

(2019) 03 P&H CK 0188

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4749 Of 2012

Amar Singh (deceased) Through LRs

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 03 P&H CK 0188

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Deepak Sonak, Pradeep Prakash Chahar

Judgement

Augustine George Masih, J.

1. Appellant-plaintiff-Amar Singh filed a civil suit for declaration to the effect that the appellant is entitled for regularization of his services with effect from 31.01.1996 in terms of the Policy dated 07/18.03.1996 as he has been discriminated against vis-à-vis the persons, who have been appointed subsequent to him, inaction on the part of the respondents-defendants is illegal, arbitrary, unconstitutional and, therefore, is null and void and further with a mandatory injunction directing the respondents-defendants to regularize the services of the appellant with effect from 31.01.1996 in terms of the Policy referred to above. The said civil suit was dismissed by the learned Civil Judge (Junior Division), Rewari, on 27.01.2011, appeal against which preferred by the appellant-plaintiff stands dismissed by the learned District Judge, Rewari, on 08.08.2012, which has led to the filing of the present appeal.

2. Briefly the facts are that appellant-plaintiff-Amar Singh was appointed on 01.01.1993 on the post of Mali-cum-Chowkidar on daily wages. His services were terminated on 01.11.1996 leading to the raising of an industrial dispute, which on reference, was decided by the Industrial Tribunal-cum-Labour Court, Gurgaon, vide award dated 09.07.2002 holding the termination of the services of the

appellant illegal being violative of the provisions of the Industrial Disputes Act entitling him to reinstatement in service with continuity thereof with full back wages. This award was challenged by the respondents-defendants by filing CWP No.7348 of 2003, which was dismissed by this Court on 20.12.2003. SLP preferred by the respondents-defendants was also dismissed on 20.08.2004. Despite dismissal of the SLP, appellant-plaintiff was not reinstated in service till 23.08.2006. On reinstatement, he has been granted the benefit of the award i.e. continuity of service and full back wages, arrears of which were also released to him.

3. Appellant-plaintiff, after reinstatement in service on 23. 08.2006, submitted a representation seeking regularization of his services on the basis of the Instructions dated 07.03.1996/18.03.1996 issued by the Government of Haryana, according to which services of those work charged/casual/daily wage employees, who had completed three years of service as on 31.03.1996 and were in service on the said date, were directed to be regularized and were held entitled to pay scale applicable to the post on which the employee was working with other admissible benefits. When no response was received, he served a legal notice dated 04.09.2006 upon the respondents-defendants, who did not respond to the same leading to the filing of the civil suit by the appellant-plaintiff on 08.11.2006.

4. The facts, as have been stated by the appellant-plaintiff in his suit, have been admitted except for the fact that the appellant-plaintiff was appointed as Mali-cum-Chowkidar on 01.01.1993. What has been asserted by the respondents is that he was engaged as a workman/casual labour on daily wages. The plea for not regularizing the services of the appellant-plaintiff is based upon the judgment dated 08.04.2006 passed by the Hon'ble Supreme Court in Secretary, State of Karnataka Versus Uma Devi and others.

5. During evidence, appellant-plaintiff has on the basis of the official records, especially while examining PW-6 Vijay Singh, Clerk office of the Divisional Forest Officer, Rewari, proved the certified copies of the orders regularizing the services of the employees on the post of Mali-cum-Chowkidar, who were appointed in the same manner as the appellant-plaintiff but after him. One such person is Satish Kumar, who was appointed on 01.07.1995 and was regularized on the post of Mali-cum-Chowkidar with effect from 01.10.2003 vide order dated 16.10.2006 (Exhibit PW-1/2). Office orders dated 23.06.2010 Exhibits PW-3/A and PW-3/B have also been proved on record, according to which Bhagmal son of Hari Singh and Ram Swaroop son of Moti Ram were regularized in service, who have been appointed in service admittedly after appointment of the appellant-plaintiff and were thus, junior to him. It would not be out of way to mention here that the appointment letter has admittedly not been issued by the respondents as is apparent from the award (Exhibit P-1/1), wherein it was stated so by the witness, who had appeared for the management, however, it stands proved on record that persons junior to the appellant-plaintiff have been regularized on the

post of Mali-cum-Chowkidar, who were similarly appointed as the appellant-plaintiff. Counsel for the appellant, on this basis, had asserted that Articles 14 and 16 of the Constitution of India have been violated.

