



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

CWP-22554-2020

Reserved on : 05.12.2024

Pronounced on : 13.12.2024

Rajender Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Rajesh Arora, Advocate for the petitioner.

Mr. Ravi Dutt Sharma, D.A.G., Haryana.

NAMIT KUMAR, J.

1. The petitioner has invoked the writ jurisdiction of this Court by filing the instant petition under Articles 226/227 of the Constitution of India, seeking writ of certiorari, quashing the letter dated 20.11.2020 (Annexure P-11), whereby the claim of the petitioner for regularization has been rejected. Further seeking a writ of mandamus, directing the respondents to regularize the services of the petitioner w.e.f. 01.10.2003 as Pump Attendant with all consequential benefits.

2. The brief facts of the case, as have been pleaded in the petition, are that the petitioner joined the services of the respondents as Pump Attendant on 01.01.1999 and he continuously worked till 31.12.2009, when his services were terminated. The said termination was impugned by the petitioner before the Labour Court-I, Gurugram.

The said reference was answered in favour of the petitioner vide award dated 20.07.2012, whereby the petitioner was ordered to be reinstated in



CWP-22554-2020

service with 30% back wages. The concluding portion from the award reads as under :-

“6. The evidence adduced by the workman goes unrebutted and unchallenged that he worked for continuous period from 01.01.1999 to 30.12.2009. No notice or retrenchment compensation was paid to him at the time of termination of his services. The statement made by the workman as PW-1 has gone unrebutted on the file and there is no valid reason as to why his statement on oath should not be believed. A further perusal of evidence available on the file establish that workman had actually worked for more than 240 days with the respondents and his services were terminated in an illegal manner. Hence, workman is entitled to reinstatement in service of respondents with back wages to the extent of 30% on the basis of last drawn salary as he had worked with the respondents for more than 240 days and his services were illegally terminated.

7. Thus, in view of above discussed evidence, the reference made for the workman is ordered to be decided in favour of the workman and against the mgt.”

3. The abovesaid award was challenged by the respondents by filing CWP No.18011 of 2013 titled as ‘S.D.O., Public Health Department, Sub-Division no.2, Nuh, Mewat (Haryana) and another Vs. Rajender Kumar and others’ and during the pendency of the said writ petition, the petitioner was reinstated in service and paid 30% back wages and the said writ petition was rendered infructuous vide order dated 06.02.2015. The State Government issued instructions dated 01.10.2003 for regularization of Group 'C' & 'D' employees, who have completed three years service as on 30.09.2003 and were in service on



CWP-22554-2020

the said date and have completed 240 days of service in each year and the break should not be more than 30 days in a year. After the reinstatement of the petitioner, the petitioner made a request for regularization of his services in terms of the policy dated 01.10.2003 which was forwarded by the Executive Engineer, Public Health Engineering Project Division No.2, Palwal to the Executive Engineer, Public Health Engineering, Division No.1, Nuh vide memo dated 01.10.2019 which was replied by the Executive Engineer, Public Health Engineering Division No.1, Nuh vide memo dated 23.10.2019 by stating that the petitioner is working in their office at present, hence his case for regularization is to be dealt with by the said office. His case was also recommended by the Superintending Engineer, Public Health Engineering Circle, Palwal vide his memo dated 13.03.2020 to the Engineering-in-Chief, Public Health Engineering Department, Haryana, Panchkula. Thereafter, vide memo dated 17.07.2020, the office of Engineer-in-Chief, Haryana directed the Superintending Engineer, Public Health Engineering Circle, Palwal to take action as per the Labour Court award dated 20.07.2012 and High Court order dated 06.02.2015 as per law and rules. Since no action was taken by the respondents for regularization of the services of the petitioner, he served a legal notice dated 14.09.2020 which has been replied vide memo dated 20.11.2020 (Annexure P-11), whereby his claim for regularization has been rejected on the ground that in terms of the policy dated 01.10.2003 only those employees, who have completed three years service as on 30.09.2003 and were in service on 30.09.2003 were



CWP-22554-2020

entitled for regularization and the petitioner does not fulfill the said criteria. Hence the present petition.

