



CWP No.18339 of 2018 (O&M)

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

CWP No.18339 of 2018 (O&M)
Reserved on : August 02, 2024
Pronounced on : September 03, 2024

Rajesh Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Alka Chatrath, Advocate with
Ms. Neha Singh, Advocate
for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J. (Oral)

1. The petitioner has approached this Court by way of filing the instant petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari*, quashing the order dated 18.06.2018 (Annexure P-16), whereby the claim of the petitioner for regularization of his services w.e.f. 01.10.2003, as per Policy Instructions dated 01.10.2003 (Annexure P-3) read with instructions dated 10.02.2004 (Annexure P-4), has been rejected, and further a writ of *mandamus* is prayed for directing the respondents to regularise the services of the petitioner in terms of Policy Instructions dated 01.10.2003 (Annexure P-3) read with instructions dated 10.02.2004 (Annexure P-4), with all consequential benefits.

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2. The brief facts, as have been pleaded in the writ petition, are that the petitioner, who is matriculate, was appointed as 'Mali-cum-Chowkidar' on 19.09.1995 in PWD (Public Health) and he joined, as such, on 01.10.1995 on daily wage basis. His services were terminated w.e.f. 31.03.1997. Aggrieved against the said action, the petitioner issued a Demand Notice on 02.04.1997 to the authorities concerned and in pursuance thereto, the dispute was referred to the Industrial Tribunal-cum-Labour Court, Gurugram, vide notification dated 30.09.1997, and the learned Tribunal, vide award dated 02.02.2001, answered the reference in favour of the petitioner and he was held entitled to reinstatement, with continuity in service, with full back wages.

3. The abovesaid award was challenged by the Department before this Court by filing CWP No.9171 of 2001 titled as '*State of Haryana versus Rajesh Kumar and Ors.*', which was admitted vide order dated 24.07.2003, and recovery of backwages was ordered to be stayed. Thereafter, the petitioner was allowed to join duties on 24.12.2003 and finally the said writ petition was allowed in part vide order dated 03.04.2018, whereby learned Single Bench has held that 'since the petitioner has not worked from 01.04.1997 to 03.02.2004, therefore, he was not entitled for full back wages' and was awarded 25 % of the back wages.

4. It has further been averred that the Haryana Government in exercise of powers conferred by the *proviso* to Article 309 of the Constitution of India read with *proviso* to Clause (6) of Notification dated 28.01.1970 issued by the Government of Haryana, issued notification dated 01.10.2003, regularizing the services of the ad-hoc/contract/daily wages employees, who had completed 03 years of service on 30.09.2003. The said notification was amended vide notification dated 10.02.2004 and as per the said amendment, the services of all such employees, who have rendered 03 years of services, will be regularized, even

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if there is a break of more than 06 months, in case such break is not attributable to the employee and the employees, who have been engaged before 31.01.1996, shall be regularized provided they fulfill the other conditions.

5. Since the similarly situated employees were regularised and the petitioner was not given the same benefit in spite of fulfilling the eligibility criteria, the petitioner sent a legal notice dated 12.07.2004 for regularization of his services w.e.f. 01.10.2003 and the same was replied by the Executive Engineer, PWD (Public Health) vide memo dated 12.08.2004, stating therein that “since the petitioner had been taken back into service on 24.12.2003 and CWP No.9171 of 2001, filed by the State of Haryana against the award dated 02.02.2001, is pending in the High Court, therefore, the services of the petitioner cannot be regularized”.

6. The petitioner challenged the abovesaid reply dated 12.08.2004 before this Court by way of filing CWP No.13763 of 2004 and the said writ petition was ordered to be heard with CWP No.9171 of 2001 and was disposed of on 03.04.2018 with a direction to the respondents to pass a speaking order on the fresh representation to be submitted by the petitioner within a period of three months.