6. Counsel for the appellant has argued that the case of the appellant-plaintiff is covered by the judgment passed by this Court in RSA No.2050 of 2007 titled as Mohan Lal Versus State of Haryana and others, where the facts of the case were almost identical, in which this Court on the basis of an earlier judgment passed by this Court, had proceeded to grant the benefit of regularization of the services to the appellant therein from the date his juniors were regularized. The judgment passed by the Hon'ble Supreme Court in Uma Devi's case (supra) has also been dealt with and this Court has held that there is hostile discrimination leading to the violation of Article 14 of the Constitution of India and keeping that in view, the civil suit has been allowed and the benefit of regularization of services granted to appellant-Mohan Lal, in the said case, from the date his juniors were granted the benefit of regularization.

7. On the other hand, learned counsel for the State has asserted that not only the judgment of the Supreme Court in Uma Devi's case would disentitle the appellant-plaintiff the benefit of regularization of services, he further asserts that the Policy Instructions, on which reliance has been placed by the appellant do not hold the field in the light of the withdrawal of all the earlier policies including that of the year 1996 as also of the year 2003 vide letter dated 25.04.2007 Exhibit D-5 in the light of the judgment of the Hon'ble Supreme Court in Uma Devi's case.

8. On a specific question put by this Court as to whether it is a matter of fact or not that the appointment letter was not issued to the appellant-plaintiff, the said fact has not been denied. Counsel for the respondents has very fairly stated that the respondents have not stated specifically as to whether Satish Kumar, Bhagmal and Ram Swaroop, who were admittedly appointed after the appointment of the appellant-plaintiff, were appointed to any specific post or that were originally appointed against a regular and vacant post. He could not distinguish the nature of appointment of the appellant vis-à-vis these persons, who were junior to the appellant-plaintiff as far as the length of service is concerned. He could not also dispute the fact that the orders of regularization of the services of Bhagmal and Ram Swaroop are dated 23.06.2010, which is subsequent to the order of withdrawal of the Policies issued by the Government for regularization of the services of the employees vide letter dated 25.04.2007 and no effort has been made to deregularize the services of the similarly placed employees, although junior to the appellant-plaintiff, referred to above.

9. Having considered the submissions made by the counsel for the parties and on going through the impugned judgment as well as the pleadings and the evidence brought on record, this Court is of the considered view that the claim of the appellant-plaintiff is covered by the judgment of this Court in RSA No.2050 of 2007, wherein the services of Mohan Lal-workman, who was appointed on

01.09.1993, were terminated on 31.08.1996 leading to the reference to the Labour Court, which passed the award dated 10.04.2000 ordering reinstatement with continuity of service with 40% backwages. The said award was unsuccessfully challenged before this Court as well as the Supreme Court by the State of Haryana resulting in reinstatement of the said employee Mohan Lal, where he was not being regularized on the ground that the date when the Policy had come into force, he was actually not in service and that he did not have the continuous service of three years on the date of issuance of the Policy especially when he was out of service. This Court held as follows:-

"Learned counsel for the appellant has, however, placed reliance on a decision of this Court in CWP No.16325 of 2012, Bhagirath and another vs State of Haryana and others, decided on 8.5.2015 in which reliance was placed on another decision of this Court in Khajjan Singh and others vs State of Haryana and others, CWP No.10017 of 2011 decided on 28.5.2014. Relevant portion of the decision dated 8.5.2015 is quoted herein below :-

