

Chowkidars / Helpers and as per the promotion policy of Chandigarh Administration for conversion of staff from Daily Wage to Work Charge, were brought on the work charge establishment as Chowkidars / Helpers in the years 1986 and 1989 (Annexure A-4). All the applicants have been performing their duties diligently and to the entire satisfaction of their controlling officers for the last more than 25 years. However, the applicants have not been considered for regularization inspite of policy / scheme framed by the respondents for their regularization as well as the observations made by the Apex Court in Uma Devi's case followed by many other judgments.

3. In the grounds for relief, it has been stated as follows:-

- i) The applicants have been continuing working as Daily Wage Chowkidars / Helpers under respondent Chandigarh Administration since 1983-85 on daily wage basis and thereafter w.e.f. 1989 on work charge basis and thereafter on the formation of Municipal Corporation Chandigarh were transferred on deemed deputation basis to MC where they are still working and till now have worked for more than 25 years to the entire satisfaction of their superiors without any complaint against them. Therefore, pursuant to the judgment passed by Hon'ble Supreme Court in Dharampal's case (Annexure A-7), they have completed much more than 240 days of regular service with the respondent Chandigarh Administration. Further the case of the applicants is also squarely covered by the Constitution Bench decision of Hon'ble Supreme Court in Uma Devi's case as well as the Punjab Govt. notifications dated 15.01.2006 (Annexure A-8) and 18.03.2011 (Annexure A-9) which have been issued in view of the decision of Hon'ble Apex Court in Uma Devi's case which are ipso-facto applicable on the respondent Chandigarh Administration vide notification dated 13.01.1992 (Annexure A-5) and order dated 13.07.1995 (Annexure A-6) whereas the respondents have denied consideration to the cases of the applicants for regularization of their service pursuant to the above notifications issued by Punjab Govt. dated 18.03.2011 (Annexure A-9) and therefore the action of the respondents is

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unreasonable, illegal, arbitrary and in violation of the Apex Court judgment (Annexure A-7) and notifications (Annexure A-8) and Annexure A-9). Therefore, the whole action on the part of the respondents in non regularizing the services of the applicants is illegal, arbitrary and in violation of the judgments mentioned as well as in the body of the petition. Hence, the whole action is non-est in law and is liable to be quashed / set aside.

- ii) The Punjab Govt. notification dated 18.03.2011 (Annexure A-9) which is ipso-facto applicable on the respondent Chandigarh Administration as well as in view of the decision given by Hon'ble Supreme Court of India in Uma Devi's case, the respondents Chandigarh Administration after detailed discussions / deliberations and on the recommendations of the coordination committee issued regularization policy dated 05.04.2013 (Colly with Annexure A-2) and decided that employees working on daily wage / work charge who completed 10 years of service till December, 2006 and who fulfill the educational qualifications, their services be regularized by creating the requisite number of posts in the concerned Department. Subsequently, the respondent Administration issued another regularization policy dated 10.02.2014 (Annexure A-2) wherein in furtherance to the earlier policy dated 05.04.2013, it was provided that while regularizing the service of Group 'D' work charge / daily wage employees on the same post on which he / she was engaged in the Department, "Relaxation in Educational Qualification may be allowed to those who have completed 10 years of service till December, 2006 as a onetime measure." Consequently the applicants being fully eligible and fulfilling the requisite requirements in terms of the regularization policy of respondent Chandigarh Administration dated 05.04.2013 and 10.02.2014 (Annexure A-2) being in employment for more than about 16-20 years as on December, 2006, were required to be considered for regularization by the Department but even inspite of repeated representations preferred by the applicants through their union dated 06.07.2012 (Annexure A-13) as well as 15.11.2013 (Annexure A-14), the respondents have failed to consider their cases for regularization till date as per the seniority list of employees in the respective cadre of Chowkidars / Helpers whereas as is apparent from perusal of order dated 01.08.2014 (Annexure A-12), the respondents are regularizing the services of juniors to the present applicant in an illegal manner ignoring the claim of the applicants being much senior to them and serving the respondent departments for more than 25 years till date. Therefore, the whole action on the part of the respondents in not regularizing the services of the applicants in view of their own

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regularization policies (Annexure A-2) is illegal, arbitrary and such action of the respondents is liable to be quashed / set aside by this Court.

