junior to him or engaged later has had his service regularized. The principle of reasonableness in Article 14 has to be given wholesome meaning by treating the petitioner approximately similar to the counterparts who have secured regularization of service in the same Nigam/Board while working shoulder to shoulder on the same posts of Mali, Sweeper etc.



Accordingly and as a result, for the foregoing reasons, the petition is allowed, the impugned order (Annex. P-1) dated 05.03.2015 is set aside. In cases where no impugned orders have been passed, the impugned inaction is set aside to bring all the cases on par. The respondent-Nigam is directed to regularize the services of the petitioner with all consequential benefits and arrears of pay of three years prior to the date of filing of the petition is allowed. The regularization will relate back to the policy dated 29.07.2011.”

(10) Madan Lal’s case was taken up in an intra court appeal being LPA-1316-2018-Haryana Vidyut Parsaran Nigam Ltd. and others vs. Madan Lal and others which was dismissed by a Co-ordinate Bench of this Court on 12.07.2022 by holding as follows: -

“A perusal of the said judgment would go on to show that the issue before the Apex Court was regarding the regularization policy of the Government of India in pursuance of the orders of the Apex Court in Uma Devi's case as per OM dated 11.12.2006. The original applicants before the Tribunal were serving as part-time employees and were not granted the benefit of the same and the Tribunal had also rejected their claim of regularization. However, the Tribunal had directed that a onetime scheme be formulated. The matter had been brought to this Court by both, Union of India and the part-time employees wherein directions had been issued to formulate the policy and place it before the Court. Accordingly, a new policy had been formulated and directions were issued to re-consider the claim as per the new policy dated 30.06.2014. The authorities thereafter had rejected the claim vide order dated 11.09.2014 on the ground that there were no sanctioned posts and the employees had not completed 10 years of service as on 10.04.2006, the date of decision in Uma Devi's case. Resultantly, directions had been issued to reformulate the policy and take a decision on the sanctioned posts in a phased manner. The said directions were not approved by holding that the High Court could not exercise powers to issue a mandamus to sanction and create the posts and to formulate a particular regularization policy. Resultantly, the said directions were set aside while upholding the directions issued that persons who had completed 20 years as part-time daily wagers were to be granted the minimum basic pay of Group-D posts w.e.f. 01.04.2015 or on completion of 20 years of service, whichever is later. In our considered opinion, the issue as conceded by Mr.Nalwa also is that the policy in question does also apply to part-time workers and therefore the judgment of Ilmo Devi (supra) shall not be applicable.

It is also to be noticed that in **Sheo Narain Nagar & others Vs. State of Uttar Pradesh & others, AIR 2018 SC 233**, a similar issue arose before the Apex Court regarding the regularization not granted by the High Court of Allahabad despite the fact that the Government employees had been working on daily wage basis since August, 1993. The Apex Court noticed that the employees who had rendered service for about 24 years and only on account of the fact that the appointments were irregular but not back-door entry or illegal appointments, the benefit of regularization had to be granted. The decision in Uma Devi (supra) was held to be not properly understood by various State Departments who rather resorted to contractual employment in an exploitive manner. It was noticed that the writ petitions had been dismissed on the



ground that the appointments were illegal and in contravention of the rules and further it was noticed that the said employees had completed 10 years of service and temporary status had been given to them. Resultantly, the orders terminating their services and the judgments of the learned Single Judge and the Division Bench of the Allahabad High Court were set aside by directing regularization. The said judgment would apply squarely in the facts and circumstances of the present case also.

It is in such circumstances, keeping in view the background which has been noticed by the Learned Single Judge and where there is apparent violation of Article 14 of the Constitution of India where persons who have only completed 6 years of service like in the case of Uday Singh, have been granted the benefit of regularization, the Nigam still has chosen to file the present appeals. The same are also barred by 45 days of delay in filing in the case of Madan Lal and 101 days of filing in the case of Laxmi Devi.

Accordingly, keeping in view the above background, we also do not deem it fit to interfere in the orders passed by the learned Single Judge as no sufficient case also has been made out to condone the delay in filing the appeals. The employees who have rendered over 25 years of service as on today and who were employed at the first instance by the erstwhile Board/Nigam itself on their asking, without complying with the terms of the employment by offering employment to others, cannot be short-changed by the Nigam on technicalities. It is also to be noticed that the learned Single Judge was exercising jurisdiction under Article 226 of the Constitution of India which is a discretionary one and thus, the principles of equity would come into force overriding the strict rule of the policy on the technicalities as argued by Mr.Nalwa. One cannot lose sight of the fact that the private respondents are Class-IV employees who are now at the fag end of their life and also not likely to be employed elsewhere and have served the Board/Nigams to the best of their ability in their youth. Therefore, the benefit which the Learned Single Judge has granted them is not the one which is liable to be set aside, in the peculiar facts and circumstances.”

(11) In the light of the afore discussion, we are not inclined to interfere with the impugned judgment.

(12) Dismissed.

(13) Pending miscellaneous application(s) also stand disposed of.

[DEEPAK SIBAL]
JUDGE

13.08.2024
shamsher

[DEEPAK MANCHANDA]
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No