4. Pursuant to notice of motion, written statement on behalf of the respondents has been filed and the claim of the petitioner for regularization has been resisted by stating that the petitioner was engaged on muster roll as a Pump Attendant on daily wages w.e.f. 01.01.1999 and thereafter, his services were terminated. The Labour Court, Gurugram after considering only the contentions of the petitioner granted the relief of reinstatement and payment of 30% back wages to the petitioner as the respondents could not be present in the Labour Court. The petitioner had produced documents only for the year 1999 and the petitioner did not come for more than 64 days in the year 1999 and despite that the Labour Court went on to pass the award in favour of the petitioner and granted the relief on the basis of his claim that he worked for the department from 1999 to 2009, whereas the evidence/documents produced related only to one year i.e. 1999. The petitioner does not fulfill the conditions of regularization policy of 2003 and thus, he is not entitled for regularization as he was not appointed against the sanctioned post in the year 1999.

5. Learned counsel for the petitioner has submitted that the claim of the petitioner for regularization in terms of policy dated 01.10.2003 has wrongly been rejected by the respondents by taking a stand that he was not in continuous service. He further submitted that the respondents have ignored the finding recorded by the Labour Court wherein a firm finding has been recorded that the petitioner was in



CWP-22554-2020

continuous service from 01.01.1999 to 30.12.2009. Therefore, the petitioner cannot be denied the benefit of regularization.

6. Per contra, learned State counsel has submitted that since the petitioner was not in service as on 30.09.2003 and there was break in service of the petitioner in the year 1999, therefore, he does not fulfill the conditions mentioned in the regularization policy dated 01.10.2003 and his claim has rightly been rejected.

7. I have heard learned counsel for the parties and perused the relevant documents with their able assistance.

8. There is no dispute that the petitioner joined as a Pump Attendant on 01.01.1999 as a daily wager and his Services were terminated on 31.12.2009. The said termination was challenged by him before the Labour Court, Gurugram. The Labour Court, Gurugram vide its award dated 20.07.2012 recorded a finding that the petitioner worked for continuous period from 01.01.1999 to 30.12.2009 and before terminating his services, no notice or retrenchment compensation was paid to him. He had actually worked for more than 240 days with the respondent and his services were terminated in an illegal manner, hence he was held entitled for reinstatement in service with 30% back wages. The said award was challenged by the respondent before this Court by filing *CWP No.18011 of 2013 titled as 'S.D.O., Public Health Department, Sub-Division no.2, Nuh, Mewat (Haryana) and another Vs. Rajender Kumar and others'*. During the pendency of the said writ petition, the petitioner was reinstated in service and was paid 30% back wages. In this manner, the Labour Court award was implemented by the



CWP-22554-2020

respondents and the said writ petition was rendered infructuous vide order dated 06.02.2015. Thereafter, the petitioner requested the department for regularization of his services in terms of policy dated 01.10.2003, however, the said claim has been rejected by the respondents mainly on the ground that firstly, as on 30.09.2003, the petitioner was not in service and secondly, there was 64 days break in his service in the year 1999.

9. The stand taken by the respondents is totally erroneous and perverse as the finding recorded by the Labour Court to the effect that the petitioner was in continuous service from 01.01.1999 to 30.12.2009 has totally been ignored by the respondents. The respondents had an opportunity to rebut the said stand of the petitioner first before the Labour Court and then before this Court, when they challenged the award passed by the Labour Court. Having failed to perform their duty, they cannot be allowed to challenge the said finding of the Labour Court, while considering the claim of the petitioner for regularization. The respondents cannot be allowed to act as per their whims and fancies as the State, being a model employer, is expected to act in a rightful manner. The issue which has been finalized by the Labour Court and upheld by this Court cannot be allowed to be raised in the present proceedings. The Hon'ble Supreme Court in ***State of Punjab and another Vs. Suresh Kumar Sharma : 2010(4) S.C.T. 490*** has held that once a question has been decided in another case upto the Hon'ble Supreme Court and the judgment has been implemented, the same objection cannot be allowed to raise subsequently in other case. In the



CWP-22554-2020

present case, the respondents cannot be allowed to raise the said question. Further once the petitioner has been ordered to be reinstated in service, he is deemed to be in service on 30.09.2003 and cannot be denied regularization in service.