7. The State Government has issued instructions dated 13.04.2007, whereby the Governor of Haryana rescinded the instructions dated 07.03.1996, 18.03.1996 and 01.10.2003 relating to regularization of the daily wage / adhoc employees. Thereafter, the Government of Haryana again issued notification dated 18.06.2014, whereby proviso was added in the policy dated 13.04.2007 for regularization of services of the left over ad-hoc / contract / daily wages / work-charged workers, who could not be regularized earlier under the regularization policy issued vide different dates mentioned in the notification dated 13.07.2007,

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due to administrative reasons, and consequently, vide letter dated 20.06.2014, a direction was issued to all the Heads of the Departments in the State for regularization of Group 'C' and Group 'D' employees / workers appointed / engaged on contract basis for regularization of services of Group 'C' and Group 'D' employees, whose cases were covered under the policies dated 17.06.1997, 05.11.1999, 01.10.2003 and 10.02.2004. Despite that the services of the petitioner were not regularized and whereas services of the other similarly situated persons, who had joined much after the petitioner, were regularized.

8. In terms of order dated 03.04.2018, passed in CWP No.13763 of 2004, the petitioner submitted legal notice dated 07.04.2018 to the respondents - authorities to consider his claim for regularization w.e.f. 01.10.2003, however, the said claim has been rejected, vide order dated 18.06.2018 (Annexure P-16), which is impugned in the present writ petition, despite of the fact that other similarly situated employees, who have joined much later than the petitioner, their services have been regularized by the respondents- department.

9. It has also been averred by the petitioner that similarly situated employees namely Anil Kumar, Sahi Ram, Karan Singh, Satya Narain and various other persons, working on the post of 'Mali-cum-Chowkidar' & 'Beldar', have been regularized, vide orders of different dates as Annexures P-8, P-9, P-17, P-18, P-20, P-22 and P-23.

10. Learned counsel for the petitioner submitted that the claim of the petitioner has wrongly been rejected by the respondents vide order dated 18.06.2018 (Annexure P-16) whereas various other similarly situated employees working on the same posts have been regularized vide orders of different dates and most of those employees are junior to the petitioner, therefore, action of the



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respondents is illegal and arbitrary being not only against the regularization policy dated 01.10.2003, as also the Articles 14 and 16 of the Constitution of India. She has placed reliance upon the Judgements passed by the Hon'ble Supreme Court in ***Civil Appeals No.616-617 of 2016 (arising out of various SLP (C) Nos.9965-9974 of 2016 and connected cases) titled as 'State of Haryana and others versus Khajjan Singh and others' decided on 09.01.2024*** and ***'Om Prakash Banerjee versus The State of West Bengal & Ors.' 2023 INSC 567***; Judgement dated 02.12.2022 passed by the Division Bench of this Court in ***LPA No.688 of 2021*** titled as ***'State of Haryana and others versus Balwinder Singh and others'***; Judgement dated 31.01.2024 passed in ***LPA No.761 of 2021 in case titled as 'State of Haryana and others versus Bhoop Singh (since deceased) through his LR-Muniya'***; ***'Ram Pat versus State of Haryana', 1998 (3) S.C.T. 114***; ***'Ajmer Singh versus State of Haryana and others' 2002(1) RSJ 479*** and ***'Jagdish Chand versus Haryana Tourism Corporation Ltd.', 2006 (2) SCT 567*** and Judgements passed by the Single Bench of this Court in ***CWP No.2009 of 2016 titled as 'Balwinder Singh and others v/s State of Haryana and others' decided on 31.01.2020***; Judgement dated 24.02.2021 passed in ***CWP No.19779 of 2017 titled as 'Pawan Kumar and another versus State of Punjab and others'*** and Judgement dated 20.04.2021 passed in ***CWP No.19793 of 2017 titled as 'Bhoop Singh (since deceased) through his LR v/s State of Haryana and others'***.

