



Neutral Citation No.

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

|                           |        |                     |
|---------------------------|--------|---------------------|
| (105)                     |        | LPA-1397-2023 (O&M) |
| State of Haryana & others |        | .....Appellant(s)   |
|                           | Versus |                     |
| Raj Rani                  |        | .....Respondent(s)  |
| (2)                       |        | LPA-1399-2023 (O&M) |
| State of Haryana & others |        | .....Appellant(s)   |
|                           | Versus |                     |
| Shakuntla Devi            |        | .....Respondent(s)  |
| (3)                       |        | LPA-1444-2023 (O&M) |
| State of Haryana & others |        | .....Appellant(s)   |
|                           | Versus |                     |
| Madan Lal                 |        | .....Respondent(s)  |

Decided on : 07.05.2024

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

Present: Ms.Shruti Jain Goyal, Sr.D.A.G., Haryana, for the appellants.

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

CM-3556-LPA-2023 in LPA-1397-2023,  
CM-3560-LPA-2023 in LPA-1399-2023 &  
CM-3679-LPA-2023 in LPA-1444-2023

1. Applications for condoning the delay of 386-405 days in  
refiling the appeals are allowed keeping in view the averments made in the  
applications duly supported by affidavit of the official. Delay of 386-405  
days in refiling the appeals is hereby condoned.

2. CMs stand disposed of.

CM-3557-LPA-2023 in LPA-1397-2023,  
CM-3561-LPA-2023 in LPA-1399-2023 &  
CM-3680-LPA-2023 in LPA-1444-2023

3. Exemption applications are allowed as prayed for.

4. CMs stand disposed of.

CM-3558-LPA-2023 in LPA-1397-2023,  
CM-3562-LPA-2023 in LPA-1399-2023 &  
CM-3681-LPA-2023 in LPA-1444-2023

5. Applications for condoning the delay of 20-22 days in filing the appeals are allowed keeping in view the averments made in the applications duly supported by affidavit of the official. Delay of 20-22 days in filing the appeals is hereby condoned.

6. CMs stand disposed of.

LPA-1397, 1399 & 1444-2023 (O&M)

7. Consideration in the present appeals bearing LPA-1397, 1399 & 1444-2023 is to the common judgment dated 11.05.2022 passed by the Learned Single Judge in CWP-27426, 27416 & 27417-2016, the lead case of which was CWP-27417-2016 titled *Madan Lal Vs. State of Haryana & others*.

8. The relief which was granted by the Learned Single Judge was that the writ petitioners having been appointed in January, 1986 on consolidated salary as Sweepers on part-time basis and working for the last 30 years and their case be processed as per the regularization policy dated 29.07.2011 (Annexure P-1) as undisputedly on that date the writ petitioners had rendered more than 16 years of service. However, the monetary benefits were confined to 38 months prior to filing of the writ petitions. Reliance was placed upon the judgment of the Apex Court in

**Nihal Singh & others Vs. State of Punjab & others, (2013) 14 SCC 65**

to overcome the hurdle which was being raised by the State on the ground that the policy in question provided that the posts had to be sanctioned and the writ petitioners had been employed as Sweepers with the Treasury Officer in District Kaithal. It was noticed that in the other cases also, they had been in service since 1995 and therefore, the requirement of service on the post in question could not be denied by the State only on an administrative ground of their legitimate dues.

9. State Counsel has vehemently submitted that the policy dated 29.07.2011 had certain conditions which were not complied with due to which the order had been passed on 08.08.2013 by the Director, Treasury & Accounts on the legal notices being served, seeking the enforcement of the right of regularization under the said policy as the posts were not sanctioned, therefore, the said request had been rejected.

10. The matter is no longer *res-integra*. While dealing with the issue of regularization and various policies, we had noticed the handicap which the employees face on account of the fact that they might not have the minimum qualifications as required which is also now sought to be argued. As noticed, we were dealing with Class-IV employees working as Sweepers and therefore, the legal impediment would not come in the way as it was also held by the Apex Court in **State of Karnataka Vs. M.L.Kesari, (2010) 9 SCC 247**.

11. The initial policy of 18.03.1996 provided for a period of 3 years from 31.01.1996 pertaining to regularization of work-charged daily rated employees. Policy dated 17.06.1997 provided for a period of 2 years for regularization of Group-C employees working on ad-hoc basis and daily rated employees who had completed 3 years as on January, 1996.

Policy dated 05.12.1999 provided for Group-C posts having held for minimum period of 15 years of service from the date of publication of the notification and the services having not regularized they were given the benefit. Policy dated 01.10.2003 again provided minimum service of 3 years to Group-C employees on ad-hoc/ contract or daily wage basis and Group-D employees.

12. We have noticed all the series of above-said policies in **State of Haryana & others Vs. Balwinder Singh & others, 2023 (2) RCR (Civil) 336**. Due to the judgment passed by the Apex Court in **State of Karnataka Vs. Uma Devi, 2006 (4) SCC 1**, policy dated 29.07.2011 was framed which provided the benefit to the part-time employees also. The period was thus 10 years as on 10.04.2006. Relevant portion of the judgment reads as under:

“17. The State then framed policy dated 29.07.2011 for Group-D employees in pursuance of the judgment passed in **Uma Devi supra**) wherein Group-D employees had to have 10 years of service as on 10.04.2006 for the grant of the said benefit. The said policy reads as under:-

**“Notification**

**The 29th July, 2011**

**No. G.S.R. 9/Const./Art. 309/2011.**— In exercise of the powers conferred by the proviso to article 209 of the Constitution of India read with the proviso to clause 6 of Haryana Government, General Administration Department (General Services), notification No. 523-3GS-70/2068, dated the 28th January, 1970, the Governor of Haryana hereby specifies such Group C posts, as have been held for a minimum period of ten years as on 10-4-2006, by Group C employees workers on adhoc/contract/work-charged/daily wages and part-time basis to be taken out of the purview of the Haryana Staff Selection Commission.

