

2025:PHHC:130412



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

**CWP-200-2013
DECIDED ON: 19.09.2025**

RAM KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Naveen Daryal, Advocate
for the petitioner

Mr. Rahul Dev Singh, Addl. AG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 31.10.2012 (Annexure P-7) alleging the same to be discriminatory, arbitrary and against the rules of natural justice.
2. The petitioner has sought regularization as per the policy of 1996 from the date his juniors were to be put on regular establishment alongwith all consequential benefits with interest for the delayed period.
3. Learned counsel for the petitioner submits that the petitioner was initially engaged as a daily-wage Chokidar on 01.05.1978 with the respondent/ department and has been continuously serving across various divisions. The

details of such engagement and service have been set out in tabulated form in paragraph 2 of the writ petition, which merit consideration and are reproduced hereinbelow:

Sr. No.	Name of Officer	From	To
1.	Provisional Division No.1 PWD B&R Kurukshetra. (Pehowa Sub Division Pehowa)	01.05.1978	28.02.1982
2.	Mandi Division B&R Panipat	01.05.1982	31.10.1982
3.	Provisional Division No.1, Panipat	01.11.1982	31.05.1985
4.	Provisional Division Kaithal. (Rajound Sub Division Rajound)	01.06.1985	28.02.1988
5.	World Bank Division Murthal	01.03.1988	30.06.1990

4. Thereafter the petitioner worked under the under the control of XEN, Provisional Division No.1 since 01.06.1992 with the following sub-divisions:-

i) Provisional Sub-Division No.III Panipat from 6/92 to 6/93

ii) Provisional Sub-division No.2 Samalkha from 7/93 to 7/94.

Thereafter the service of the petitioner has been dispensed with by the respondent without any reason.

5. On dispensation of his services on 07.07.1994 a demand notice was served on 07.12.1996 alongwith a claim statement. The Labour Court, after adjudication, passed an award dated 23.02.2001 in favour of the petitioner, setting aside the termination on the ground that it was illegal and in violation of Sections 25-F and 25-G of the Industrial Disputes Act. The Labour Court further directed the reinstatement of the petitioner with continuity of service and full back wages w.e.f. the date of the demand notice, i.e., 07.12.1996.

6. The State approached this High Court vide Civil Writ Petition No.9996 of 2001.

7. It is on the basis of the aforementioned factual background that the present petition was argued. However, during the pendency of the proceedings, the petitioner unfortunately passed away on 09.05.2020. Pursuant to his demise, his legal heirs namely, Dhanpati (widow of Ram Kumar), Dinesh Kumar (son), and Renu (daughter), were brought on record vide order dated 02.09.2022.

8. Heard.

9. In support of the proposition that the petitioner-workman, despite his demise and the fact that he had not been regularized in service during his lifetime, was still entitled to the reliefs claimed, reliance has been placed upon the judgment of this Hon'ble Court in **CWP No. 10017 of 2011, titled "Khajjan Singh and Others vs. State of Haryana and Others."** In the said case, it was held that the benefit of continuity in service must relate back to the date of the original appointment, and any break in service could not be used by the respondents to the prejudice of the workman so as to deny the benefits that would have otherwise accrued to him due to the wrongful termination. The relevant portion of the said judgment reads as under:

*"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."

10. To the argument raised by the State of Haryana that the petitioner has since deceased and is no more in existence. Thus, the case for regularization cannot be considered at this stage, would not hold good for the reason that the State had already adjudicated upon the petitioner's claim and rejected the same vide order dated 31.10.2012 (Annexure P-7). The said rejection was immediately

challenged by the petitioner in the present writ petition, which was filed during his lifetime. Therefore, the cause of action had already crystallized, and the petitioner's right to relief survives even after his demise and in case the present writ petition is accepted and the arguments raised get merit in favour of the consequential relief would necessarily relate back to the date from which the petitioner was legally entitled to regularization. At that time, he was actively serving as a daily wager and pursuing his rightful claim for regularization, particularly on the ground that his juniors namely Jagat Singh, Dharam Singh, Zile Singh, and Raju were regularized w.e.f. 01.01.1996 under the regularization policy framed by the State of Haryana in 1996.