"63. This landmark insight in the judgment has turned the tide. The judgment in para. 34 delivered by a three judge bench eminently extends the frontiers of industrial jurisprudence as hitherto never before. It is in the same strain as U.P.S.E.B vs. Pooran Chand Pandey, 2007 (11) SCC 92, disapproved by the three judge bench in Official Liquidator v. Dayanand and others which is a decision prior to Casteribe. However, 64. Umadevi (3) has now to be understood in its application to labour jurisprudence as one keeping in mind the dictum of both Casteribe and Hari Nandan Prasad, the former from the point of view of unfair labour practice, the latter from the standpoint of unfair discrimination while Umadevi stands beyond the pale of labour law as contradistinguished from mainline service law jurisprudence and their subtle difference. Labour law was delineated in Casteribe. But yet the Supreme Court did not go full throttle and circumscribed its decision on service law principles weighed down by principles of vacancies and the nature of initial appointments bound by the constitution bench principles laid down in Umadevi (3). Nevertheless, the exception carved out in Hari Nandan Prasad (para 34) is where the foothold lies and the take off point of the present batch of cases now rests. The clamour for regularization on principles of unfair discrimination is now louder for passing of favourable office orders of regularization in cases coming via the Industrial Tribunals and Labour Courts giving rise to a demand for application of constitutional law principles re: discrimination. I may say that any minor discrimination is not unfair because it may suffer reasonable restrictions break a homogenous group asunder artificially. Failing which non-regularization of left over workers/the unfortunate group as now defined in Hari Nandan Prasad would amount to hostile and invidious discrimination. Therefore the equilibrium has to be restored by granting the status quo ante from the dates counterparts secured benefit of regularization by administrative orders passed without judicial intervention. The Supreme Court holds in Hari Nandan Prasad that "...the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this

constitutional provision". 65. High Court Judges bound by Constitutional limitations in article 14 as elsewhere in the law are enjoined to erase unfair inequality resulting from adverse State action or inaction and would remain under oath while discharging judicial duties to strike down unfair discrimination the moment they find its ugly head rearing from case papers placed before them. They would remain bound to kill the weed before it grows on the meadow of article 14. Article 14 to say the least is the heart of the law pumping sap into the capillaries of the Constitution so that it grows well nourished and well tended into a Banyan tree with its root system pervading all things. After South Africa won its freedom the emblem of its Constitutional Court became the Banyan Tree.

66. Any unfair discrimination practiced by the State has to be dealt with by the strong arm of the law by firm affirmative action in order to remove unfair discrimination and not to promote it so that rights of no citizen go un-redressed. It would be a crying shame to leave the petitioners deserted and feeling that article 14 was not meant for them and only for the 'haves'. Subverting consciously the equality clause in article

14 would be an anathema to the Constitution. Judges may as well then pack up their bags and go home. 67. However, I may add a word of caution here, I have not touched upon in this judgment the issue of regularization arising in cases of questionable appointments to posts sanctioned on the cadre strength of units of service in the departments of Government, besides the instrumentalities of State and nothing said here would apply to the other set of pending cases involving claims of regularization made by holders of posts in Class III service which are to be decided on their own facts and the laws applicable. 68. Since the Judgment of the Supreme Court in Hari Nandan Prasad in paragraph 34 now holds the roost, the apparent conflict caused by the verdict of Channi, in following Uma Devi and Rajinder Kumar overlooking the subsequent view of the Supreme Court in Casteribe, pales into insignificance. Accordingly, the already formulated view of this Court, which is now reflected in the Supreme Court Judgment of Hari Nandan Prasad, stands fortified and buttressed. This obviates any necessity of any alleged conflict between earlier views of this Court to be reconciled. Having drawn strength from the latest view of the Supreme Court in Hari Nandan Prasad, it may be safe for me to conclude that there no longer exists any conflict of opinion in the interpretation of Umadevi. Therefore, I find no reason to accede to the request of Mr. Nehra for the matter to be placed before a larger bench of this Court as the issue seems resolved by the Supreme Court itself in the illuminating view in Hari Nandan Prasad. 69. The nine questions crystallized above indicate internally what their answers might be but with one broad thread running through all of them indicating a case for grant of positive retroactive parity and to answer if this relief at all deserves to be given to the petitioners to remove the vice of unfair discrimination even if it is through the process of making a supernumerary arrangement to give effect to the cardinal principle of equality under the law and of equal protection of the laws. A parity which is measured by the laws founded on State policies of which the beneficiaries were