11. *Per contra*, learned State counsel while referring to the detailed written statement has submitted that since the initial appointment of the petitioner was not in conformity with the provisions of Articles 14 and 16 of the Constitution of India, therefore, the petitioner is not entitled for regularization. He further submitted that the petitioner being daily wager and appointed against the constitutional scheme of public employment is not entitled for the relief



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sought in the instant petition. He has placed reliance on the Judgement dated 10.04.2006 passed by the Hon'ble Supreme Court in Civil Appeal No.3595-3612 of 1999 titled as '*Secretary, State of Karnataka and others versus Umadevi and others*', 2006 (2) SCT 462.

12. I have heard learned counsel for the parties and perused the record.

13. Vide orders dated 04.10.2018, the main petition was initially disposed of in terms of orders dated 04.10.2018 passed in CWP No.2009 of 2016 titled as '*Balwinder Singh and others versus State of Haryana and others*', whereby the respondents were directed to consider the case of the petitioner for regularization and pass appropriate orders. Since 54 petitions, claiming regularization of their services, were allowed by learned Single Bench of this Court, vide order dated 04.10.2018, therefore, aggrieved by, the State of Haryana had preferred Letter Patent Appeals against the order dated 04.10.2018, passed by Single Bench in various writ petitions, (lead case LPA No.109 of 2019 titled as "*State of Haryana and others versus Balwinder Singh and others*") whereby the Division Bench of this Court vide orders dated 18.03.2019 had set aside the order dated 04.10.2018 of learned Single Judge and remitted the matter(s) to learned Single Bench of this Court for its adjudication afresh. Thereafter, vide order dated 31.01.2020, the CWP No.2009 of 2016 was decided afresh by Single Bench of this Court and the respondents were directed to consider the case of the petitioner for regularization. The State of Haryana had challenged the same orders passed in different writ petitions by filing Letter Patent Appeals i.e. LPA No.688 of 2021 and other connected cases, which was dismissed on 02.12.2022. Moreso, Civil Appeal No.4237 of 2024 and other connected cases, which were filed against abovesaid LPA Bench order, have also been dismissed by the Hon'ble Supreme Court, vide order dated 09.01.2024. Thereafter, learned counsel for the



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petitioner has moved an application i.e. CM No.7881 of 2024 seeking disposal of the case in terms of order dated 31.01.2020, passed by this Court in CWP No.2009 of 2016, against which LPA No.688 of 2021 and Special Leave to Appeals have also been dismissed, as referred above, and in terms of order dated 13.03.2024 passed in CWP No.2158 of 2020 titled as '*Ashish Sharma and others versus State of Haryana and others*', notice in the application was issued on 13.05.2024. However, no reply has been filed thereto.

14. The facts are not in dispute that the petitioner was initially engaged on daily wages basis on 19.09.1995 as 'Mali-cum-Chowkidar' and his services were terminated on 31.03.1997 and the said termination was set aside by the Labour Court vide award dated 02.02.2001 and in pursuance to the said award, the petitioner was reinstated in service. The said award was challenged before this Court by the State and the same was upheld vide order dated 03.04.2018 passed in CWP No.9171 of 2001, whereby full back wages were modified to 25 % back wages from the period 01.04.1997 to 03.02.2004 only and the petitioner remains to continue in service.

15. As per records, the petitioner has served the respondents-department for about 29 years and his case is squarely covered by the policy dated 01.10.2003 issued by the State of Haryana and the relevant Clause of said policy, is as under:-

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“ 3. Daily-Wage Employees (Group D) :-

Only such daily wage employees who have completed three years services on Group D post(s) on 30th September, 2003 and were in service on 30th September, 2003 shall be regularised against their respective Group-D posts provided they fulfill the requisite qualification and were originally appointed against vacant posts. Provided further that they have worked for a minimum period of 240



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days in each year and if the break in service of a daily wage employee(s) has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days ”

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16. The said policy was further modified vide notification dated 10.02.2004, wherein following relevant condition was added:-

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" D) after condition number 7, the following condition shall be added at the end, namely:-

8. In the case of daily Wage Group C and D employees, only those daily wage employees shall be regularized who had been engaged before 31.1.96 provided they fulfill the other conditions."