10. Another plea has been taken by the respondents that the petitioner was not working against a sanctioned post. The said plea is also liable to be rejected as it has specifically been averred by the petitioner in para 5 of the writ petition that various similarly situated persons namely Ram Chander, Javed and Umesh had been regularized in the year 2003 and even one of his junior namely Daya Chand s/o Umrao Singh, Sweeper has also been regularized. The said plea has also not been denied by the respondents in their written statement. The petitioner has placed on record regularization order of his junior namely Daya Chand s/o Umrao Singh, who was a part timer and his services have been regularized vide order dated 13.11.2019 w.e.f. 17.01.2017.

11. The Division Bench of this Court in ***Ajmer Singh versus State of Haryana and others : 2002(1) RSJ 479*** has held that once an employee is reinstated in service with continuity, he is deemed to be on duty for all intents and purposes and the benefit accruing on the basis of such deemed reinstatement has to be granted as if he was actually on duty from the date when his services have been illegally terminated.

12. Similar claim was accepted by this Court, vide judgement dated 24.01.2017 passed in ***CWP No.17150 of 2015 titled as 'Pawan Kumar and others versus State of Haryana and others'***, wherein it was held that the petitioners are entitled to be regularized in service, as per



CWP-22554-2020

regularization policy dated 01.10.2003 of the State Government and the above said judgement has been upheld by the Division Bench of this Court, vide judgement dated 02.12.2022 passed in ***LPA No.688 of 2021 titled as 'State of Haryana and others versus Balwinder Singh and others'*** wherein, it has been held as under:-

“xxx xxx xxx xxx

*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 :



CWP-22554-2020

(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*



CWP-22554-2020

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*



CWP-22554-2020

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.”*

119. *The Apex Court in **State of Jharkhand and others Vs. Kamal Prasad and others, (2014) 7 SCC 223** while dismissing the appeals of the State and upholding the judgment of the High Court, regarding the regularization orders in favour of the Junior Engineers who had been working for 29 years was held to be legal and by holding that they were covered under the exceptions made in **Uma Devi (supra)**. Resultantly, while placing reliance upon the judgment passed in **Olga Tellis & others Vs. Bombay Municipal Corporation & others, (1985) 3 SCC 545**, it was held that the High Court had rightly come to the conclusion that the action of the State was arbitrary and it shocked the conscious of the Court that the persons had worked for 29 years and had been discharging permanent nature of duties. Therefore, it was held that the judgment could not be vitiated on account of any erroneous finding or suffering from any error in law.*

120. *Thus, we are of the considered opinion that a window had been kept open by the State that the policies*



CWP-22554-2020

dated 17.06.1997, 05.11.1999, 01.10.2003, 10.02.2004 were to be applied to persons who had not been regularized and, therefore, it does not lie in the mouth of the counsel for the State to argue that the policies stood withdrawn. The learned Single Judges were justified in issuing directions for consideration. As noticed above the claim is based on a legal right for seeking issuance of a writ of mandamus and in such circumstances it cannot be said that the learned Single Judges were in error in allowing the writ petitions. Accordingly, the appeals filed by the State are dismissed. All pending civil miscellaneous applications, if any, are also disposed of. ”

13. To the same effect is the judgement of the Hon'ble Supreme Court in ***Civil Appeals No.616-617 of 2016 (arising out of various SLP (C) Nos.9965-9974 of 2016 and connected cases) titled as 'State of Haryana and others v. Khajjan Singh and others' decided on 09.01.2024*** wherein it has been held as under:-

“xxx xxx xxx xxx

The writ petitions were filed by Respondents seeking regularization of their services from the dates from which their juniors were regularized by the State as per regularization policy dated 01.10.2003. It was averred that even after fulfilling the criteria as specified the juniors to them were extended the benefit of regularisation. Learned Single Judge vide order dated 28.05.2014 allowed the writ petitions and granted the relief, as prayed. The relevant portion of the order is reproduced herein as thus:

“72.By applying these standards of primary review of administrative action in the present cases where the fortunate ones secured their freedom of regularization without court intervention but which has resulted in hostile and invidious discrimination are declared bad in the eyes of law. The rule of law is clearly against man's inhumanity to man. This kind of deprivation is in contravention of the natural law of equality among citizens who are or have become equally placed in all respects of basic rights possessed by both of them as human beings even if there were no written constitution or statutory law



CWP-22554-2020

protecting workers against unfair discrimination and unfair labour practice inter se of those who deserve equality of treatment with their counterparts obtained through the tardy process of Labour Court trial resulting in favourable awards by the deeming fiction of law, even then the Court must step in to vanquish subjugation of the spirit. No person aggrieved should be turned away thinking the Court failed in coming to aid by restoring the unfair imbalance created by the administrator.