11. It is pertinent to note that the petitioner was engaged in litigation before the Labour Court during the relevant period, which culminated in an award dated 23.02.2001 passed in his favour. As a result, while his juniors benefited from regularization, his case remained pending due to the ongoing legal proceedings. The award in his favour was subsequently upheld by this Court in *CWP No. 9996 of 2001* vide order dated 08.11.2016. Accordingly, a vested legal right accrued in favour of the petitioner for consideration for regularization from the date his juniors were granted the benefit and merely for the reason that he unfortunately passed away on 09.05.2020, cannot violate the right by any stretch of imagination under any proposition of law to which the petitioner has become legally entitled.

12. In view of the aforementioned facts and the admitted position that the Labour Court had allowed the demand notice by granting the relief of reinstatement with continuity of service, it is pertinent to note that the said award was duly complied with. During the pendency of *CWP No. 9996 of 2001*, the State made a statement before this Hon'ble Court to the effect that the workman had

been reinstated and full back wages had been paid. It was further submitted that the reliefs granted by the Labour Court had been fully implemented. Consequently, the writ petition was rendered infructuous and was dismissed as such. The relevant portion of the said order reads as under:

“Respondent-workman sought his reinstatement with continuity of service and full back wages from the date of payment i.e. 07.12.1996. His claim was allowed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat vide order dated 23.02.2001. This order was challenged by the petitioner by filing the writ petition bearing CWP No.9996 of 2001. During the pendency of the writ petition, the relief sought i.e. reinstatement of the workman and full back wages have been paid to him. This fact is also conceded by Mr. Prashant Kumar, SDE-PSD-II, Samalkha, District Panipat. This being the conceded position, the same renders the present petition as infructuous. Accordingly, this writ petition is dismissed.”

13. Learned counsel for the petitioner has also placed reliance on the judgment dated 28.02.2025 passed by a learned Single Judge of this Court in **CWP No. 6614 of 2016, titled "Shyam Lal (Deceased) through his LRs vs. State of Haryana and Others,"** contending that the present case is squarely covered by the ratio laid down therein.

14. Mr. Rahul Dev Singh, learned Additional Advocate General, Haryana, does not dispute the petitioner's contention and fairly concedes that the facts and legal position in the present case are indeed covered by the decision in *Shyam Lal (Deceased) (supra)*.

15. This case is a solemn reminder that the law, while clothed in the formalities of procedure, must never lose sight of its humane purpose. The petitioner appears before us not in search of charity, but in pursuit of justice that

ought to have been served during her husband's lifetime. She seeks recognition not just of the service rendered by her late husband, but of the dignity that every employee is entitled to under our constitutional scheme.

16. The facts are undisputed. The employee had rendered long years of continuous, dedicated service. He had crossed the threshold where temporariness loses its meaning, and regularization becomes not an act of grace, but a matter of right.

17. This Court cannot allow the architecture of justice to be subverted by procedural rigidity. The right to regularization, when accrued, travels with the person and in their absence, survives through their legal representatives. The State, as a model employer, is bound to uphold not merely the letter of the contract, but the spirit of fairness, equality, and compassion.

18. Therefore, this Court holds that the deceased employee shall be deemed to have been regularised from the date on which he became eligible for such benefit. All consequential entitlements monetary and otherwise shall accordingly be made over to the legal heirs, who today stand not merely as claimants to financial dues, but as representatives of a moral wrong seeking redress. Justice, even if delayed, must be seen to repair what was broken not only in legality, but in principle.

19. In light of the above, this Court recognizes the hardship faced by the legal heirs of the deceased petitioner, who have been left to pursue a right that was long overdue due to protracted litigation and the petitioner's untimely death. It is only just and equitable that the vested right in favor of the petitioner now be acknowledged and honored in favor of his heirs.

20. Accordingly, the respondents are directed to pass necessary orders for the regularization of the deceased petitioner from the date of demand notice i.e., 01.01.1996, within three months from the date of receipt of a certified copy of this order. All consequential benefits shall be released, along with interest at the rate of 6% per annum, to mitigate the prejudice suffered by the petitioner's legal heirs.

21. The present petition in the aforesaid terms stands allowed.

22. Pending application(s), if any shall disposed off, accordingly.

19.09.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No