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17. The petitioner was engaged as daily wager i.e. 'Mali-cum-Chowkidar' on 19.09.1995, which was before the cut of date i.e. 31.01.1996 and was in service on 30.09.2003 with a deeming fiction, as his termination was set aside by the Tribunal vide award dated 02.02.2001, which was upheld by this Court, vide Judgement dated 03.04.2018, passed in CWP No.9171 of 2001. The following persons, who were similarly situated like the present petitioner and/or were junior to the petitioner, have been regularized:-

Sr.	Name of the Official(s)	Designation	Remarks
1.	Sh. Anil Kumar	'Mali-cum-Chowkidar'	Regularized w.e.f. 01.10.2003 vide order dated 02.09.2011 (Annexure P-8) passed by the Superintending Engineer, Public Health, Engineering Circle, Gurugram.
2.	Sh. Sahi Ram	'Mali-cum-Chowkidar'	Regularized w.e.f. 01.10.2003 vide order dated 11.07.2011 (Annexure P-9) passed by the Superintending Engineer, Public Health, Engineering Circle, Gurugram.



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3.	Sh. Sat Narnain	'Beldar'	Regularized w.e.f. 01.10.2003 vide order dated 24.07.2014 (Annexure P-18) passed by the Executive Engineer, Mech. Divn. PWD (B&R) Br.
4.	Sh. Karan Singh	'Beldar'	Regularized w.e.f. 01.10.2003 vide order dated 24.07.2014 (Annexure P-20) passed by the Executive Engineer, Mech. Divn. PWD (B&R) Br.
5.	Sh. Kamal	'Beldar'	Regularized w.e.f. 28.05.2014 vide order dated 11.03.2015 (Annexure P-22) passed by the Executive Engineer, Provincial Divn. No.2, PWD (B&R) Branch, Rohtak
6.	S/Sh. Ram Raji Mahabir Jai Bhagwan Baljeet Singh Harnandi Karmbir Krishan Dilbag	'Beldar'	All the persons/employees were regularized vide order dated 18.03.2015 , passed by Executive Engineer, Provincial Divn. No.2, PWD (B&R) Branch, Rohtak, after considering them eligible on the basis of attendance and Govt. Policy and the order dated 28.05.2014 qua withdrawal of their services was cancelled.

18. The Division Bench of this Court in '**Ajmer Singh case**' *supra* has held that once an employee is reinstated in service with continuity, he is deemed to be on duty for all intents and purposes and the benefit accruing on the basis of such deemed reinstatement has to be granted as he if was actually on duty from the date when his services have been illegally terminated.

19. Similar claim was accepted by this Court, vide Judgement dated 24.01.2017 passed in **CWP No.17150 of 2015 titled as 'Pawan Kumar and others versus State of Haryana and others'**, wherein it was held that the petitioners are entitled to be regularized in service, as per regularization policy dated 01.10.2003 of the State Government and the above said Judgement has been upheld by the Division Bench of this Court, vide Judgement dated 02.12.2022 passed in **LPA No.688 of 2021 in case titled as 'State of Haryana and others versus Balwinder Singh and others'** wherein, it has been held as under:-

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“ 118. Thus keeping in view the judgment in **State of Karnataka Vs. M.L.Kesari & others, (2010) 9 SCC 247**, we are of the



considered opinion that the learned Single Judges were well justified in directing consideration for regularization as the claim was on the basis of the policies which were in effect and were supplemented by others. The persons had worked for the requisite period of time and were seeking regularization as per the policies which were in vogue at that point of time and they were not continuing in service on account of any litigation and did not have any interim orders in their favour. The Apex Court had noticed that the true effect of the directions passed in Uma Devi (supra) was that persons who had been continuing for the period of 10 years without interim orders of the Tribunals and the employer had not undertaken the exercise of regularization within 6 months of the decision in Uma Devi (supra) then the exercise was to be taken for the limited view and it would not disentitle the employees for their right for regularization as a one-time measure. Appointment of persons which was illegal and irregular was clarified to the extent that the illegality would be only if the appointee did not possess the required minimum qualifications and the irregularity would be if the person had been selected without undergoing the process of open competitive selection but had the prescribed qualifications. In the present cases we are dealing with cases of Class-IV employees employed as Beldar/Mali/Labourer and, therefore, the said legal impediment would not come in the way. Relevant observations reads as under:

5. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.



