
(2015) 07 P&H CK 0260
In the Punjab And Haryana At Chandigarh
Case No : R.S.A. No. 3959 of 2007 (OandM)

State of Haryana and Others

APPELLANT

Vs

Budh Ram and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Citation : (2015) 4 LLJ 348

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Samarvir Singh, DAG, for the Appellant; Namit Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ritu Bahri, J.—The State of Haryana has come up in regular second appeal against the judgments of the trial Court dated 15.12.2006 and the lower appellate Court dated 17.08.2007, whereby the suit of the plaintiffs has been decreed for regularisation of service as per Government instructions. Plaintiffs No. 1 to 4 were posted as Malis (gardeners) whereas plaintiff No. 5 was posted as water carrier with the defendants. They were appointed on 25.08.1980, 01.07.1984, 18.02.1992, 07.10.1993 and 12.04.1994, respectively. One Sohan Lal, Mali, junior to the plaintiffs, who was appointed on 01.08.1989, was regularised on 22.08.1995. The plaintiffs had completed five years of service and fulfill all the conditions for regularisation as per Government instructions dated 18.03.1996 and 17.10.2003.

2. On notice of the suit, the defendants filed their written statement and admitted that some employees who were juniors to the plaintiffs were appointed against sanctioned posts. Some employees were appointed on regular posts under ex-gratia scheme. The case of the plaintiffs did not fit in the instructions dated 18.03.1996 and 01.10.2003 as the plaintiffs were contingent paid part time employees and not on whole time. There was no vacant post of Mali/water carrier in the District/office. The trial Court framed the following issues:

- "1) Whether plaintiffs are entitled to a declaration to the effect that their services deemed to be regularized w.e.f. 22.8.1995 as per instructions/policies dates 1.2.1999, 17.10.2002 and 26.7.2004 issued by the Government of Haryana? OPP.
- 2) If issue No. 1 is proved in affirmative, whether plaintiffs are entitled to consequential monetary relief along with interest @ 18% per annum? OPP.
- 3) If issue No. 1 is proved in affirmative, whether plaintiffs are entitled to a consequential decree for permanent injunction restraining the defendants from terminating their services except in due course of law? OPP.
- 4) Whether suit is not maintainable in the present form? OPD.
- 5) Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD.
- 6) Whether the plaintiffs have concealed true and material facts from this Court and, therefore, they are not entitled to any relief? OPD.
- 7) Whether suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD.
- 8) Whether plaintiffs do not have any cause of action to file and maintain the present suit? OPD.
- 9) Whether plaintiffs are estopped from filing the present suit by their own acts and conduct?
- 10) Whether suit is time barred? OPD.
- 11) Relief."

3. DW 1 Ram Chander in his affidavit stated that the plaintiffs' case shall be considered for regularisation on availability of vacancies. There was no complaint against the plaintiffs and their work and conduct is up to mark. Some juniors to the plaintiffs have been regularised and as per instructions given in letter Ex. P6, plaintiffs were entitled for regularisation of their service. The plaintiffs being part time ground "D" employees, who entitled for regularisation after completing 10 years of service. The suit was decreed by the trial Court and the lower appellate Court has dismissed the appeal filed by the State. Reference was made to judgments of the Hon'ble Apex Court in Mineral Exploration Corporation Employees' Union Vs. Mineral Exploration Corporation Limited and Another, and this Hon'ble Court in the case of Sukhdev Kaur v. State of Punjab, 2002 (8) SLR 349 (P & H) and Des Raj v. State of Haryana and Others, 2003 (4) SCT 264 whereby a consistent view has been taken that keeping the contingent workers for a long time, offering regular appointment periodically and abruptly stopping them taking on duty, amounted to unfair labour practices. An employer cannot be allowed to play with the future of the thousands of employees from all benefits available to regular employees. They must be regularised in service after a reasonable time. They cannot be deprived of the benefits of being a regular employee indefinitely. In Sukhdev Kaur v. State of Punjab (supra) where the

petitioners were working as part time sweepers, their claim for regularisation of service was rejected on the ground that they had not been employed after having been sponsored by the Employment Exchange. Finding no merit, the appeal was dismissed. During the pendency of the regular second appeal, an affidavit was filed on 06.04.2009 by the Superintendent of Police. In paragraph 2 of the affidavit, names of the employees who were juniors to the plaintiffs have been regularised, details of which are as under:

4. The respondent/plaintiffs in CM No. 2770-C of 2015 has placed on record order dated 06.08.2014 (Annexure A-2), Vide which the persons juniors to the plaintiffs have already been regularised and judgment dated 19.05.2011 passed by a Coordinate Bench of this Court in CWP No. 1133 of 2010 titled as Ram Harsh and Others v. State of Haryana and Others where the claim of the employees who were working as contingent part time employees seeking minimum wages has been allowed.