73. On the conspectus of the above facts, law and the thread of judgments read together, and for the various reasons stated interconnecting the judicial decisions, the rights of the petitioners for ante dated regularization of services are declared in their favour and against the State.

74. The writ petitions are allowed. The orders of the respondent State declining representations of the petitioners for regularization in this batch of cases are nullified and set aside. In cases where regularization has been granted with effect from 2003 they shall be ante dated in terms of this judgment from the dates such petitioners were separated from their erstwhile juniors and fellow workers. Accordingly, the State of Haryana would pass fresh orders in terms of this judgment in each case after the period of limitation prescribed for calling in question this order has expired.”

On filing of the appeal by State, learned Division Bench of the High Court vide impugned judgments passed on different dates, dismissed the LPA(s) filed by appellant(s) maintaining the order of learned Single Judge. The relevant portion of the order of learned Division Bench is reproduced as under :

“[4] Learned Single Judge has followed the view earlier taken by this Court that where services of juniors are regularized without considering the claim of senior employee, such action of the authorities would be violative of Articles 14 & 16 of the Constitution. Consequently, directions have been issued vide the order under appeal for regularization of services of private-respondents.



CWP-22554-2020

[5] The order of learned Single Judge was admittedly assailed by the State of Haryana firstly in LPA No.1903 of 2014 (State of Haryana and others versus Jiyaji Sharma which was dismissed by a Coordinate Bench vide order dated 21.01.2015. On that very day, another LPA No.1909 of 2014 (State of Haryana and another versus Sukhbir Singh was also dismissed.

[6] For the reasons assigned by this Court in Jiyaji Sharma's case (supra) coupled with the findings returned by learned Single Judge, as briefly noticed in para [2] above, we do not find any merit in these appeals which are accordingly dismissed.”

Challenging the impugned Judgments, present appeals were filed before this Court, but since the issue involved is similar in all matters, therefore they are tagged and taken together for hearing.

During the hearing, it has been brought to our notice that Special Leave Petition (C) Nos. 36871 of 2012; 17531 of 2014; and 25598 of 2014 filed in similar cases have been heard and dismissed by this Court vide orders dated 02.05.2014; 07.07.2014; and 12.09.2014 respectively. Further, it was also brought to our notice that while the present matters were pending, some of the respondents have been regularized and orders in this regard have been placed on the record.

After hearing learned counsel for the parties, and on perusing the orders of dismissal of the petitions passed by the coordinate benches in similar matters and also considering that some of the respondents have already been regularized by the appellants, we are not inclined to interfere with the orders impugned. The appeals are, accordingly, dismissed. However, the question of law is left open.

We further direct that the order passed by High Court shall now be complied within a period of two months from the date of communication of this order.

Pending interlocutory application, if any, is/are disposed of.”

14. Further, the Hon'ble Supreme Court in the case of **Om**

Prakash Banerjee v. The State of West Bengal & Ors. : 2023 INSC



CWP-22554-2020

567 has held that the employee cannot be denied the benefit of regularization of his services, when his similarly placed fellow employees have been granted the said benefit. In the abovesaid judgement, it has been held as under:-

“xxx xxx xxx xxx

22. At the outset, we would like to state that this a case of gross violation of Article 14 and 16 of the Constitution. The Appellant, who has been working in Respondent No. 3- Municipality since 1991, and was, subsequently, appointed as a clerk in 1996; has not been regularised in his service. Moreover, his several of his co-employees (including juniors) have been regularised in service. The High Court's Order dated 20.06.2000 in Writ Petition No. 19555 of 1999 clearly shows that absorption has been given effect to vide Order dated 26.09.1996. The said writ petition was dismissed to the extent of entitlement of back dated appointment and arrears. However, the Respondents never paid any heed to such order and inordinately delayed the Appellant's appointment, while simultaneously absorbing other casual employees. Even the Appellant's service book records that Respondent No. 3- Municipality has absorbed the Appellant in view of the High Court's Order dated 20.06.2000 in Writ Petition No. 19555 (W) of 1999.