(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

6. The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

7. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/adhoc/casual employees were still pending before Courts.



Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

8. The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the



practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.

9. These appeals have been pending for more than four years after the decision in Umadevi. The Appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularization within six months of the decision in Umadevi or thereafter.”

*119. The Apex Court in **State of Jharkhand and others Vs. Kamal Prasad and others, (2014) 7 SCC 223** while dismissing the appeals of the State and upholding the judgment of the High Court, regarding the regularization orders in favour of the Junior Engineers who had been working for 29 years was held to be legal and by holding that they were covered under the exceptions made in **Uma Devi (supra)**. Resultantly, while placing reliance upon the judgment passed in **Olga Tellis & others Vs. Bombay Municipal Corporation & others, (1985) 3 SCC 545**, it was held that the High Court had rightly come to the conclusion that the action of the State was arbitrary and it shocked the conscious of the Court that the persons*



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had worked for 29 years and had been discharging permanent nature of duties. Therefore, it was held that the judgment could not be vitiated on account of any erroneous finding or suffering from any error in law.

120. Thus, we are of the considered opinion that a window had been kept open by the State that the policies dated 17.06.1997, 05.11.1999, 01.10.2003, 10.02.2004 were to be applied to persons who had not been regularized and, therefore, it does not lie in the mouth of the counsel for the State to argue that the policies stood withdrawn. The learned Single Judges were justified in issuing directions for consideration. As noticed above the claim is based on a legal right for seeking issuance of a writ of mandamus and in such circumstances it cannot be said that the learned Single Judges were in error in allowing the writ petitions. Accordingly, the appeals filed by the State are dismissed. All pending civil miscellaneous applications, if any, are also disposed of. ”

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20. To the same effect is the Judgement dated 09.01.2024 of the Hon'ble Supreme Court passed in the case of '*Khajjan Singh and others*' (*Supra*) wherein it has been held as under:-

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“ The writ petitions were filed by Respondents seeking regularization of their services from the dates from which their juniors were regularized by the State as per regularization policy dated 01.10.2003. It was averred that even after fulfilling the criteria as specified the juniors to them were extended the benefit of regularisation. Learned Single Judge vide order dated 28.05.2014 allowed the writ petitions and granted the relief, as prayed. The relevant portion of the order is reproduced herein as thus:

“72.By applying these standards of primary review of administrative action in the present



cases where the fortunate ones secured their freedom of regularization without court intervention but which has resulted in hostile and invidious discrimination are declared bad in the eyes of law. The rule of law is clearly against man's inhumanity to man. This kind of deprivation is in contravention of the natural law of equality among citizens who are or have become equally placed in all respects of basic rights possessed by both of them as human beings even if there were no written constitution or statutory law protecting workers against unfair discrimination and unfair labour practice inter se of those who deserve equality of treatment with their counterparts obtained through the tardy process of Labour Court trial resulting in favourable awards by the deeming fiction of law, even then the Court must step in to vanquish subjugation of the spirit. No person aggrieved should be turned away thinking the Court failed in coming to aid by restoring the unfair imbalance created by the administrator.

73. On the conspectus of the above facts, law and the thread of judgments read together, and for the various reasons stated interconnecting the judicial decisions, the rights of the petitioners for ante dated regularization of services are declared in their favour and against the State.

74. The writ petitions are allowed. The orders of the respondent State declining representations of the petitioners for regularization in this batch of cases are nullified and set aside. In cases where regularization has been granted with effect from 2003 they shall be ante dated in terms of this judgment from the dates such petitioners were separated from their erstwhile



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juniors and fellow workers. Accordingly, the State of Haryana would pass fresh orders in terms of this judgment in each case after the period of limitation prescribed for calling in question this order has expired.”