the fortunate group, then could the petitioners be lawfully deprived of those social and material benefits. The rights of the petitioners who are daily wage workers accrue and flow from the Labour Court awards made in their favour granting to them a continuity of service. However, where continuity of service is not granted by the Labour Court and such awards have attained finality, the period for which benefit of past service when not granted, would stand deprived of the reckonable period for intents and purposes. In the present cases, the petitioners would be deemed to have been in service as though the adverse retrenchment orders were never passed. The State was not able to show in any of these cases the rules of service applicable to the initial engagement of the petitioners on daily wage in the Forest and in the Irrigation Department. Therefore, the question of their illegal or irregular appointments is not a debatable issue in these batch of cases and a strong presumption would go in favour of the petitioners that their initial appointments were not contrary to law given that power to employ them was posited in the State to offer them daily wage employment albeit through its local functionaries with power derived from manuals to operate the muster roll system. The Industrial Disputes Act is a piece of beneficial social welfare legislation which stands alone and apart from constitutional service law. However, as time passed and departures were made with India opening up to globalization and free enterprise the axis RSA No. 2050 of 2007 (O&M) ::6:: suffered a paradigm shift towards capital and then the Supreme Court spoke in Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192 to turn back the rising tide. A sea change was brought about by a quick series of judgments with Harjinder Singh in the lead. The Court's deep anguish in Courts contributing to emasculating the original scheme of labour laws could not have been expressed with greater pathos than in para. 30-31 which observations are significant in the present context and can be profitably noticed:-

"30. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. 31. It need

no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private."

70. This statement of law is, or what I may call, the restatement and re-visit of the law, is effectively the summum bonum of humanism in action from the last Court of judicial resort."

This Court then noticed that the decision in Khajjan Singh and others (supra) was upheld in the LPA and also further quoted the decision of the LPA Bench as follows :-

" "However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision".

In this view of the matter, the fact that the argument of learned DAG Haryana cannot succeed. What this Court has stayed in Yogesh Tyagi's case is the revival of the policies by the State of Haryana to give benefit to employees. Today it cannot affect the rights of those employees whose services were illegally terminated and who had to wage an uphill battle (even upto the Supreme Court as in this case) to come back in service."

10. In another judgment passed in CWP No.5710 of 2011 titled as Pawan Kumar and another Versus State of Haryana and others, decided on 19.07.2012, this Court has been held as follows:-

"The factual aspect, as has been recorded above, is not in dispute. The question, which requires to be answered, is whether in the light of the awards passed by the Labour Court, petitioners would be held entitled to the regularization of their services and the services would be counted for the purpose of fulfilling the requirement as per the policy instructions dated 27.05.1993 and 07.03.1996 read with notification dated 18.03.1996, reliance whereof has been placed by the respondents.

Awards passed by the Labour Court clearly held that the termination of the services of the petitioners was in violation of the provisions contained under the Industrial Disputes Act and Section 25-F of the said Act stands violated. Thus,

the order of termination was said to be illegal. While granting relief, they were held entitled to reinstatement on their previous post with continuity of service and back wages, as was specified therein. This clearly shows that the petitioners would be deemed to be, all through, in service with the respondents especially in the light of the findings recorded about their being in service and continuity thereof from the date of initial appointment till the date of their termination. The termination of the services of the petitioners being not in consonance with law on their reinstatement would entitle them to all consequential benefits except which are specifically declined by the Court or are specifically granted by the Court. Since the petitioners have already been granted the continuity of service for all intents and purposes, they are to be treated as in service and, therefore, the period of service rendered by the petitioners with the respondents has to be counted and benefit granted to them. Thus, the contention of the counsel for the respondents with regard to their being out of service and mere fictional reinstatement and continuity of service does not stand as they are held entitled to all the benefits as if they were in service except for the relief denied to them.

