

2025:PHHC:030877



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

1417

CWP-6614-2016

Date of decision: 28.02.2025

SHYAM LAL (DECEASED) THROUGH HIS LRS

.....Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

**Present: - Mr. Ajay Chaudhary, Advocate
for the petitioner(s).**

Mr. K.K. Chahal, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (Oral)

The present writ petition which was initially filed by Shyam Lal (since deceased) is now being pursued through his LRs Smt. Madhu Bala and Kanish Aggarwal, for seeking regularization of services under the policy of 07.03.1996 and 18.03.1996 (Annexures P-3 and P-4 respectively) and other consequential benefits since the benefit of regularization had already been granted to similarly situated persons who were junior to him.

2. Learned Counsel appearing on behalf of the petitioner contends that Shyam Lal (since deceased) was initially appointed as daily wager-Beldar in September, 1981 in the office of XEN, Provincial Division No-II, PWD (B&R), Hisar and he worked there upto June, 1992. He was thereafter

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transferred to the office of Executive Engineer, Provincial Division No. II, PWD (B&R), Sirsa in July, 1992 and he worked there upto October, 1994. The services of Shyam Lal were however illegally terminated by the respondents in November, 1994 against which an industrial dispute was raised. Reference No.2 of 1999 was eventually decided by the Industrial Tribunal-cum-Labour Court, Hisar vide Award dated 14.05.2002 and the following relief was granted.

“19. Sequel to the findings on above issues, this reference is hereby answered accordingly against the respondents department and in favour of the workman, to the effect that termination of services of Sh. Shyam Lal was neither in order, nor justified, he is entitled to reinstatement with continuity and with all other consequential services benefits with 25% back wages from the date of his demand notice dated 05.09.1997 till reinstatement.”

3. It is submitted that after the order of reinstatement, the deceased petitioner (Shyam Lal) was reinstated in service. During the aforesaid period of termination, the Govt. of Haryana had framed the policy for regularization on 18.03.1996 as per which those daily wagger employees who had completed 03 years of service as on 31.01.1996 were entitled to be regularized. Shyam Lal (Deceased) accordingly sought the information about the juniors namely Jai Singh and Phool Chand, who were appointed as Daily Wagers in the year 1993 and 1992 respectively, and had been regularized by the respondents in terms of the said policy and thereafter submitted a representation to the respondents about regularization of his

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services, however, no action was taken by the respondents despite regular follow up. Shyam Lal (Deceased) eventually retired on 30.09.2015 awaiting a decision on regularization to be taken by the respondents. The instant writ petition was, thereafter, filed in the year 2016 for seeking the said benefit after sending the legal notice to the respondents to release his due and other retiral benefits. It is also argued by the Counsel for the petitioner that the action of the respondents in not granting the benefit of regularization and other consequential benefits is *prima facie* illegal and disregards the Award that has already been passed in favour of the petitioner whereby the benefit of continuity of service with 25% back wages had been awarded. He further submits that once the respondents did not dispute that a person junior to the petitioner stood regularized, there was no occasion for the respondents to deny the petitioner's regularization. A reference is also made by the Counsel for the petitioner to the information that had been sought by the petitioner under the Right to Information Act and appended alongwith the present writ petition as Annexure P-12 and P-13 to establish that the persons who were initially engaged during the period from 1988 to 1994 had already been regularized by the respondents but the benefit has not been granted to the petitioner despite working with the respondent-authorities since 1981. He has also referred to the information obtained by the petitioner from the respondents under the RTI Act which pertained to the details of the daily wages employees from April, 1986 onwards which shows that the petitioner was in service in the year 1986 and the said fact is well borne out from the record of the respondents themselves. The additional documents (Annexure P-14) had also been appended by the petitioner alongwith affidavit filed by

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him commencing from April, 1986 and continuing upto June, 1992. It is thus argued that the deceased Shyam Lal was entitled to be regularized w.e.f the date when the juniors were regularized in terms of the policy dated 07.03.1996/18.03.1996.

4. Learned Counsel appearing on behalf of the respondents however, refers to the affidavit dated 01.05.2019 filed by the Executive Engineer, Provincial Division.II, PWD (B&R) Sirsa and contends that as per the policy of 07.03.1996/18.03.1996, a person was eligible to seek regularization in case he has completed three years of regular service as on 31.01.1996. He contends that since the petitioner was engaged on Temporary Muster Roll in the month of May, 1993, hence, he had not completed the service of three years as on 31.01.1996, hence, he is not eligible for regularization. No other argument has been advanced.

