
(2015) 05 P&H CK 0202

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 16325 of 2012 and 24611 of 2013

Bhagirath and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 309

Citation : (2015) 05 P&H CK 0202

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Sandeep Thakan, for the Appellant; Keshav Gupta, AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J.—By this common order, I propose to dispose of two Civil Writ Petition Nos. 16325 of 2012 and 24611 of 2013 as common question of law and facts is involved in both the petitions. The facts are being taken from CWP No. 16325 of 2012.

2. The prayer in Civil Writ Petition No. 16325 of 2012 is for issuance of a writ in the nature of mandamus directing the respondents to regularize the services of the petitioners w.e.f. 27.5.1993 and 7.3.1996/18.3.1996 in terms of the Government instructions (Annexures P-1 to P-3) issued from time to time.

3. Mr. Sandeep Thakan, learned counsel appearing for the petitioners in CWP No. 16325 of 2012 submits that the petitioners were appointed as Mali-cum-Chowkidars in the year 1982 and 1992 and as per the 1996 policy, the Government of Haryana decided to regularize the work charged employees, who had completed five years or more years of continuous service as on 31.1.1996 and were in service on 31.1.1996 and even to regularize casual and daily rated employees, who have completed five or more years of service as on 31.1.1996. Despite the promulgation of the aforementioned instructions, services of the

petitioners were not regularized, rather their services were terminated, which necessitated to raise the industrial disputes. The Labour Court answered the references in favour of the workmen and directed the Management- Forest Department to reinstate the petitioners with continuity of service. Copies of the awards passed on 3.4.2006 have been annexed with the petition as Annexures P-4 and P-5.

4. Thereafter, the petitioners again requested the respondents for regularization of their services, but their claim has been rejected vide letter Annexure P-6 dated 20.4.2012 on the premise that the petitioners had not completed 240 days each year of three years before 30.9.2003 and, therefore, they were not entitled for regularization from 1.10.2003.

5. Mr. Sandeep Thakan, learned counsel for the petitioners, in support of his contention, relied upon the judgment dated 28.5.2014 rendered by the Single Bench of this Court in Khajjan Singh and others v. State of Haryana and others, CWP No. 10017 of 2011 to submit that in the aforementioned order, the learned Single Judge while discussing all the policies and as well as the judgment rendered in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 , directed the respondents to regularize the services of the petitioners in the said case. He further submitted that even Letters Patent Appeal No. 1903 of 2014 (State of Haryana and others v. Jiyaji Sharma) filed against the aforementioned judgment has been dismissed on 21.1.2015

6. Mr. Keshav Gupta, learned Assistant Advocate General, Haryana appearing for the State, in support of his contention, brought to the notice of this Court para 53 of Uma Devi's case (supra) to contend that only under five exceptions, the persons are entitled to regularization and for claiming regularization, there has to be specific pleadings, much less, averments. However, in the present case, no such averments or pleadings have been made. He further submitted that from the date when the judgment of Uma Devi's case (supra), came, it has been clearly mentioned that there shall be no further bypassing of the constitutional requirement and regularizing or making permanent those, who had not been appointed as per the constitutional scheme. He further submitted that the petitioners were not appointed on regular/sanctioned posts and, therefore, they were not entitled to regularization. He further submitted that the instructions of 1993 and 1996 issued under Articles 162 and 309 of the Constitution of India are not mandate of the Constitution/law and, therefore, they are not binding on the State, but owing to the pronouncement of the judgment in Umadevi's case (supra), the State is restrained to act upon such instructions.

7. Learned counsel for the petitioners, in rebuttal, submitted that the State had come out with a notification dated 18.6.2014 issued under Article 309 of the Constitution of India, wherein it has been clarified that the services of the left out persons shall also be regularized. He has further drawn the attention of this

Court to Annexure P-11, list of the similarly situated employees, whose services have been regularized.

8. I have heard the learned counsel for the parties and appraised the paper book.

9. The contention of the learned State counsel that unless and until the Legislature of the State does not come out with the act or rules, the instructions issued under Articles 162 and 309 of the Constitution would not have any force, much less, binding in view of the promulgation of Umadevi's case (supra). The same, according to me, would not be applicable in this case in view of the fact that in an identical situation, the learned Single Judge in aforementioned Khajjan Singh's case (supra), by discussing the parameters laid down in Umadevi and Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI and another, 2014(2) SCT 234, which has been pronounced after noticing Umadevi and various other judgments, while dealing with the nature of employees of Forest Department, has held that the rights of the persons, 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 of intents and purposes. The relevant portion of the judgment reads thus:--

