



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

117

LPA-2356-2024 (O&M)
Date of decision: 26.09.2024

State of Haryana and others

....Appellants

Versus

Sher Singh

...Respondent

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

Present: Mr. Sanjeev Kaushik, Addl. A.G. Haryana
for the appellants.

DEEPAK SIBAL, J.(ORAL)

1. The present intra Court appeal has been preferred by the State of Haryana to challenge therein judgment dated 20.03.2024 passed by a learned Single Judge of this Court allowing the respondent's petition in terms of an earlier judgment passed by the same learned Judge on 13.03.2024 in *CWP-2158-2020 – Ashish Sharma and others Vs. State of Haryana and others.*

2. A few relevant facts may be noticed.

3. On 01.08.1994, the respondent was appointed as a Mali-cum-Baildar in the Forest Department, Haryana. His appointment was on daily wage basis. On 01.01.1998 his services were terminated. He knocked the doors of the Labour Court to challenge therein his termination. Through award dated 18.04.2006 the Labour Court held that the respondent's services had been illegally terminated and resultantly ordered his reinstatement with continuity of service with 50 percent back wages from the date he had served the demand notice upon the State with regard to wrongful termination



of his services. The State challenged the award of the Labour Court before this Court through ***CWP-13040-2007 – Divisional Forest Officer Rohtak Vs. Sher Singh and another***. When the said writ petition came up for final hearing on 20.12.2017 it came to light that the award of the Labour Court stood implemented by the State and in view of this development this Court was of the opinion that the impugned award of the Labour Court warranted no interference. Accordingly, the State's petition was disposed of by granting liberty to the respondent to approach the concerned authority seeking regularization of his services. Thereafter, the respondent continued to serve the appellant-State and on 06.02.2018 got served upon the State a legal notice seeking therein regularization of his services in terms of the Regularization Policy of the State dated 01.10.2003. On 09.03.2018, the State rejected the respondent's claim which became the subject matter of challenge at the respondent's behest before this Court. Before the respondent's petition could be finally heard, another bunch of petitions involving identical questions as had been raised by the respondent in which lead case was ***CWP-2158-2020 – Ashish Sharma and others Vs. State of Haryana and others***, was decided in favour of the petitioners' therein. The objections raised by the State in Ashish Sharma's case (supra) were identical to those raised in the respondent's case. These objections read as follows:-

- (i) The services of the petitioners therein could not be regularized as they were working on daily wage basis on posts which had not been sanctioned;
- (ii) the petitioners therein were not entitled to claim regularization of their services in terms of the policy of the



State dated 01.10.2003 as they were not in service on 30.09.2003 and that

(iii) in terms of the Regularization Policy dated 01.10.2003 a beneficiary was also required to be in service for 240 days in each of the three years preceding the date of the Policy which condition also the petitioners therein did not qualify.

4. In Ashish Sharma's case (supra) all the above objections raised by the State were considered and rejected by the learned Single Judge. It was held that once an employee had served the State for decades, even though on daily wage basis, the State could not deny the employee's claim for regularization of his services in the case of each of the petitioners therein on the ground that he was serving against a non-sanctioned post. In the operative part of the judgment the learned Single Judge directed the State to pass appropriate orders in terms of the findings returned by him.

5. Admittedly, the respondent's case being similar to Ashish Sharma's case (supra) was allowed in the same terms.

6. Learned counsel for the appellant has been heard.

7. Learned State counsel assails the impugned judgment on the following grounds:-

i) The services of the respondent on daily wage basis could not be ordered to be regularized as throughout his service the respondent had served on a non-sanctioned post;

ii) the respondent was not entitled to claim regularization of his services in terms of the policy of the State dated 01.10.2003 as in terms of such policy a beneficiary was required to be in



service on 30.09.2003 on which date the respondent was not in service and that

iii) in terms of the State's regularization policy dated 01.10.2003 a beneficiary was also required to be in service for 240 days in each of the three years preceding the date of the policy which condition the respondent also did not fulfill.

8. It remains undisputed that the respondent joined the Forest Department, Haryana on 01.08.1994 on daily wage basis; on 01.01.1998 his services were terminated which he challenged before the Labour Court; through award dated 18.04.2006, the Labour Court held the termination of services of the respondent to be illegal; consequently, the Labour Court ordered the respondent's reinstatement with continuity of service and 50 percent back wages from the date of service of the demand notice by him; the State challenged the award of the Labour Court through filing of a petition before this Court being CWP-13040-2007; when the State's petition came up for final hearing it came to light that the respondent had not only been reinstated but he had also been paid the back wages as directed by the Labour Court; in these circumstances, this Court was of the opinion that the award of the Labour Court warranted no interference; accordingly, the State's petition was disposed of by granting liberty to the respondent to approach the State seeking regularization of his services; thereafter, the respondent continued to serve the State and that he was relieved on 01.01.2019 only after attaining the age of 58 years.