On filing of the appeal by State, learned Division Bench of the High Court vide impugned judgments passed on different dates, dismissed the LPA(s) filed by appellant(s) maintaining the order of learned Single Judge. The relevant portion of the order of learned Division Bench is reproduced as under :

“[4] Learned Single Judge has followed the view earlier taken by this Court that where services of juniors are regularized without considering the claim of senior employee, such action of the authorities would be violative of Articles 14 & 16 of the Constitution. Consequently, directions have been issued vide the order under appeal for regularization of services of private-respondents.

[5] The order of learned Single Judge was admittedly assailed by the State of Haryana firstly in LPA No.1903 of 2014 (State of Haryana and others versus Jiyaji Sharma which was dismissed by a Coordinate Bench vide order dated 21.01.2015. On that very day, another LPA No.1909 of 2014 (State of Haryana and another versus Sukhbir Singh was also dismissed.

[6] For the reasons assigned by this Court in Jiyaji Sharma's case (supra) coupled with the findings returned by learned Single Judge, as briefly noticed in para [2] above, we do not find any merit in these appeals which are accordingly dismissed.”

Challenging the impugned Judgments, present appeals were filed before this Court, but since the issue involved is similar in



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all matters, therefore they are tagged and taken together for hearing.

During the hearing, it has been brought to our notice that Special Leave Petition (C) Nos. 36871 of 2012; 17531 of 2014; and 25598 of 2014 filed in similar cases have been heard and dismissed by this Court vide orders dated 02.05.2014; 07.07.2014; and 12.09.2014 respectively. Further, it was also brought to our notice that while the present matters were pending, some of the respondents have been regularized and orders in this regard have been placed on the record.

After hearing learned counsel for the parties, and on perusing the orders of dismissal of the petitions passed by the coordinate benches in similar matters and also considering that some of the respondents have already been regularized by the appellants, we are not inclined to interfere with the orders impugned. The appeals are, accordingly, dismissed. However, the question of law is left open.

We further direct that the order passed by High Court shall now be complied within a period of two months from the date of communication of this order.

Pending interlocutory application, if any, is/are disposed of.

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21. Further, the Hon'ble Supreme Court in the case of '**Om Prakash Banerjee**' (*Supra*) has held that the employee cannot be denied the benefit of regularization of his services, when his similarly placed fellow employees have been granted the said benefit. In the abovesaid Judgement, it has been held as under:-

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22. *At the outset, we would like to state that this a case of gross violation of Article 14 and 16 of the Constitution. The Appellant, who has been working in Respondent No. 3- Municipality since 1991, and was, subsequently, appointed as a clerk in 1996; has not been*



regularised in his service. Moreover, his several of his co-employees (including juniors) have been regularised in service. The High Court's Order dated 20.06.2000 in Writ Petition No. 19555 of 1999 clearly shows that absorption has been given effect to vide Order dated 26.09.1996. The said writ petition was dismissed to the extent of entitlement of back dated appointment and arrears. However, the Respondents never paid any heed to such order and inordinately delayed the Appellant's appointment, while simultaneously absorbing other casual employees. Even the Appellant's service book records that Respondent No. 3- Municipality has absorbed the Appellant in view of the High Court's Order dated 20.06.2000 in Writ Petition No. 19555 (W) of 1999.

23. *The Respondent has relied on Umadevi (supra) judgment to contend that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. The relevant portion of the factual position in Umadevi (supra) is being reproduced as hereunder:*

"8.the respondents therein who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka claim that they worked in the Department based on such engagement for more than 10 years and hence they are entitled to be made permanent employees of the Department, entitled to all the benefits of regular employees. They were engaged for the first time in the years 1985-86 and in the teeth of orders not to make such appointments issued on 3-7-1984. Though the Director of Commercial Taxes recommended that they be absorbed, the Government did not accede to that recommendation. These respondents thereupon approached the Administrative Tribunal in the year 1997 with their claim. The Administrative Tribunal rejected their claim finding that they had not made out a right



either to get wages equal to that of others regularly employed or for regularisation. Thus, the applications filed were dismissed. The respondents approached the High Court of Karnataka challenging the decision of the Administrative Tribunal. It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts.”