23. The Respondent has relied on Umadevi (supra) judgment to contend that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. The relevant portion of the factual position in Umadevi (supra) is being reproduced as hereunder:

“8.the respondents therein who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka claim that they worked in the Department based on such engagement for more than 10 years and hence they are entitled to be made permanent employees of the Department, entitled to all the benefits of regular employees. They were engaged for the first time in the years 1985-86 and in the teeth of orders not to make such appointments issued



CWP-22554-2020

on 3-7-1984. Though the Director of Commercial Taxes recommended that they be absorbed, the Government did not accede to that recommendation. These respondents thereupon approached the Administrative Tribunal in the year 1997 with their claim. The Administrative Tribunal rejected their claim finding that they had not made out a right either to get wages equal to that of others regularly employed or for regularisation. Thus, the applications filed were dismissed. The respondents approached the High Court of Karnataka challenging the decision of the Administrative Tribunal. It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in **Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544]** and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts.”

24. However, in the present case, as we have observed, the Appellant was appointed as a casual worker in 1991. While the services of other co-employees were regularised, that of the Appellant and some others was left out. The High Court in its Order dated 03.09.2010 passed in Writ



CWP-22554-2020

Petition No. 17892 of 2010 has also recorded the Respondents' submissions that resolutions pertaining to the Appellant's absorption are already in place and the same have been sent for necessary approval. Therefore, the judgment rendered in Umadevi (supra) will not apply to the facts and circumstances of the present case.

25. Now, coming to the Reasoned Order dated 07.03.2012 passed by Respondent No. 2 herein, which states that in pursuance of the High Court's order dated 24.08.2009 to not to give effect to the instruction of the Labour Department (pertaining to regularisation of casual employees) as communicated in the circulars dated 13.08.1979, 28.08.1980 and 13.03.1996; the Appellant's services cannot be regularised. However, what is to be seen here is that, as early as 2002, i.e., the High Court's Order dated 20.06.2000 in Writ Petition No. 19555 of 1999 clearly shows that absorption has been given effect to vide Order dated 26.09.1996. Moreover, as has been observed above, the Respondents had also submitted before the High Court in Writ Petition No. 17892 of 2010 that resolutions pertaining to the Appellant's absorption are already in place and the same have been sent for necessary approval. Apart from this, as is evident from the facts and circumstances mentioned above, the non-regularisation of the services of the Appellant in the present case, is, in our view, a violation of the fundamental rights of equality before law and equality of opportunity in matters relating to employment under the State, as enshrined under Article 14 and Article 16(1) of the Constitution, respectively. It is to be noted that the Appellant has retired in 2021.

26. The facts of U.P. SEB (supra) are similar to the case at hand. The relevant portion of the said judgment is being reproduced hereunder:

"3. By means of the writ petition, 34 petitioners who were daily wage employees of the Cooperative Electric Supply Society (hereinafter referred to as "the Society") had prayed for regularisation of their services in the U.P. State Electricity Board (hereinafter referred to as "the Electricity Board"). It appears that the Society had been taken over by the Electricity Board on 3-4- 1997. A copy of the minutes of the proceeding dated 3-4-1997 is Annexure P-2 to this appeal. That proceeding was



CWP-22554-2020

presided over by the Minister of Cooperatives, U.P. Government and there were a large number of senior officers of the State Government present in the proceeding. In the said proceeding, it was mentioned that the daily wage employees of the Society who are being taken over by the Board will start working in the Electricity Board “in the same manner and position”.

4. Pursuant to the said proceeding, the respondents herein were absorbed in the service of the Electricity Board.

5. Earlier, the Electricity Board had taken a decision on 28-11-1996 to regularise the services of its employees working on daily-wage basis from before 4-5-1990 on the existing vacant posts and that an examination for selection would be held for that purpose.

6. The contention of the writ petitioners (the respondents herein) was that since the Society had been taken over by the Electricity Board, the decision dated 28-11-1996 taken by the Electricity Board with regard to its daily wage employees will also be applicable to the employees of the Society who were working from before 4-5-1990 and whose services stood transferred to the Electricity Board and who were working with the Electricity Board on dailywage basis.