In the light of the above, now the question, which needs to be referred to and adjudicated upon, is whether the petitioners are entitled to regularization of their services in the light of the fact that the services of the similarly placed employees, who were appointed subsequent to the petitioners, stand regularized. This information with regard to the persons, who have been appointed subsequent to the petitioners and their services having been regularized, is available on the record as Annexure P-9, which is an information supplied to the petitioners under the Right to Information Act by the respondents themselves.

In the reply, which has been filed by the respondents, the factual assertion of the petitioners that they are similarly placed as the persons mentioned in Annexure P-9 and were appointed prior to them, having not been disputed. It is, therefore, established that the petitioners are senior in service to the persons as mentioned in Annexure P-9 because of the length of service. When the services of the persons junior to the petitioners stand regularized, petitioners do have a right of regularization of their services. No distinction has been drawn by the respondents for denying the benefit of regularization of the services of the petitioners in comparison to the persons mentioned in Annexure P-9. What has been asserted by the counsel for the respondents is that they do not fulfil the mandate of appointment of their services as per the statutory Rules and the availability of the post. No specific Rule(s) have been mentioned which have not been followed and whether those were followed in case of the persons whose services were regularized and whether these persons were appointed on regular posts. In case the persons mentioned in Annexure P-9 have been regularized on the posts which were created for them or as such posts becoming available later on the petitioners being senior will have preferential and prior right of consideration on such posts. The plea of the respondents thus cannot be accepted in the light of the assertion of the petitioners that they are similarly placed as the persons mentioned in Annexure P-9, which fact has not been

disputed by the respondents. When a claim is made on the basis of similarity of the nature of appointment, work and the post, if the same is not disputed by the respondents, the same can be presumed to have been admitted. If everything being equal and the petitioners being senior, they have a prior right of regularization.

It would not be out of way to mention here that as is apparent from Annexure P-9, order of regularization of the services has been passed on 22.12.2010 w.e.f. 01.02.1996 in the case of Sanjha Ram son of Guru Dayal, whose name finds mention at Sr. No. 8. The assertion thus, of the respondents that after passing of the judgment of the Supreme Court in Uma Devi's case (supra), the policy instructions having lost its force on its withdrawal will not be applicable on the case of the petitioners, cannot be accepted.

In view of the above, the present writ petition is allowed. Petitioners are held entitled to regularization of their services w.e.f. the date, the services of the juniors have been regularized. In the light of the information, as contained in Annexure P-9, they are held entitled to be regularized from the date their junior Sanjha Ram son of Guru Dayal stands regularized i.e. 01.02.1996. Consequential benefits be granted to the petitioners in accordance with law within a period of two months from the date of receipt of copy of this order."

11. In view of the above two judgments, which cover the case of the appellant-plaintiff in his favour, the present appeal is allowed.

12. Impugned judgment dated 27.01.2011 passed by the Civil Judge (Junior Division), Rewari and judgment and decree dated 08.08.2012 passed by the District Judge, Rewari, are hereby set aside.

13. The suit of the appellant-plaintiff is decreed and a declaration is issued that the appellant-plaintiff is entitled to regularization of his services with effect from 01.10.2003, the date his junior Satish Kumar stood regularized with all consequential benefits. Injunction is issued to the respondents to release the consequential benefits by deducting the pay and allowances, which had been released to the deceased appellant during the relevant period, to the LRs of appellant-plaintiff restricting the arrears to three years two months prior to the date of filing of the civil suit in the light of the Full Bench judgment of this Court in Saroj Kumari Versus State of Punjab and others 1998 (3) SCT 664, within two months from the date of receipt of the copy of this order.