

Before K. Kannan, J.

TARLOK SINGH AND OTHERS,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 17589 of 2006

15th March, 2010

Constitution of India, 1950—Art. 226—Petitioners working on contract basis for more than 10 years seeking regularization of their services—Board of Directors recommending to Government case of petitioners for regularization—High Court directing regularization of two workmen—Discrimination—Petitioners failing to show that Board has any sanctioned posts against which they could obtain absorption—Petitioners cannot claim regularization on ground that similarly situated persons were absorbed—Creation of posts for regularization—Matter of policy—No interference—Petitioner have no enforceable legal right for regularization—Petition dismissed.

Held, that all the persons are work charged employees and there had been recommendations by the Board of Directors to the Government for their regularization. If the Government had recommended the creation of posts, the regularization/absorption would have followed automatically. If the Government chose not to do, the Court shall not take up a decision for the Government and direct creation of posts only in order to secure regularization for them. Even the recommendations of the Board of Directors referred to absorption against regular posts. It is nobody's case that there are posts available against which the petitioners could be absorbed.

(Para 6)

Further held, that it may seem unfortunate that the persons, who had been in employment for more than 15 years in the Board are still retained in work charged posts and the Board has not created sufficient number of posts for regularization although the work is of regular nature. It is essentially a matter of policy that the Court shall be loathe to interfere.

The State or public bodies have long since ceased to be model employers. If we arrived at a situation where a public authority behaves like a private employer, keeping the workman on tenterhooks, it shall be only on the strength of a strong labour force and employment policy that matters could turn for the better. The petitioners have perhaps a justifiable grievance but still not sound enough to qualify as an enforceable legal right.

(Para 8)

R. K. Arora, Advocate , *for the petitioners.*

Anil Kumar Sharma, Additional Advocate General, Punjab *for respondents No. 1 and 2.*

Arvind Rajothia, Advocate, *for respondent No. 3.*

Vijay Kaushal, Advocate, *for respondent No. 4.*

K. KANNAN, J.

(1) The petitioners 1 to 3 were initially appointed as Pump Operators; petitioners 4 and 6 were appointed as Mali-cum-Chowkidar, while the 5th petitioner was appointed as Fitter Mazdoor by the Punjab Water Supply and Sewerage Board. The contention of the petitioners is that they have been held as work charged workmen on contract basis for more than 10 years since 1991–1995. As per the recommendations of the Board of Directors, they were entitled to be regularized. The petitioners would refer to several other resolutions which were passed by the Board of Directors admitting them to be considered for regularization. At the 119th meeting of the Board held on 21st July, 1997, the Board had directed that the categories of Class-III and Class-IV employees had been recommended by the Board of Directors by its resolution dated 23rd November, 1995 for regularization in terms of a judgment of this Court in a writ petition on 29th May, 1997. They would also make reference particularly to a judgment of this Court in Civil Writ Petition No. 7218 of 2006 in Tarlok Singh *versus* Punjab Water Supply and Sewerage Board that referred to its earlier decision in Ram Niwaj and another *versus* Punjab Water Supply and Sewerage Board in Civil Writ Petition No. 5721 of 1999, and held that the right of the 1st Petitioner was to be considered in the light of the earlier decision of this Court in Ram Niwaj's case. The other petitioners would

claim similar consideration. It appears that the 1st petitioner had made representation on 5th July, 2006 in the light of the directions given by this Court in Civil Writ Petition No. 7218 of 2004 when by the impugned order dated 5th July, 2006, the respondent rejected the 1st petitioner's claim by observing that Ram Niwaj's case was different from the petitioner's case in that the former dealt with the appointment against regular posts while the 1st petitioner and other persons were working against work charged posts on contract basis and their existed no vacant posts to which they could be regularized.

(2) The petitioners referred to instructions from the Government to all departments issued on 23rd January, 2001 which directed that every department must prepare a list of work charged daily wager and other categories of workers, who had completed 3 years of service and out of the list prepared, the workers should be absorbed/regularized against regular posts existing in each department (emphasis supplied), when the benefit of regularization was given to some Junior Engineers. Similar resolutions had also been earlier passed on 23rd November, 1995 when the Board of Directors had recommended the regularization of service of employees appointed on contract basis.

(3) The basis of the claim of the petitioners is therefore two fold: (i) by virtue of several other recommendations given by the Board of Directors, the persons, who had been working in work charged posts for several number of years would be required to be regularized; (ii) in terms of the directions of the Hon'ble High Court, the benefit of regularization given to Ram Niwaj and Dev Singh should also be given to them and no discrimination could be practiced against the petitioners.