5. On being confronted with the information furnished by the respondents and appended by the petitioner alongwith his affidavit as Annexure P-14, Counsel for the respondent-State is not in a position to controvert the same or to deny the information furnished by the respondents themselves under the Right to Information Act, 2005.

6. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

7. It is evident from a perusal of the aforesaid that the respondents had undisputedly supplied the information acknowledging of the petitioner



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being in the employment of the respondents since April, 1986 till June, 1992 and during the said years, he had more than 242 days of service. It is on account of the termination of his services in the year 1994 that he had to approach the Labour Court under the Industrial Disputes Act and the reference was allowed by the Labour Court vide its Award dated 14.05.2002 directing reinstatement alongwith continuity and backwages to the extent of 25%.

8. Once the benefit of continuity of service has been extended, as per the judgment of this Court in **CWP No. 10017 of 2011** titled as “**Khajjan Singh and others versus State of Haryana and others**”, the said benefit of continuity has to relate back to the date of original appointment. Hence, the break period in service could not have been taken into consideration by the respondents to the detriment of the workman and to deny the benefit that would have accrued in his favour but for the wrongful termination. The relevant extract of the said judgment reads thus:

*“19. Labour and industrial rights deserve to be examined on both constitutional principles and industrial law precepts preserved by the special law of the Industrial Disputes Act, 1947 and the foremost question posed in (iv) above has to be answered in the first instance whether Umadevi stands distinguished and explained in the landmark judgment delivered by R.M.Lodha, J. in **Casteribe**. The two judge Bench of the Supreme Court dealt with the State law of Maharashtra cited as **The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (MRTU & PULP Act)**. The Court dealt with Section 21(1)*



*and its proviso; Schedule IV Items 2, 5, 6 and 9 and especially with Item 6 which is in pari materia with the provisions of Entry 10 of the 5th Schedule to the Industrial Disputes Act, 1947, the commonality being a facet of unfair labour practice to keep workmen as badlis, casuals or temporaries and to continue them as such “for years” with the object of depriving them of the status and privileges of permanent workmen. The Constitution Bench in **Umadevi** was explained in para. 35 and 36 in **Casteribe** as follows: -*

35. Umadevi (3) 1 is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi (3)1 does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.”



(emphasis added)

20. The Court observed that there can never be any quarrel with the proposition that the Courts cannot direct creation of posts, the principles of which are embedded in **Mahatma Phule Agricultural University v. Nasik Zila Sheth Kamgar Union**, 2001 (3) SCR 1089; **State of Maharashtra v. R.S.Bhonde**, (2005) 6 SCC 751; **Indians Drugs & Pharmaceuticals Ltd. v. Workmen**, (2007) 1 SCC 408; **Aravali Gold Club v. Chander Hass**, (2008) 1 SCC 683. In para. 41, in **Casteribe** the Court held : -

“41. Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the Courts.”

21. The argument raised by the Corporation in **Casteribe** before the Supreme Court was that, where the Industrial Court has found the Corporation to have indulged in unfair labour practice in employing the complainants as casuals on piece-rate basis, then the only direction which could be given to the Corporation was to cease and desist from indulging in such unfair labour practice and no direction of according permanency to those employees could be given, was rejected by the Supreme Court since it found specific power given to the Industrial/Labour Court under the Act to take affirmative action against the erring employers



*and orders can well be made to accord permanency to the employees affected by such unfair labour practice. The Court found nothing wrong in the direction of the Bombay High Court granting status and permanency to the complainants employed as cleaners by the Corporation for its buses running public transport. The directions issued in **Umadevi** were held to be confined to orders passed by the High Courts under article 226 and the Supreme Court under article 32 not to issue directions regarding absorption/regularization of daily wage or ad hoc employees unless the recruitment itself was made regular in terms of the constitutional scheme. However, the victims of unfair labour practice of the employer deserve freedom of permanency where facts and circumstances demand in the canvas of **Casteribe**.*

What is unfair labour practice and unfair discrimination in Labour & Industrial law.

