

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111+224

2024:PHHC:044020-DB

LPA Nos.1886, 1693 and 1925 of 2023 (O & M)

Date of Decision: 02.04.2024

Jai Bhagwan

.....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

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

Present: Mr. R.S. Sangwan, Advocate,
for the appellant (in LPA Nos.1886 and 1925 of 2023).

Mr. R.K. Hooda, Advocate,
for the appellant (in LPA-1693-2023).

Mr. Deepak Balyan, Addl. A.G., Haryana.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

CM-4300-LPA-2023 in LPA-1693-2023

1. Application for condonation of delay of 14 days in refiling the appeal is allowed, in view of averments made in the application supported by affidavit of appellant No.1.

2. Delay condoned.

3. CM stands disposed of.

**CM-4735-LPA-2023 in LPA-1886-2023 and
CM-4824-LPA-2023 in LPA-1925-2023**

4. Applications for condonation of delay of 40 days in filing the appeals are allowed, in view of averments made in the applications supported by affidavit of appellant No.1.

5. Delay condoned.

6. CMs stand disposed of.

Main Appeals

7. The present judgment shall dispose of three letters patent appeals i.e.

1886-2023, Jai Bhagwan vs. State of Haryana and others arising out of CWP-15364-2019 decided on 24.07.2023 since the other two cases have also been disposed of in terms of the main order.

8. Consideration in the present letters patent appeal is to the judgment dated 24.07.2023 passed by the learned Single Judge in CWP-15364-2019 whereby the claim of the writ petitioners for regularization from an earlier date on the basis of a policy dated 13.02.1979 (Annexure P-4) on the ground that they had completed 240 days was repelled.

9. The learned Single Judge noticed that the writ petitioner was initially engaged in service on daily wage basis with the Transport Department and his services were regularized in the year 2003 and no grievance as such had been raised till the filing of the writ petition which was in the year 2019. Reliance was placed upon the order passed by the Division Bench and relied upon by the State in **LPA-1662-2015, Sukhbir Singh and others vs. State of Haryana and others** decided on 13.08.2016 that similar plea raised for retrospective regularization of services on completion of 240 days as per government policy dated 13.02.1979 has been rejected by the Division Bench.

10. Counsel for the appellants have vehemently submitted, while placing reliance upon the order dated 07.09.2011 (Annexure P-10), that it is a case of violation of Article 14 of the Constitution of India in as much as one Chander Bhan, Helper had been given the benefit of regularization on completion of 240 days from 03.08.1994.

11. We have perused the paper book. Apparently, the services of the appellants, who were working on daily wage basis as Washer/Helper Boy since 01.10.2003, were regularized on 10.03.2004 and they were put on probation for a period of 2 years which could be extended upto 3 years and their appointment was

antecedents were to be verified by the Police Authority. It was a condition that if they were willing to accept the offer, they should report for duty.

12. Apparently, the appellants took the benefit of the said order and had never agitated for the grouse of regularization from an earlier date. It has been held by the Constitutional Bench of the Apex Court in ***Uma Devi vs. State of Haryana, (2006) 4 SCC 1*** that regularization involves financial outlays and cannot be claimed as a matter of right. Para No.53 of the said judgment reads thus:-

“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.”

13. In a subsequent judgment in ***Official Liquidator vs. Dayanand and others, (2008) 10 SCC 1***, while noticing the observations in *Uma Devi's case*

(*supra*), a three-Judge Bench of the Apex Court has frowned upon that regularization being granted by Courts in violation of the directions issued by the Constitutional Bench. The relevant part reads as under:-

“We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is

required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. (emphasis supplied).”

14. Rather it was held in the above judgment cited (supra) that the observations made by the two Judges Bench in ***U.P.State Electricity Board vs. Pooran Chandra Pandey 2007(11) SCC 92***, should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunal and other judicial foras nor they should be relied upon or made basis for bypassing the principle of ‘*equal pay for equal work*’.

15. The claim for regularization at a belated stage cannot be made out on the strength of a benefit being granted to one Chander Bhan as apparently, Chander Bhan had got a benefit from the Addl. Civil Judge, (Sr. Divn.), Sirsa, as noted in the impugned order. It can, thus, be safely said that the said order as such was personal to the said person and it was in execution the State as such was complying with the judgment, which is also clear from Para No.14 of the written statement of the State wherein, all these facts are also mentioned that it was not under Government Policy but under the judgment delivered by Sh. Gopal Krishan, Addl. Civil Judge, (Senior Division), Sirsa.

16. Reference has also been also made to one Krishan Kumar, Helper,

and, therefore, any benefit granted to such employee was personal in nature and on the strength of the same, no similarity can be claimed to claim regularization having accepted the regularization order 15 years back in point of time.

17. The learned Single Judge has already noticed that the issue stands concluded in *Sukhbir Singh's case (supra)* by a co-ordinate Bench. Similarly, another Division Bench of this Court in ***LPA-50-2020, Anand Singh vs. State of Haryana and others decided on 14.01.2020*** also discussed the said issue and also kept in mind the judgment passed in *Sukhbir Singh's case (supra)* apart from the judgment in ***State of U.P. and others vs. Arvind Kumar Srivastava and others, 2015 (1) SCC 347***. Resultantly, the co-ordinate Bench came to the conclusion that even the instructions dated 19.02.1979, on the basis of which, regularization has been sought, was not applicable for the following reasons:-

“There is yet another dimension to the matter, as the specific case set out by the State was that services of the appellant were regularised w.e.f. 1.2.1996, whereas instructions dated 19.2.1979, pursuant where to the appellant was claiming regularization, were not applicable, for those instructions were issued for regularization of services of conductors, drivers and workshop staff up to the post of mechanic (Class III), who had been employed through Employment Exchange and had completed 240 days of service as on 19.2.1979. Thus, the appellant was not entitled to claim regularisation, in terms of instructions dated 19.2.1979, for he had neither completed 240 days of continuous service as on 19.2.1979, nor he was employed through Employment Exchange. Be that as it may, for the learned Single Judge dismissed the writ petitions on the ground of delay and laches, we do not deem it necessary to delve any further into this aspect.

In the wake of the above, we are dissuaded to interfere with the impugned order and judgment dated 02.05.2019,

rendered by the learned Single Judge. Thus, the only and the inevitable conclusion that could be reached: the appeals being bereft of merit are dismissed.

18. The appeals of similarly situated persons regarding the same department having been dismissed, we do not see any plausible reason to take a different view keeping in view the settled position of law rendered by two Division Benches of this Court.

19. Even otherwise, the appellant was appointed in the year 1995. It has been specifically pleaded by the State in Para No.4 of reply filed in the writ petition that Policy No.1682-92/A-3/HAR dated 19.02.1979 was not in existence, either at the time of engagement of the appellants nor at the time of regularization of their services and, therefore, they had been granted the benefit under the prevailing policy.

20. The argument raised that the delay and laches would not come in the way as it is a recurring cause of action is also without any basis. A specific decision was taken by the State at that point of time. The appellants having accepted the same and slept over their rights for 15 years cannot now start raking up the stale issue at this point of time.

21. Accordingly, the present letters patent appeals stand dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

02.04.2024
shivani
Whether reasoned/speaking
Whether reportable

Yes
Yes

(LAPITA BANERJI)
JUDGE