7. The learned Single Judge in his judgment dated 21-9-1998 held that there was no ground for discriminating between two sets of employees who are daily wagers, namely, (i) the original employees of the Electricity Board, and (ii) the employees of the Society, who subsequently became the employees of the Electricity Board when the Society was taken over by the Electricity Board. This view of the learned Single Judge was upheld by the Division Bench of the High Court.

8. We are in agreement with the view taken by the Division Bench and the learned Single Judge.

9. The writ petitioners who were daily wagers in the service of the Society were appointed in the Society before 4-5-1990 and their services were



CWP-22554-2020

taken over by the Electricity Board “in the same manner and position”. In our opinion, this would mean that their services in the Society cannot be ignored for considering them for the benefit of the order dated 28-11-1996.

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19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years' service and it will surely not be reasonable if their claim for regularisation is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularisation and are made to face the same selection which fresh recruits have to face.”

27. The principles of natural justice, too, demand that the Appellant cannot be denied the benefit of the regularisation of services when his similarly placed fellow employees have been granted the said benefit.

28. Therefore, we do not agree with the view taken in the impugned judgment of the High Court as well as by the learned Single Judge in Writ Petition No. 31399 (W) of 2017. The Appellant herein, in our considered opinion, is entitled to receive back wages and benefits from 1991, along with an interest of 10%.

29. Accordingly, the Appeal is allowed. The impugned judgment of the High Court dated 10.12.2019, passed in MAT No. 611 of 2018 and CAN No. 10038/2018 is hereby set aside. However, in the facts and circumstances of the case, we do not make any order as to costs.”

15. To the same effect is the judgement passed by the Division Bench of this Court in the case of '**Ajmer Singh**' (*Supra*) and of the Single Bench dated 20.04.2021 passed in **CWP No.19793 of 2017 titled as 'Bhoop Singh (since deceased) through his LR v/s State of Haryana and others**, against which LPA No.761 of 2021, preferred by the State of Haryana, was also dismissed, vide order dated 31.01.2024.



CWP-22554-2020

16. In *Ushaben Joshi versus Union of India and others* : **2024 INSC 624**, recently the Hon'ble Supreme Court has held that similarly placed employees cannot be discriminated and directed regularization of worker, who served for 30 years. The relevant paras of said judgement are reproduced as under:-

“xxx xxx xxx xxx

17. *The respondents have not indicated anything in the affidavit filed in pursuance of the order dated 27th February, 2024, that the nature of duties or the hours of work being performed by Smt. K.M. Vaghela were any different from that of the appellant. Thus, the defence taken by the respondents for their decision not to confirm the appellant in services that she was only performing duties as a contingency worker(water woman) for four hours a day is not substantiated from any acceptable material on record. Indisputably, the appellant continuously served the Department for more than three decades as a contingency ‘water woman’. Keeping in view the fact that an employee similarly placed but inducted in service after nearly six years from the date of employment of the appellant with the respondent-Department has been conferred the benefits of confirmation in service by way of appointment to the post of MTS, the appellant is entitled to claim the same benefits.*

xxx xxx xxx xxx

19. *In view of the foregoing discussion, the impugned orders are set aside. The respondents are directed to treat the appellant at par with Smt. K.M. Vaghela and shall pass the order of regularisation/appointment as MTS in favour of the appellant, on similar terms as was done in the case of Smt. K.M. Vaghela. The order of regularisation will be effective from the date on which, Smt. K.M. Vaghela was appointed as MTS with all consequential benefits. Compliance of this order shall be effected within a period of three months from the date of this order.”*

17. Adverting to the facts of the present case, once services of the similarly situated person, who was junior to the petitioner, have been regularized by the respondent-department, there is no justification for

**CWP-22554-2020**

denying the said benefit from the same date to the petitioner, as the same would be discriminatory and violative of Articles 14 and 16 of the Constitution of India.

18. In view of the above, the present petition is allowed and the impugned order dated 20.11.2020 (Annexure P-11) is quashed and set aside and the respondents are directed to regularize the services of the petitioner in terms of the policy dated 01.10.2003 with all consequential benefits within a period of 03 months from the date of receipt of certified copy of this Court.

13.12.2024
kothiyal

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No