(4) The contention on behalf of the Board is that the Board merely extended some services on a turn-key basis for several of the projects entrusted to them at various times by Municipal Committees and other Local Bodies. Although there had been recommendations for regularization, the petitioners could not be absorbed or regularized since there were no sanctioned posts available against which they could be absorbed. Responding to the contention that Ram Niwaj and another had been absorbed and that, therefore, there was a discrimination, 2nd respondent would submit that there were vacant posts available at that time against which they could be absorbed while there are no such vacant posts for absorption.

(5) The question of regularization or absorption has undergone a sea change with its point of culmination obtaining through the judgment of the Hon'ble Supreme Court in **Secretary, State of Karnataka versus Uma Devi (1)**. The judgment was principally to prevent back door entries from being legitimized by mere the length of service. The Hon'ble Supreme Court had however in the judgment provided for norms directing the respective State Governments to regularize as a one time measure persons, who had been in service for more than 10 years and who had been occupying the posts, not by virtue of any stay order obtained from any Court. The under current of the said judgment with even its exceptions is that there should be sanctioned posts to which persons could be directed to be absorbed or regularized. **Uma Devi** dispensation is also authority to the proposition that the power does not reside in the Court either to create posts or order regularization where the mode of initial appointment was not in conformity to the recruitment rules.

(6) We have a hand a situation where the entry into service itself is not in question. All the persons are work charged employees and there had been recommendations by the Board of Directors to the Government for their regularization. If the Governemnt had recommended the creation of posts, the regularization/absorption would have followed automatically. If the Government chose not to do, the Court shall not take up a decision for the Government and direct creation of posts only in order to secure regularization for them. Even the recommendations of the Board of Directors referred to absorption against regular posts. It is nobody's case that there are posts available against which the petitioners could be absorbed.

(7) That leaves us only with the consideration of the fact whether there is any discrimination practiced by the respondents in directing the regularization of two of the workmen namely Ram Niwaj and Dev Singh. The learned counsel appearing for the petitioners points out that in the writ petition filed in Civil Writ Petition No. 5721 of 1999 by the above said persons, the contention of the Board was that they had been holding contractual posts on work charged basis and for the first time, only in the impugned order, they had contended that they had been appointed against sanctioned posts. It is also seen from the record that the order of regularization itself came only when there was an application for contempt of Court taken

(1) 2006 (4) S.C.C. 1

at the instance of Ram Niwaj and another that the directions given in Civil Writ Petition No. 5721 of 1999 had not been given effect. This Court has only the solemn statement of the Board to vouch that there were only two sanctioned posts available to which they could be absorbed. It is not seen how they took up a different plea and did not divulge the fact that there were posts available when Civil Writ Petition No. 5721 of 1999 had been filed. The petitioners cannot demand a parity if they cannot show that the Board has any sanctioned posts against which they could obtain absorption. The learned counsel appearing for the petitioners referred to a decision of the **U.P.S.E. Board versus Pooran Chandra Pandey (2)**, to show that **Uma Devi** dispensation cannot be applied like Euclid's theorem and that where an action of the public authority falls foul of Article 14, there could be direction for regularization. This judgment, in my view, cannot help the petitioners since the correctness of the decision was doubted by a larger Bench of the Hon'ble Supreme Court in **Official Liquidator versus Dayanand (3)**. The decision of the Constitution Bench in **Uma Devi** still holds the field and judicial rectitude and discipline demand that there is no deviation from the law as stated. The petitioners cannot, therefore, obtain regularization by only pointing to how similarly situated persons like Ram Niwaj and another were absorbed.

(8) It may seem unfortunate that the persons, who had been in employment for more than 15 years in the Board are still retained in work charged posts and the Board has not created sufficient number of posts for regularization although the work is of regular nature. It is essentially a matter of policy that the Court shall be loathe to interfere. The State or public bodies have long since ceased to be model employers. If we have arrived at a situation where a public authority behaves like a private employer, keeping the workman on tenterhooks, it shall be only on the strength of a strong labour force and employment policy that matters could turn for the better. The petitioners have perhaps a justifiable grievance but still not sound enough to qualify as an enforceable legal right. The petition shall fail and the writ petition is dismissed.

R.N.R.

(2) 2007 (11) S.C.C. 92

(3) (2008) 10 S.C.C. 1