

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4754-2012 (O&M)

Decided on 08.11.2024

Shakuntla (deceased) through LRs & Ors.

... Appellants

VS.

District Forest Officer Territorial Mahendergarh & Ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Sonak, Advocate for the appellants

Mr. BS Virk, Sr.DAG Haryana

Sandeep Moudgil, J.

(1). The present regular second appeal has been preferred assailing the judgment and decree dated 25.10.2010 passed by the Civil Judge (Jr.Divn.), Rewari as well as the judgment and decree dated 08.08.2012 passed by District Judge, Rewari.

(2). The appellant-plaintiffs who are employees of the respondents filed a civil suit seeking declaration and permanent injunction with consequential relief on the ground that they are working with the Forests Department as Mali-Chowkidar since the year 1988-89 on daily wages and Labour Court Gurgaon has passed an award for continuity of service alongwith full back wages 5 to 6 years ago. It was their case before the civil Court that appellant- plaintiffs had been working continuously since the last more than 6 years as Mali-Chowkidars and vide order dated 3.10.2003 the Haryana Government regularization and since appellant-plaintiffs fulfill all the conditions of being regularized, they are entitled to the same. The District Forest Officer, Mahendergarh under Section 25 of the Industrial Disputes Act,

1947 (in short the Act) has given them notice for removing them from service.

(3). The trial court vide judgment and decree dated 25.10.2010 observed that the respondents-defendant have proceeded under Section 25 of the Act in consonance with the award which has been passed by the Labour Court dated 16.08.2000 and the plaintiffs were taken back in service as there was non-compliance of the said provision leading to the passing of the said award by the Labour Court. The trial court repelled the contention of the appellant-plaintiffs that their claim is based on the fact that they remained in service and they are entitled for regularization of their services as per Govt. policy of 2003 by observing that the appointment to the post of Mali-Chowkidar is through the process of selection in which they are to compete along with other suitable candidates and since the work of the appellant-plaintiffs was admittedly of seasonal in nature, there is no need for regular appointment in the Department. The suit of the appellant-plaintiffs was dismissed, *inter alia*, with the following observations:-

*“The contention of the plaintiff that their co-employees have been given the benefit by the Hon'ble High Court and therefore, they should be regularized is not tenable in view of the fact that its stand admitted that this extraordinary relief has been given to them in exercise of special powers of the Hon'ble High Court. In this regard it has been laid down by the Hon'ble Supreme Court of India in the case titled **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, 2006(4) SCC 1** in para no.27 that a temporary employee would not be entitled to rely any writ petition they filed before the court upon the order of Hon'ble Supreme Court which directs the temporary employees to be regularized in his service without assigning reasons and ask the High Court to pass an order to similar*

nature. Therefore, this court cannot pass the order on the basis that a relief has been granted to the other employees by the Hon'ble Supreme Court for regularization in service and pass an order of similar nature. Therefore, in the present case engagement was made for a particular work i.e. Planting of trees during the monsoon season and on completion of that work or project, the plaintiffs, who were temporary employees claim any right to continue in the service, and this court cannot direct them to be continued or absolve elsewhere. A person appointed on temporary basis on daily wages and on the project coming to an end cannot issue the direction to engage them in any other work or appoint him against, existing vacancies. Therefore, issue no.1 and 2 are decided against the plaintiff and in favour of defendants.”

(4). The civil appeal preferred thereagainst also was dismissed vide judgment and decree dated 08.08.2012 observing that the appellant-plaintiffs have failed to prove that they had completed three years of continuous service and had worked for 240 days in each year or they were appointed against a regular vacant post which were the pre-requisite condition for availing the benefit under the policy dated 01.10.2003 and on this ground, their claim for parity with other employees found eligible for regularisation cannot be entertained.

(5). Counsel for the appellant has argued that the case of the appellant-plaintiff is covered by the judgment passed by this Court in **RSA No.2050 of 2007 titled as Mohan Lal Versus State of Haryana and others,** where the facts of the case were almost identical, in which this Court on the basis of an earlier judgment passed by this Court, had proceeded to grant the benefit of regularization of the services to the appellant therein from the date his juniors were regularized. The judgment passed by the Supreme Court in **Uma Devi's** case (supra) has also been dealt with and this Court has held that

there is hostile discrimination leading to the violation of Article 14 of the Constitution of India and keeping that in view, the civil suit has been allowed and the benefit of regularization of services granted to appellant-Mohan Lal, in the said case, from the date his juniors were granted the benefit of regularization. Besides he also asserts that this Court while dealing with identical issue decided the case in favour of the appellant in **Amar Singh (deceased) through LRs vs. State of Haryana & Ors. RSA No. 4749 of 2012** decided on 07.03.2019.

(6). Learned State counsel, on the other hand, though is unable to controvert the factual aspect, however, submits that the policy instructions, on which reliance has been placed by the appellants do not hold the field in the light of the withdrawal of all the earlier policies including that of 2003 vide letter dated 25.04.2007.

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

(8). The Supreme Court in **Umadevi's** case held that no mandamus can be issued to regularise and absorb those in regular service who were engaged on daily wages/adhoc without following the procedure prescribed by the Rules applicable for recruitment. In paragraph 26, it has been held as under:-

"26. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases

directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment."

