

Arun Kumar and Others Vs State of Haryana and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 19, 2012

Acts Referred: Constitution of India, 1950 " Article 14, 16

Citation: (2012) 134 FLR 1010

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: Manoj Chahal, for the Appellant; Sunil Nehra, D.A.G., Haryana., for the Respondent

Final Decision: Allowed

Judgement

Augustine George Masih, J.

Petitioners were appointed as Beldar-cum-Malis on daily wage basis in the Forest Department between the

years 1982-1996. Their services were terminated in violation of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act), against

which they raised an industrial dispute. The Labour Court found the termination to be not in accordance with law and declared it to be null and

void thereby ordering their reinstatement in service with continuity thereof. These awards were not challenged by the respondents and the

petitioners were reinstated in service on different dates depending upon the date of the award.

They, on the basis of the reinstatement, approached the respondents for regularization of their services from the date persons junior to them stood

regularized and also claimed regularization on the basis of the observations made in para 53 by the Supreme Court in its judgment passed in the

case of State of Karnataka v. Uma Devi 2006 (109) FLR 826 (SC) as they had completed more than 10 years of service on the date of the

passing of the judgment by the Supreme Court and also on the ground that persons junior to them stood regularized in pursuance to the directions

issued by the Supreme Court referred to above vide order dated 14.10.2006 according to which Jai Bhagwan, Bijender, Pirthavi, Shamsher, Zela

@ Zile, Suresh and Mohinder, who were working in the Bhiwani Territorial Division where the petitioners are also performing their duties. It has

further been submitted that these persons whose services have been regularized were petitioners along with the present petitioners in CWP No.

8820 of 2004 and the respondent-Authorities adopted a pick and choose policy while considering the claims for regularization of the services

which amounted to gross-violation of Articles 14 and 16 of the Constitution of India.

When this occurred, petitioners filed a representation claiming the benefit of regularization and when no response was received, petitioners filed

CWP No. 9921 of 2010 which was disposed of by this Court vide order dated 26.5.2010 directing the respondents to consider the claim of the

petitioners for regularization in the light of observations made in para 53 of the judgment passed in Uma Devi's case (supra), within a period of six

months. The claim of the petitioners was considered and rejected vide order dated 25.8.2010 by the Divisional Forest Officer on the ground that

the petitioners were neither engaged against sanctioned post nor any advertisement was issued before they were employed. Their appointment is

for a specific period i.e. on daily wage basis and that there are no Rules under which appointment/employment can be made of a workman on daily

wage basis. This order dated 25.8.2010 (Annexure P-5) has been challenged by the petitioners through the present writ petition claiming the same

to be not in consonance with the judgment passed by the Supreme Court and being violative of Articles 14 and 16 of the Constitution of India.

Reliance has also been placed on the interpretation given by the Supreme Court to para 53 of the judgment passed in Uma Devi's case (supra) in

case State of Karnataka and others v. M.L. Kesari and others. 2010 (127) FLR 12(SC) Petitioners have further placed reliance upon a judgment

of this Court passed in CWP No. 1169 of 2009 titled as Ved Pal and others v. State of Haryana and others, decided on 10.2.2012.

2. Counsel for the petitioners has argued the case on the above lines and has submitted that the present writ petition deserves to be allowed.

3. On the other hand, Counsel for the respondents submits that the regularization policies under which the petitioners are claiming regularization of

their services stand already withdrawn by the State of Haryana after the passing of judgment by the Supreme Court in Uma Devi's case (supra).

His contention is that the petitioners are not entitled to the benefit of regularization on the ground that they were neither appointed as per the

Statutory Rules governing the service nor were they appointed on sanctioned posts. Petitioners are daily wage labourers who are engaged on

seasonal work. There being no specific Rule(s) governing the engagement/appointment of labourers on daily wage basis, their services cannot be

regularized. For appointment to a Government post, it is mandatory that the said post be advertised first giving a chance to all those to compete for

the post and it is only thereafter that the post can be filled up. Such a procedure was not followed while appointing the petitioners which disentitles

them to the claim for regularization. An order of regularization passed in violation of these provisions would not be in consonance with the judgment

of the Supreme Court in Uma Devi's case (supra). Reliance has also been placed upon a judgment of the Supreme Court in the case of State of

Karnataka and Others Vs. Sri G.V. Chandrashekar, to contend that the appointments of the petitioners being violative of the provisions of the

Constitution of India, cannot be sustained and, therefore, benefit of regularization cannot be extended to them. Accordingly, supporting the

impugned order of rejection of the claim of the petitioners for regularization, Counsel contends that the writ petition deserves to be dismissed.