22. *Though Casteribe dealt with MRTU & PULP Act enacted by the State of Maharashtra but the provisions of unfair labour practice are identical to Entry 10 of the 5th Schedule to the Industrial Disputes Act, 1947. Entry 10 is a statutory protection against invidious discrimination and exploitation provided the discrimination continues 'for years'. It would follow that short duration of employment is per se not violative of Entry 10 of the Act and length of employment becomes relevant consideration to examine unfair labour practice issues. The rule evolved in Umadevi of 10 years service or more has sufficient approval of the Supreme Court to call upon the Union and the State Governments and their instrumentalities to take steps of regularization as a one-*



time measure, the services of irregularly appointed but not illegally appointed workers subject to availability of sanctioned posts where such employment is not litigious in nature or under the cover of orders of Courts or of Tribunals. In Umadevi the Constitution Bench protected regularization done but those appointments which were not sub judice could not be reopened. In terms of Umadevi, a distinction will have to be kept in mind between irregular appointments and illegal ones in view of the directions in para. 44 to para 46, and thus a distinction would also have to be kept in mind between regularization and giving permanency.

23. The claim in this bunch of cases arises out of Labour Court awards granting reinstatement with continuity of service. If the petitioners were kept out of service by illegal orders passed by the State Government functionaries, the period of absence would have to be treated as continuous service to be added to the total period of service with a right of protection under Entry 10 of the 5th schedule to the Industrial Disputes Act provided they qualify as 'workmen' within the meaning of section 2 (s) of the Act which ex facie they appear to be without any special proof by way of evidence. There is no dispute that the petitioners stand reinstated to service in compliance of the orders passed by the Industrial adjudicator and they may deserve to be put at par with the "fortunate group" to remove the vice of unfair discrimination, where the "fortunate group" secured orders of regularization or permanency by the administrator and not by the Court. The interim orders passed by the Division Bench of this Court should not put the petitioners to disrepute of a litigious nature and



should be understood from the stand point of persons aggrieved having approached the Court for its protection under article 226 of the Constitution to secure justice to themselves. Therefore, the cases in this batch in which persons have continued in service by interim protection or otherwise, can be placed in the same group together with those of the petitioners who approached the Court after their representations for regularization were rejected either before or after the pronouncement of the judgment in Umadevi.”

9. So far as the second argument of the respondents that the petitioner was appointed on temporary basis and since the same was not a regular appointment, hence, the petitioner could not be regularized in terms of the policy of 07.03.1996/18.03.1996 is concerned, Hon’ble Supreme Court in ***SLP(C) No. 5580 of 2024*** titled as ***“Jaggo versus Union of India and others”*** has specifically held that the workman/employee on temporary/ad hoc basis cannot be denied the benefit of regularization solely on the ground that the engagement was not on a regular post. The relevant para of the judgment is extracted hereunder:-

" 10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants’ long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was



through any illegal or surreptitious route."

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12. Despite being labelled as "part-time workers," the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants' termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

10. Since the position in law remains well settled against the respondent-State on both the grounds. I find that the respondents committed an error in not passing an order of regularization in favour of the petitioner



especially when persons, who were appointed much later to the petitioner and during 1988 to 1994 onwards, had already been regularized by them.

11. Even though argument of delay and laches has been raised by the respondent-State, however, I am of the opinion that such an argument does not behold the State. It has itself failed to extend the benefit of regularization in favour of the petitioner even when such benefit was being extended in rem to all other similarly placed persons. In any case, the sting of the denial of benefit of regularization would give rise to an entitlement and to claim such benefit. Needless to mention that had the benefit of regularization been conferred upon the petitioner late Shyam Lal as per his entitlement, the wife of the petitioner would have been entitled to pension/family pension in terms of the policy. Invariably, the act of the respondents in denying the said benefits to the petitioner has thus defeated the very objective of the regularization policy. No reasons have given by the respondents as to why such benefit has not been extended to the petitioner when the same had been extended by the respondent themselves to other similarly placed persons. Rather, shockingly, the respondents have denied the existence of a relationship between the respondent-Department with the petitioner even when they themselves supplied the information under the RTI Act showing that the petitioner was engaged with them. Thus, there has been a material concealment and an attempt to file factually incorrect affidavit. This Court would have ordinarily dealt with such act on the part of the officials strictly, however, taking a lenient view in the matter, no further costs are being imposed. The State is however, warned to submit documents

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fairly and not conceal information, as and when the same is asked for by this Court.

12. The present writ petition is accordingly allowed and the respondents are directed to pass an appropriate order regularizing the service of the petitioner w.e.f. the date when persons junior to him had been regularized by the respondent-Department. The consequential benefits, as would become admissible to the petitioner, shall thereafter be ascertained by the respondents and the same shall also be released, subject to fulfillment of the necessary statutory conditions, by the petitioner.

13. Let the needful be done within a period of four months of receipt of certified copy of this order.

(VINOD S. BHARDWAJ)**JUDGE****FEBRUARY 28, 2025***Vishal Sharma*

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No