



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

564

CWP-8891-2003 (O&amp;M)

Date of decision: 26.03.2025

Sham Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present:- Mr. B.D. Sharma, Advocate  
for the petitioner.

Mr. Satnam Preet Singh, DAG, Punjab.

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**AMAN CHAUDHARY, J. (ORAL)**

1. Prayer made in the present petition is for quashing the order dated 25.04.2003, whereby the services of the petitioner, who was working as Mali since 26.06.1992, had been terminated and for regularizing his services, which was stayed by the Division Bench on 30.05.2003 and decided on 17.08.2004, whereafter it was remanded by the Hon'ble Supreme Court, relevant paras whereof read thus:-

“Learned counsel for the appellant has submitted that the issue of regularisation of service has been recently examined by a Constitution Bench of this court in Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors. (2006) 4 SCC 1 and the doctrine of equal pay for equal work has also been examined in State of Haryana & Ors. Vs. Charanjeet Singh & Singh & Ors, JT 2005 (12) SCC 475 and the judgement rendered by the High Court is not in accordance with law laid down in the aforesaid cases. Learned counsel for the respondent-employee has, on the other hand, submitted that the government of Punjab has announced a policy for regularisation of employees, where under the respondents are entitled to be regularized. Learned counsel for the appellant has not disputed the said fact but has submitted that regularization of service can be done only in accordance with the conditions which are enumerated in the said policy and in terms thereof.

Having considered the submissions made by learned counsel for the parties, we are of the opinion that the matter requires a fresh consideration by the High Court in the light of the decisions referred to above and other decisions of this Court and also the policy issued by the Government of Punjab.



The appeal are, accordingly, allowed and the judgment and orders under challenge are set-aside. The matters are remanded back to the High Court for a fresh decision of the writ petitions. It is made clear that this court is not expressing any opinion on the merits of the claim made by the concerned employee.”

2. An affidavit was filed by the Additional Welfare Commissioner, Punjab dated 15/18.01.2007, relevant extract of which reads thus:-

“4. That as per instructions dated 23.1.2001, the workers should be considered for regularization only against available regular vacancies. There is no sanctioned regular post available in the Board against which the services of Sham Singh can be regularized and there were no other compelling circumstances which warrant creation of a new post in this case.

5. That Shri Sham Singh was appointed as Chowkidar-cum-Mali on 26.6.1992 against a non-sanctioned post on daily wages fixed by the Deputy Commissioner. In the case of State of Karnataka Vs. Uma Devi, [2006 (4) SCC-1] the Hon'ble Apex Court has held that merely because an employee had continued under cover of an order of court, under litigious employment or had been continued beyond the term of his appointment by the State of its instrumentalities he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.”

3. Learned counsel submits that the petitioner has continued in service and retired on 30.05.2023 on attaining the age of superannuation and thus relies on the judgment of this Court in **Ajit Singh vs. State of Punjab and others**, CWP-2269-2016, decided on 23.08.2023, against which LPA-2596-2024 was dismissed on 23.10.2024 to avail the remedy of review, which has also been dismissed on 07.02.2025, the relevant paras of it read thus:-

“5. This Court finds that the Government of Punjab, vide circular dated 23.01.2001 had noted the Scheme for absorbing and regularizing the existing daily wage workers and other category of workers but the petitioner has not been regularized although his name was recommended for regularization, vide letter dated 18.04.2001, 29.11.2004 and 09.02.2007. However, no reasons have come forward for denying him regularization. This case has also remained pending before the Court since 2016 and meanwhile, the petitioner has attained superannuation on 31.05.2023.



6. In the case of Secretary, State of Karnataka and others Vs. Uma Devi and others, (2006) 4 SCC 1, Hon'ble Supreme Court has held 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 by-passing of the constitutional requirement and regularizing or making permanent, those



not duly appointed as per the constitutional scheme.”

7. Again, in the case of State of Punjab and others Vs. Jagjit Singh and others, 2016(10) Scale 447, Hon’ble Supreme Court has held as under:-

“57. Having traversed the legal parameters with reference to the application of the principle of ‘equal pay for equal work’, in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of ‘equal pay for equal work’ summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of ‘equal pay for equal work’ would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.”

8. In view of the law as laid down by the Hon’ble Apex Court, this Court is of the firm view that even if the petitioner had attained superannuation age, the right which flows from the judgments (supra) as well as the circular issued by the State Government, cannot be denied to him and the petitioner is found to be entitled to be considered for regularization in terms of the circular dated 23.01.2001.



9. Keeping in view the aforesaid findings, the present petition is allowed.

10. Accordingly, the respondents are directed to pass appropriate orders regularizing the services of the petitioner with effect from the date of issuance of the circular dated 23.01.2001 and treat him to have worked as a regular employee on the post of Chowkidar from 2001 onwards.

11. The period of service rendered on daily wage basis from the date of initial appointment i.e. from 1997 upto 2001 shall be counted for the purpose of calculating his pension. However, for other purposes, the said period shall not be counted. The petitioner would also be entitled to the salary and pay and allowances for the period from 2001 onwards till he attained the age of superannuation. The salary shall be fixed accordingly. The arrears shall be calculated and the amount which has been paid to the petitioner for the intervening period shall be accordingly deducted and the remaining arrears shall be released to the petitioner along with interest @ 9% per annum. The interest shall have to be borne by the office of the Director, Social Security Women and Child Development, Punjab who may further fix the liability on the persons who are found to have denied the benefit of regularization, in terms of the circular dated 23.01.2001. The retiral benefits shall also be calculated accordingly and released to the petitioner within the same period as above. The payment shall be released to the petitioner within a period of three months from today.”

4. Further reliance is made to the judgment of the Hon’ble Supreme Court in **Jaggo vs. Union of India and others**, 2025 AIR SC 296, the relevant paras thereof read thus:-

“26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and



purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.

28. In view of the above discussion and findings, the appeals are allowed. The impugned orders passed by the High Court and the Tribunal are set aside and the original application is allowed to the following extent:

- i. The termination orders dated 27.10.2018 are quashed;
- ii. The appellants shall be taken back on duty forthwith and their services regularised forthwith. However, the appellants shall not be entitled to any pecuniary benefits/back wages for the period they have not worked for but would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits.”

5. Learned State counsel despite best efforts has not been able to controvert regards factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

6. In view of the above, the present petition is disposed of in terms of **Ajit Singh** (supra).

**(AMAN CHAUDHARY)**  
**JUDGE**

**26.03.2025**  
Hemant

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|---------------------------|---|----------|
| Whether speaking/reasoned | : | Yes / No |
| Whether reportable        | : | Yes / No |