4. I have considered the submissions made by the Counsel for the parties and gone through the records of the case.

5. It is an admitted position that there are no statutory rules governing the process of appointment on daily wage basis. Petitioners are admittedly

performing the duties with the respondents as daily wage employees. The date of initial appointment has only been disputed on the ground by

asserting that they were daily wage employees and, therefore, cannot claim regularization. Services of the petitioners were terminated by the

respondents which was in violation of the provisions as contained under the ID Act which was challenged by the petitioners before the Labour

Court and the award came in their favour granting them reinstatement in service with continuity thereof. The period of termination, thus, stood

obliterated and for all intents and purposes, petitioners are to be treated in service continuously from the date of their initial appointment. In this

light when the claim of the petitioners is taken into consideration vis-a-vis. the persons who have been appointed subsequently and whose services

had been regularized vide order dated 14.10.2006 (details of these persons have been mentioned above), petitioners have a genuine grouse. It is

not in dispute that if the initial date of appointment is taken into consideration, petitioners were appointed prior to the persons who have been

regularized vide order dated 14.10.2006. It would also not be out of place to mention here that petitioners and the persons regularized vide order

dated 14.10.2006 had jointly filed CWP No. 8820 of 2004 claiming regularization which claim has been accepted qua some of the petitioners

whose names have been mentioned in the order dated 14.10.2006 and are juniors to the petitioners now, whereas the claim of the petitioners had

been rejected. The impugned order passed by the respondents cannot sustain for the reason that the service of the daily rated employees who

were similarly placed and were similarly appointed as the petitioners i.e. whose names, find mention in order dated 14.10.2006 has not been

disputed by the respondents in their reply. It is also not in dispute that there are no statutory rules governing their service and in the absence of such

a statutory rule, the principle as laid down under the ID Act will have to be given effect to according to the awards passed by the Labour Court in

the case of the petitioners and their termination have been found to be not in accordance with law.

6. In the light of the above, the contention of the respondents that the petitioners' services cannot be regularized, cannot sustain especially when

they have not disputed the fact that the petitioners are similarly placed like the persons who have been appointed subsequently and whose services

have been regularized vide order dated 14.10.2006.

7. In a similar matter, this Court in Ved Pal's case (supra) had held as follows:

The factum of the petitioners having been appointed prior to the private respondents is not in dispute. It is also not in dispute that they are

performing the same duties and the responsibilities are the same as also the department. It is also not in dispute that the claim of the petitioners in

compliance with the direction issued by this Court in CWP No. 6341 of 2005 was duly considered and recommended for regularization but their

claim has been rejected simply because of the judgment of the Supreme Court in Uma Devi's case (supra). The fact remains that the petitioners

remained senior to the private respondents and therefore, had a prior right of regularization and their claim should have been considered in the

same terms as in the case of private respondents. The same having not been done, the petitioners have been discriminated against and, therefore,

the order rejecting the claim of the petitioners dated 7.5.2007 (Annexure P/5) cannot sustain and is hereby quashed. The petitioners are directed

to be regularized in service from the date their juniors were regularized and in the same terms. Petition is allowed in the above terms.

8. The claim of the petitioners is further fortified by the observations made by the Hon'ble Supreme Court in M.L. Kesari's case (supra) wherein

para 8, it has been observed as follows :

8. The object behind the said direction in para 53 of Uma Devi 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 Court or Tribunals, before the date of decision in Uma Devi 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 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 Uma Devi) 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. In view of the above also, especially in the light of the fact that persons similarly appointed subsequent to the petitioners have been regularized

whereas the claim of the petitioners has only been rejected on the ground that the regularization policy stands withdrawn, cannot be accepted as

they had a better and prior right to consideration for regularization than the persons who have been appointed later than the petitioners. The

moment the persons junior to the petitioners, whose cases cannot be distinguished with regard to the nature of appointment, work and

responsibilities from that of petitioners, stand regularized on the vacant or created post, on which the petitioners had a prior and superior right by

virtue of their length of service. Articles 14 and 16 stand violated and in such circumstances, the action of the respondents in rejecting the claim of

the petitioners cannot be sustained.

10. Reliance placed by the Counsel for the respondents in G. V. Chandershekar's case (supra) would not affect the decision of this case as there

are no statutory rules governing the service and in the absence of such rules, the provisions as contained under the ID Act would apply which

would be further tapered with the observations of the Supreme Court in para 53 of the Uma Devi's case (supra) and M.L. Kesari's case (supra).

In view of the above, impugned order dated 25.8.2010 (Annexure 5) is hereby quashed. A direction is issued to regularize the services of the (sic)

from the date of regularization of the persons mentioned in order dated 14.10.2006, who were appointed subsequent to them and are junior to the

petitioners in the light of length of service rendered by them in the department. The order be passed within a period of one month from the date of

receipt of certified copy of this order. Petitioners will be entitled to all consequential benefits except payment of arrears.

Writ petition is allowed in above terms.