5. Counsel for the appellants has placed on record judgment (Annexure A-1) whereby the claim of the contingent employees for minimum wages has been accepted and the writ petition has been allowed. An affidavit has been filed by the Superintendent of Police, Kurukshetra in compliance of the order dated 27.05.2015 to explain how the regularisation policies were being implemented. As per notification dated 11.08.2000 (Annexure R-I), no person shall be appointed unless he possesses the qualification and experience as per rules of direct recruitment. The regularisation notification for carpenter and mason, 17 candidates have been regularised who were possessing the qualification. No person junior to the respondents who does not fulfill the requisite qualification has been regularised. As per regularisation policy Annexure R-II dated 25.07.2014, Annexure R-III dated 18.06.2014 and Annexure R-IV dated 07.07.2014, a committee consisting of Deputy Superintendent of Police, Headquarters, Kurukshetra, Inspector Establishment and Welfare Inspector was constituted on 01.08.2014 (Annexure R-V) to consider the case of record of Group "D" employees for regularisation. A list of 59 class IV employees contingent paid part time employees was made and list of 22 group "D" employees was prepared (Annexure R-VI) and as per their records strictly in accordance with the guidelines recommendation for regularisation of 17 senior most eligible candidates was made as per posts vacant. Remaining five candidates were recommended for future promotions and separate list of remaining 37 candidates (Annexure RVII) was prepared by the said committee. The office, vide order dated 06.08.2014, has regularised the services of 17 candidates, who were recommended (Annexure R-VII). The services of respondent No. 2 - Ram Hans have been regularised on 06.08.2014 (Annexure R-VIII) as he fulfils the qualification and other conditions. The other respondents do not fulfill the qualification and they are not eligible for regularisation.

6. The question that arises for consideration is whether the remaining respondents who have not been regularised and have been working since 1980

can be rejected for regularisation only on the condition that as per Annexure R-I they do not fulfill the qualification of the direct recruitment. A Coordinate Bench of this Court in the case of Gopal Krishan Joshi v. Haryana Tourism Corporation Ltd. and Another, in CWP No. 1631 of 2010 decided on 01.05.2015 examined the case of an employee who was appointed in the year 1984 and his services were not regularised. This was rejected on the ground that he did not have the essential qualification of Matric with two years diploma of Electrician. After serving for a period of 24 years, the respondents could now turn around and claim that his services cannot be regularised since he does not have the prescribed qualification. The writ petition was allowed directing the respondents to regularize the petitioner with effect from the date his immediate junior was regularised. The Hon"ble Supreme Court in the case of Malathi Das (Retd.) Now P.B. Mahishy and Others Vs. Suresh and Others, has held that 55 similarly situated employees were regularised after the decision in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, Similarly situated employees had been regularised on 18.04.2006. Hence the claim of other employees who were not regularised was to be considered on the principles of parity. The Hon"ble Supreme Court made it clear that all the competent authorities were bound to regularise the services of the respondents as done in the case of 55 persons who were regularised on 18.04.2006.

7. In the present case, as per the affidavit dated 13.07.2015 filed by the Superintendent of Police, Kurukshetra, the regularization of the respondents is being denied on the ground that as per the notification dated 11.08.2000 (Annexure R-I), the necessary qualification for the post of carpenter and mason is middle pass with Hindi. Pursuant to the notifications issued for Annexure R-II dated 25.07.2014, Annexure R-III dated 18.06.2014 and Annexure R-IV dated 07.07.2014, a committee consisting of Deputy Superintendent of Police, Headquarters, Kurukshetra, Inspector Establishment and Welfare Inspector was constituted on 01.08.2014 (Annexure R-V) to consider the case of record of Group "D" employees for regularisation. Vide Annexure R-VI, a list of 22 group "D" employee was prepared who have the requisite qualifications and a separate list of 37 employees was prepared by the said Committee (Annexure R-VII) and as per their records strictly in accordance with the guidelines recommendation for regularisation of 17 senior most eligible candidates was made as per posts vacant. The services of respondent No. 2-Ram Hans have been regularised on 06.08.2014 (Annexure VIII) as he fulfils the qualification and other conditions. The other respondents do not fulfill the qualification and they are not eligible for regularisation, therefore, they have not been regularised. The stand taken in the affidavit is contrary to the judgment passed by the Coordinate Bench of this Court in Gopal Krishan Joshi v. Haryana Tourism Corporation Ltd. and Another (supra) as the employee who has been working since 1984 was not being regularised as he did not have the essential qualification of Matric with two years diploma of Electrician. The respondents in the present case have been appointed with the department in the years 1980, 1984, 1992, 1993 and 1994. Apart from

the condition of having the requisite qualification, the respondents fulfill all the other conditions for regularisation.

8. In view of Annexure R-I, no substantial question of law arises for adjudication in this appeal. Dismissed. The appellants are directed to consider the case of the respondents and pass appropriate orders within four months and compliance report be sent to this office.