The services of such Group C and Group D employees/workers appointed/ engaged on adhoc/contract/work-charged/daily-wages

and part-time basis shall be regularized if they fulfil the following conditions, namely:—

- (i) That the employee/worker should have continued to work for not less than ten years as on 10-4-2006 and is still in service but not under cover of the orders of the Courts or Tribunals, against duly sanctioned vacant posts. The period of continuous break in such service should not be more than one month in a calendar year.
- (ii) That the employee/worker possessed the minimum prescribed qualifications for the post on the date of appointment/engagement.
- (iii) That the concerned employee should have been appointed only after either his name has been sponsored by the Employment Exchange or has been appointed/engaged on the basis of recommendations made by the Departmental Selection Committee by inviting applications through advertisement against duly sanctioned vacant post.
- (iv) That the work and conduct of such employee should have been throughout satisfactory and no disciplinary or criminal proceedings should be pending against him.
- (v) That the employee should be regularized against a sanctioned vacant post of relevant category.
- (vi) A medical fitness certificate and documentary proof of Date of Birth as per the instructions shall be obtained from the employee concerned.
- (vii) His antecedents should be got verified by the police as per the Government instructions if it was not done earlier.
- (viii) No relaxation of the criteria as laid down above shall be allowed.

2. A part time employee fulfilling conditions mentioned above shall be regularized against a sanctioned vacant fulltime post of the same category.”

13. Apparently, in para nos.52 & 53 of the judgment in Uma Devi (supra), it has been held that if the State has a policy for regularization, it would be a legally enforceable right. It is only in that circumstances, the right is maintainable. Relevant portions of the judgment

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.”

14. The petitioners had filed their applications which were apparently rejected only on the ground that there was no sanctioned posts. The judgment in Nihal Singh (supra) came keeping in mind the limitation which was imposed by the Constitution Bench in Uma Devi (supra) case. The Apex Court went on to hold that it is for the State to create them by a conscious choice on the basis of rational assessment, while dealing with the case of regularization of the Special Police Officers. Relevant portions of the judgment read as under:

“19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under [section 17](#) of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants.

20. No doubt that the powers under [section 17](#) are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are

normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

“4. ... The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called “litigious employment”, has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under [Article 226](#) of the Constitution. Whether the wide powers under [Article 226](#) of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public

employment as recognised by our Constitution, has to be seriously pondered over.”

15. As noticed, the writ petitioners were in service from 1986 onwards till the impugned order was passed in 2013, after having put in more than two decades of long years of service. The least expectation from the State which is a model employer is that it would take pro-active steps to ensure that the benefits of the policy are granted to its employees and not to shut the door on their face. In **Sheo Narain Nagar Vs. State of Uttar Pradesh, (2018) 13 SCC 432** it was noticed by the Apex Court that the State Government was misunderstanding the judgment passed in Uma Devi (supra). In **Rajnish Kumar Mishra Vs. State of Uttar Pradesh, (2019) 17 SCC 648**, where regularization orders had been withdrawn after 12 years, the Apex Court directed for regularization keeping in view the long service and that the benefit of regularization could not have been withdrawn. In **State of Jharkhand Vs. Kamal Prasad, (2014) 7 SCC 223**, employees who had worked for 29 years as Junior Engineers were given the benefit by the Apex Court and the State appeals were dismissed by holding that they were covered under the exceptions made in Uma Devi (supra).

16. The fact that the writ petitioners had put in almost 30 years of service, would be sufficient to go on to hold that the nature of duties was available and of the permanent nature and therefore, the sanctioning was to be done at the end of the appellants themselves. The Apex Court has also upheld the case of Balwinder Singh (supra) in SLP(C) Nos.9965-9974 of 2016 titled *State of Haryana & others Vs. Khajjan Singh & others*, on 09.01.2024 while dealing with the bunch of cases pertaining to regularization orders passed by this Court.

17. The State Counsel has relied upon the judgment of the Apex Court in **Union of India & others Vs. Ilmo Devi & another, 2021 (4) SCT 312**. A perusal of the said judgment would go on to show that proposition was that the regularization policy is a policy decision and the Court cannot issue a mandamus or direction and there cannot be continuance of purely temporary employees. As noticed, the policy of the State itself provides benefit to be granted to the employees as the earlier policy did not provide so. In view of the 2011 policy coming into force after the judgment in Uma Devi (supra), the writ petitioners should have been granted the necessary benefit of regularization. In such circumstances, the judgment relied upon by the State Counsel would not be applicable as once the policy of the State is in place and the writ of mandamus can be issued, which has also been noticed by the Constitution Bench in Uma Devi (supra).

18. In such circumstances, we are of the considered opinion that the order of the Learned Single Judge dated 11.05.2022 does not suffer from any infirmity. There is no merit in the present appeal. It is for the State to take positive steps to ensure that the benefits of regularization are granted to the employees. Resultantly, the present appeals are hereby dismissed. All pending application(s) also stand dismissed.

**(G.S. SANDHAWALIA)**  
**ACTING CHIEF JUSTICE**

**07.05.2024**  
*Sailesh*

**(LAPITA BANERJI)**  
**JUDGE**

|                             |     |  |
|-----------------------------|-----|--|
| Whether speaking/reasoned : | Yes |  |
| Whether Reportable :        | Yes |  |