(9). In **Union of India and others vs. Vartak Labour Union, 2011(2) SLR 414**, the Supreme Court quashed the judgment delivered by a Division Bench of the Gauhati High Court wherein a direction was issued to regularize employees of Union who had put in about 30 years of service with the BRO. However, the Supreme Court gave a direction to the Union of India to consider enacting an appropriate regulation/scheme for absorption and regularization of the services of the casual workers engaged by BRO for execution of its on-going project.

(10). A Division Bench of this Court in **Union of India and others vs. Surinder Pal and others, 2012(3) SLR 433** affirmed the decision of the learned Single Judge giving direction to the respondents to frame a scheme in terms of the directions issued by Supreme Court in **Vartak Labour Union's** case (supra).

(11). In **State of U.P. and others Vs. Putti Lal (2006) 9 SCC 337**, the employees claimed regular wages keeping in view the fact that they have been working on daily wage basis for number of years. The High Court allowed the writ petition holding that all daily wage workers, who have rendered 10 years of service should be regularized by making appropriate scheme. In terms of proviso to Article 309 of the Constitution, rules were framed for regularization of daily wage employees. In the aforesaid case, a three Judges' Bench of Supreme Court upheld the order that daily wagers discharging the similar duties as those in the regular appointment would be

entitled to draw at the minimum of pay scale being received by their counterparts and would not be entitled to any other allowances or increment so long as they continue as daily wager. After returning such finding, the Court observed as under:

"6. ... The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the Court to indicate as to how many posts would be created for the absorption of these daily-wage workers. Needless to mention that the appropriate authority will consider the case of these daily-wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned, as we have stated in the case of the State of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counterpart in the Government until his services are regularized and he is given regular scale of pay."

(12). This Court in **Ram Rattan & Ors. vs. State of Haryana & Ors. (CWP-34585-2019)** decided on 19.10.2023 dealt with similar issue of the nature involved in the present case and while relying upon various case laws of the Supreme Court, this Court accepted the claim of the writ petitioners for regularization of their services observing that public employment is a facet of right to equality envisaged under Article 16 of the Constitution and that State is although a model employer, its right to create posts and recruit people, therefore, emanates from the statutes or statutory rules and that non regularization into service of such part-time employees who have put in their whole life in the service of the respondent-Nigam, would tantamount to violation of fundamental rights of equality before law and equality of opportunity in matters relating to employment under the State, as enshrined

under Article 14 & 16(1) of the Constitution. Following directions were issued by this Court:-

(32). In addition to the above, even principle of natural justice, too demand that the petitioners cannot be denied the benefit of regularization of services when their similarly placed employees have been granted the said benefit.

(33). Accordingly, the respondents are directed to consider the case of the petitioners for regularization of service in view of the policy dated 01.10.2003 as amended on 10.02.2004 issued by the Government of Haryana and to pass necessary orders regularizing their services, within a period of one month from the date of receipt of certified copy of this order. The petitioners shall also be entitled to all the benefits of regularization and consequential relief to which they are eligible including the arrears of salary.

(34). This case is also being peculiar wherein Class-IV employees are forced to undergo multiple round of litigation for their claim to which they became eligible in the year 2003 and are fighting for their legal rights for two decades, this Court cannot close its eyes to the pain and sufferings and the harassment with which this strata of society has been dealt with, needs to be compensated, though cannot be done so by any means after such a long number of years, the respondent No.3 shall pay 6 % interest per annum on the arrears from the date it became due till the date of its realization to which the petitioners are found entitled on regularization into service.

(13). Having considered the submissions made by the counsel for the parties and on going through the impugned judgment as well as the pleadings and the evidence brought on record, this Court is of the considered view that the claim of the appellant-plaintiffs is covered by the judgment of this Court in RSA No.2050 of 2007, wherein the services of Mohan Lal-workman, who was appointed on 01.09.1993, were terminated on 31.08.1996 leading to the reference to the Labour Court, which passed the award dated 10.04.2000

ordering reinstatement with continuity of service with 40% backwages. The said award was unsuccessfully challenged before this Court as well as the Supreme Court by the State of Haryana resulting in reinstatement of the said employee Mohan Lal, where he was not being regularized on the ground that the date when the Policy had come into force, he was actually not in service and that he did not have the continuous service of three years on the date of issuance of the Policy, especially when he was out of service.

(14). Accordingly, in the light of the above stated facts and case laws discussed above, this appeal is allowed and the impugned judgment and decree dated 25.10.2010 passed by the Civil Judge (Jr.Divn.), Rewari as well as the judgment and decree dated 08.08.2012 passed by District Judge, Rewari are hereby set aside.

(15). The suit of the appellant-plaintiffs is decreed and a declaration is issued that the appellant-plaintiffs are entitled to regularization of their services with effect from the date their junior were regularized with all consequential service/pensionary/retiral benefits with interest @ 9% p.a.

(16). The needful shall be done within two months from the date of receipt of certified copy of this order.

08.11.2024

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No