9. In the light of the above undisputed facts, the respondent continuously served the State as a Mali-cum-Baildar, though on daily wage basis, for nearly 25 years and that he was relieved only when he had attained



the age of 58 years. Simply for the reason that the State permitted the respondent to serve it for nearly 25 years raises a presumption that the post against which he served was regular in nature and that his services were also required by the State 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 nearly 25 years which is not expected at least from a welfare State.

10. In ***CWP-2326-2011 – Chabbi Lal and others Vs. State of Haryana and others***, regularization of services had been claimed by the petitioners therein on the ground that they had served the ***Haryana Vidyut Parsaran Nigam Limited*** (for short – the Nigam) for 18 to 27 years as Sweepers, on daily wage basis. Their claim for regularization was denied by the Nigam only on the ground that the posts against which they were serving were not sanctioned. A learned Single Judge of this Court rejected the Nigam's objection and allowed Chabbi Lal's petition 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.”

11. The judgment of the learned Single Judge was challenged by the Nigam through an intra court appeal being ***LPA-1700-2015- Haryana Vidyut Parsaran Nigam Ltd. and others Vs. Chhabbi Lal and others*** which was dismissed by a Division 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.”

12. The Nigam 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 Parsaran Nigam Limited and others Vs. Chabbi Lal and others***, which was also dismissed on 29.01.2018.

13. Similarly, in another bunch of petitions in which the lead case was ***CWP-9825-2015 – Madan Lal and others Vs. Haryana Vidyut Parsaran Nigam Limited and others*** a learned Single Judge 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 services of the petitioners therein was directed on the ground that they had served as Sweepers etc. for over two decades. The operative 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 'Chhabbi 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.”

14. Madan Lal's case was taken up in an intra Court appeal being **LPA-1316 of 2018 Haryana Vidyut Parsaran Nigam Limited and others Vs. Madan Lal and others** which was dismissed by a Division Bench 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 parttime 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.”

15. Judgments in Chabbi Lal’s case (supra) and Madan Lal’s case (supra) were then followed by us in another matter raising similar questions as in the present case being **LPA-1649-2024 – Uttar Haryana Bijli Vitran Nigam Limited and others Vs. Babli Devi and another**. In Babli Devi’s case respondent No.1 was serving the Nigam as a Sweeper and after she had put in 31 years of service her claim for regularization of her services was denied on the ground that she was serving against a non-sanctioned post. We rejected this objection of the Nigam by holding as follows:-

“(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.”



16. In the light of the above, the first objection taken by the State to deny regularization of the respondent's services is unsustainable and is therefore, rejected.

17. The second and third objections raised by the State to deny the respondent the benefit of regularization of his services are that the respondent being not in the service of the State as on 30.09.2003 and having not served for 240 days in each of the three years preceding the Policy dated 01.10.2003 was not covered under the said Policy and therefore, not entitled to regularization of his services. After considering these objections we reject them on the thought of the following undisputed facts:-

(i) Undisputably, the respondent joined the services of the State as a Mali-cum-Baildar on 01.08.1994 on daily wage basis; his services were terminated on 01.01.1998 which he challenged before the Labour Court; through award dated 18.04.2006 the Labour Court held the termination of the respondent's service to be illegal and accordingly, ordered his reinstatement with continuity of service with 50 percent back wages from the date when the respondent had served a demand notice upon the State with regard to illegal termination of his services; the writ petition filed by the State to challenge the award of the Labour Court was disposed of by this Court on the ground that between the date of filing of the petition and its disposal the State had implemented the award impugned by it and that no further challenge was made by the State. Thus, the award of the Labour Court holding that the termination of the services of the

respondent was illegal and consequently, ordering his reinstatement with continuity of service attained finality.

18. In the light of the afore facts, as on 30.09.2003 the respondent would be deemed to be in the service of the State and for the same reason, the objection by the State that the respondent cannot be granted the benefit of the Regularization Policy dated 01.10.2003 as he did not serve the State for 240 days in each of the preceding three years from the date of the Regularization Policy dated 01.10.2003 is also unsustainable.

19. In the light of the above discussion, we find no error in the impugned judgment.

20. Dismissed.

21. No costs.

22. All pending miscellaneous application(s) shall also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

26.09.2024

Sapna Adhikari

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No