24. However, in the present case, as we have observed, the Appellant was appointed as a casual worker in 1991. While the services of other co-employees were regularised, that of the Appellant and some others was left out. The High Court in its Order



dated 03.09.2010 passed in Writ Petition No. 17892 of 2010 has also recorded the Respondents' submissions that resolutions pertaining to the Appellant's absorption are already in place and the same have been sent for necessary approval. Therefore, the judgment rendered in Umadevi (supra) will not apply to the facts and circumstances of the present case.

25. *Now, coming to the Reasoned Order dated 07.03.2012 passed by Respondent No. 2 herein, which states that in pursuance of the High Court's order dated 24.08.2009 to not to give effect to the instruction of the Labour Department (pertaining to regularisation of casual employees) as communicated in the circulars dated 13.08.1979, 28.08.1980 and 13.03.1996; the Appellant's services cannot be regularised. However, what is to be seen here is that, as early as 2002, i.e., the High Court's Order dated 20.06.2000 in Writ Petition No. 19555 of 1999 clearly shows that absorption has been given effect to vide Order dated 26.09.1996. Moreover, as has been observed above, the Respondents had also submitted before the High Court in Writ Petition No. 17892 of 2010 that resolutions pertaining to the Appellant's absorption are already in place and the same have been sent for necessary approval. Apart from this, as is evident from the facts and circumstances mentioned above, the non-regularisation of the services of the Appellant in the present case, is, in our view, a violation of the fundamental rights of equality before law and equality of opportunity in matters relating to employment under the State, as enshrined under Article 14 and Article 16(1) of the Constitution, respectively. It is to be noted that the Appellant has retired in 2021.*

26. *The facts of U.P. SEB (supra) are similar to the case at hand. The relevant portion of the said judgment is being reproduced hereunder:*

“3. By means of the writ petition, 34 petitioners who were daily wage employees of the Cooperative Electric Supply Society (hereinafter referred to as “the Society”) had prayed for regularisation of their services in the U.P. State Electricity



Board (hereinafter referred to as “the Electricity Board”). It appears that the Society had been taken over by the Electricity Board on 3-4- 1997. A copy of the minutes of the proceeding dated 3-4-1997 is Annexure P-2 to this appeal. That proceeding was presided over by the Minister of Cooperatives, U.P. Government and there were a large number of senior officers of the State Government present in the proceeding. In the said proceeding, it was mentioned that the daily wage employees of the Society who are being taken over by the Board will start working in the Electricity Board “in the same manner and position”.

4. Pursuant to the said proceeding, the respondents herein were absorbed in the service of the Electricity Board.

5. Earlier, the Electricity Board had taken a decision on 28-11-1996 to regularise the services of its employees working on daily-wage basis from before 4-5-1990 on the existing vacant posts and that an examination for selection would be held for that purpose.

6. The contention of the writ petitioners (the respondents herein) was that since the Society had been taken over by the Electricity Board, the decision dated 28-11-1996 taken by the Electricity Board with regard to its daily wage employees will also be applicable to the employees of the Society who were working from before 4-5-1990 and whose services stood transferred to the Electricity Board and who were working with the Electricity Board on dailywage basis.

7. The learned Single Judge in his judgment dated 21-9-1998 held that there was no ground for discriminating between two sets of employees who are daily wagers, namely, (i) the original employees of the Electricity Board, and (ii) the employees of the Society, who subsequently became the employees of the Electricity Board when the Society was taken over by the Electricity Board. This view of the learned Single Judge was upheld by the Division Bench of the High Court.