"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. State Electricity Board Vs. Pooran Chandra Pandey and Others, (2008) 116 FLR 1172 : (2007) 12 JT 179 : (2008) 1 LLJ 1021 : (2007) 11 SCC 92 : (2008) 1 SCC(L&S) 736 : (2007) 11 SCR 920 : (2008) 1 SLJ 314 , 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 as are permitted by the law. That is why I have dwelt only on unfair discrimination which is judicially unacceptable, but not mere discrimination which may suffer reasonable restrictions. But the position here is unacceptable because it is not legally justified to 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 it 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 wager 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 suffered a paradigm shift towards capital and then the Supreme Court spoke in Harjinder Singh Vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116 : (2010) 124 FLR 700 : (2010) 1 JT 598 : (2010) 2 LLJ 277 : (2010) 1 SCALE 613 : (2010) 3 SCC 192 : (2010) 1 SCC(L&S) 1146 : (2010) 1 SCR 591 : (2010) 2 SLR 15 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."

10. In the instant case, there is no question involved with regard to illegal or irregular appointments and, therefore, the plea that the petitioners were not appointed on sanctioned/regular posts would be, thus, meaningless. Since similarly situated employees, who were also work charged/daily wagers, have been regularized, the petitioners cannot be, thus, deprived of their right of regularization. The aforementioned judgment of Khajjan Singh has also been upheld by the L.P.A. Bench of this Court and the operative part of the same, thus, reads:--

"3. As we mentioned earlier the appellant was employed with effect from 19.08.1995. The termination of his services on 31.05.1996 were held to be illegal and he was reinstated in service. Thus, as on 31.09.2003, the respondent must be deemed to have been in service. Under the policy of 01.10.2003, the petitioner was entitled to have his services regularized. All other employees similarly situated whose services had not been terminated were in fact granted the benefit of regularization under the policy of 01.10.2003. The termination of the respondent's services having been held to be illegal and having been set aside, he must also be deemed to have been in service on 01.10.2003 and

entitled to the benefits of the policy on par with the others. The petitioner cannot be denied the benefits of the policy on par with the others similarly situated for no fault of his namely and on account of the appellants having issued an illegal order of termination. The Supreme Court in Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI and another, held 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".

4. In the circumstances, the appeal is dismissed. We reiterate that the all other issues decided by the impugned judgment are kept open. The time to comply with the order of learned Single Judge is extended up to and including 28.02.2015. There shall however be no order as to costs."

11. In view of the notification dated 18.6.2014 issued under Article 309 of the Constitution of India, the State of Haryana has made a provision for the left out Group "C" and "D" employees working on adhoc/contract/daily wages/work-charged basis, whose services could not be regularized under the regularization policy issued vide notifications. The aforementioned observations read thus:--

"HARYANA GOVERNMENT

GENERAL ADMINISTRATION DEPARTMENT

(GENERAL SERVICES-I)

Notification

The 18th June, 2014.

No. 6/7/2014-I.G.S.1.-In exercise of the powers conferred by the proviso to article 309 of the constitution of India read with the proviso to clause 6 of the Haryana Government, General Administration Department (General Services), the Government of Haryana hereby makes the following amendment in Haryana Government, General Administration Department (General Services-I), Notification No. G.S.R.13/Const./Art.309/2007, dated 13th April, 2007, namely:--

AMENDMENT

In the Haryana Government, General Administration Department (General Services), Notification No. G.S.R.13/Const./Art.309/2007, dated 13th April, 2007, the following proviso shall be added at the end, namely:--

"Provided that the left over Group "C" and "D" employees working on adhoc/contract/daily wages/work-charged basis, who could not be regularized under the

regularization policy issued vide notifications mentioned at serial No. 1 to 4 above due to administrative reasons but were otherwise eligible, shall be regularized with effect from the date(s) they were eligible for regularization."

S.C. CHOUDHARY, Chief Secretary to Government Haryana".

12. In view of the fact that the State of Haryana has decided to regularize the services of the left out group "C" and "D" employees and the fact remains that the learned Single Judge of this Court, after noticing the judgment rendered by Hon"ble Supreme Court in Hari Nandan Prasad's case (supra), which has discussed the ratio decidendi culled out in Umadevi's case, I deem it appropriate to issue directions to the State to regularize the services of the petitioners from the date they were eligible and release all the consequential benefits, if any, to them forthwith.

13. The plight of the employees may not go unnoticed for the reason that the State is conscious of the same, but owing to the rigors enunciated in Umadevi's case, the State could not vindicate the grievance of the petitioners or similarly situated persons. Be that as it may, the fact remains that the State has now come out with a notification in view of the ratio decidendi culled out in Hari Nandan Prasad's case noticed by the learned Single Judge of this Court, wherein the State has also been directed to regularize the services of the petitioners.

14. The writ petitions stand allowed.