8. *We are in agreement with the view taken by the Division Bench and the learned Single Judge.*

9. *The writ petitioners who were daily wagers in the service of the Society were appointed in the Society before 4-5-1990 and their services were taken over by the Electricity Board “in the same manner and position”. In our opinion, this would mean that their services in the Society cannot be ignored for considering them for the benefit of the order dated 28-11-1996.*

.....

19. *In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years' service and it will surely not be reasonable if their claim for regularisation is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularisation and are made to face the same selection which fresh recruits have to face.”*

27. *The principles of natural justice, too, demand that the Appellant cannot be denied the benefit of the regularisation of services when his similarly placed fellow employees have been granted the said benefit.*

28. *Therefore, we do not agree with the view taken in the impugned judgment of the High Court as well as by the learned Single Judge in Writ Petition No. 31399 (W) of 2017. The Appellant herein, in our considered opinion, is entitled to receive back wages and benefits from 1991, along with an interest of 10%.*

29. *Accordingly, the Appeal is allowed. The impugned judgment of the High Court dated 10.12.2019, passed in MAT No. 611 of 2018 and CAN No. 10038/2018 is hereby set aside. However, in the facts and circumstances of the case, we do not make any order as to costs.*

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22. To the same effect is the Judgement passed by the Division Bench of this Court in the case of '**Ajmer Singh**' (*Supra*) and of the Single Bench of this Court in the case of '**Bhoop Singh**' (*Supra*), against which LPA No.761 of 2021, preferred by the State of Haryana, was also dismissed, vide order dated 31.01.2024.

23. In '**Ushaben Joshi versus Union of India and others**' 2024 INSC 624, recently the Hon'ble Supreme Court has held that similarly placed employees cannot be discriminated and directed regularization of worker, who served for 30 years. The relevant paras of said Judgement are reproduced as under:-

xxx xxx xxx xxx

“ 17. The respondents have not indicated anything in the affidavit filed in pursuance of the order dated 27th February, 2024, that the nature of duties or the hours of work being performed by Smt. K.M. Vaghela were any different from that of the appellant. Thus, the defence taken by the respondents for their decision not to confirm the appellant in services that she was only performing duties as a contingency worker(water woman) for four hours a day is not substantiated from any acceptable material on record. Indisputably, the appellant continuously served the Department for more than three decades as a contingency ‘water woman’. Keeping in view the fact that an employee similarly placed but inducted in service after nearly six years from the date of employment of the appellant with the respondent-Department has been conferred the benefits of confirmation in service by way of appointment to the post of MTS, the appellant is entitled to claim the same benefits.

xxx xxx xxx xxx

19. In view of the foregoing discussion, the impugned orders are set aside. The respondents are directed to treat the appellant at par with Smt. K.M. Vaghela and shall pass the order of regularisation/appointment as MTS in favour of the appellant, on



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similar terms as was done in the case of Smt. K.M. Vaghela. The order of regularisation will be effective from the date on which, Smt. K.M. Vaghela was appointed as MTS with all consequential benefits. Compliance of this order shall be effected within a period of three months from the date of this order. ”

xxx xxx xxx xxx

24. Adverting to the facts of the present case, once services of the similarly situated persons have been regularized by the respondent department, there is no justification for denying the said benefit to the petitioner, as the same would be discriminatory and violative of Articles 14 and 16 of the Constitution of India.

25. In view of the above, the present petition is allowed and the impugned order dated 18.06.2018 (Annexure P-16) is quashed and set aside and the respondents are directed to regularize the services of the petitioner w.e.f. 01.10.2003, as per Policy/Notification dated 01.10.2003 (Annexure P-3) read with instructions dated 10.02.2004 (Annexure P-4), with all consequential benefits and the same shall be released to the petitioner within a period of three months from the date of receipt of the certified copy of this order.

26. Pending application(s), if any, shall also stand disposed of.

September 03, 2024

mkkoundal

**(NAMIT KUMAR)
JUDGE**

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