- iii) The case of the applicants is squarely covered by the latest decision of Hon'ble Apex Court in the case of UT Chandigarh and others Vs. Sampat & Ors, decided on 03.04.2014 (Annexure A-1) wherein the Hon'ble Apex Court has dismissed the several SLPs filed by the Chandigarh Administration against the order / judgment dated 28.07.2003 (Annexure A-10) in Badri's case and has directed the respondent Chandigarh Administration to expedite the regularization of service of those employees who have not yet been regularized. The case of the present applicants being wholly identical and similar to the respondents therein deserves to be considered by the respondents by granting the benefit of the judgment. In Uttranchal Forest Rangers' Assn. (Direct Recruit) Vs. State of U.P., (2006) 10 SCC 346, the Hon'ble Apex Court has referred to the decision in the case of State of Karnataka Vs. C. Lalitha (2006) 2 SCC 747 and held that "Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. If the administrative authorities discriminate amongst persons similarly situated, in matters of concessions and benefits the same directly infringes the constitutional provisions enshrined in Art. 14 and 16 of the Constitution of India."

Moreover, the case of the applicants is also covered by the decision of the Hon'ble Apex Court in Nihal Singh & Ors. Vs. State of Punjab & Ors., 2013 (4) SCT 469 wherein it has been held that after utilizing the services of the employees for almost two decades, the respondents cannot take the plea of non-availability of sanctioned posts and were directed to regularize the services within a period of three months. Similar is the latest decision of Hon'ble Madras High Court in the case of G.Ashokan and the case of the applicants is also squarely covered by the decision of this Court dated 30.09.2013 (Annexure A-3) wherein this Court has also directed the respondents to create the requisite posts for the applicants who are entitled for regularization so that their services can be regularized. Therefore, the non consideration of the case of the applicants till date for regularization of their services by the respondents amounts to violation of the mandate as enshrined by the Hon'ble Apex Court in catena of cases and as such the action of respondent is illegal, arbitrary and is liable to be quashed / set aside by this Court."

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4. In the short reply filed on behalf of respondents no.1 and 2, it has been stated that the applicants were initially engaged on daily wage basis as Chowkidar / Helper in the year 1984 by the Chandigarh Administration and their services were converted into work charge under the Work Charge Establishment in the year 1989. The applicants were transferred to Municipal Corporation, Chandigarh on its formation in May, 1996, on the creation of Municipal Corporation, Chandigarh as Work Charged employees along with works and till then they were working with Municipal Corporation, Chandigarh and the salary of the applicants are being paid by the Municipal Corporation, Chandigarh. Thus, the applicants are not the employees of Chandigarh Administration. There are two regular posts of Chowkidar lying vacant with the answering respondent Department i.e. Engineering Department of Chandigarh Administration for which the agenda for regularization is under process from purely work charge Chowkidar as per seniority who are working in the Engineering Department of Chandigarh Administration. Since the applicants have been transferred to Municipal Corporation, Chandigarh on its formation in May, 1996, they are permanent employees of Municipal Corporation, Chandigarh i.e. respondents no.3 to 5 and hence the responsibility to regularize the service of the workers rest with the Municipal Corporation authorities.

5. In the short reply filed on behalf of respondents no.3, 4 and 5, it has been stated that relief has been claimed against the Municipal Corporation

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whereas the Municipal Corporation, Chandigarh does not fall within the jurisdiction of this Tribunal. Vide decision dated 03.04.2014 in the SLP titled U.T. Chd & Ors. Vs. Sampat & Ors., the Hon'ble Supreme Court of India has made it clear that if no post is available in the regular establishment, the employees may continue in the work charged establishment but they will be entitled to full salary which they are already drawing. In order to comply with the judgment of the Hon'ble Supreme Court of India, the seniority list of the work charged / daily wage workers has been prepared for consideration of regularization of their services as per seniority and as per availability of posts. The process of regularization has already been set in motion.

6. In the rejoinder filed on behalf of the applicants, it has been stated that notification dated 21.05.1996 transferring the services of employees of Chandigarh Administration on deemed deputation basis to Municipal Corporation, Chandigarh, came under challenge before this Tribunal in OA No.488/CH/1996 in case titled Rajinder Singh & Ors. Vs. Union of India & Ors. and several other connected OAs which were decided by this Tribunal on 09.11.2001 (Annexure A-16) wherein this Court quashed the impugned notification dated 21.05.1996 and directed the respondent Chandigarh Administration to seek fresh options from the employees of Chandigarh Administration transferred to Municipal Corporation. The Chandigarh Administration aggrieved by the order dated 09.11.2001 (Annexure A-16) passed by this Court preferred judicial review before Hon'ble Punjab and Haryana High

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Court by filing CWP No.5295/CAT/2002 titled UT Chandigarh Vs. CAT & Ors. which was dismissed by the Hon'ble High Court while deciding bunch of cases and the judgment dated 09.11.2001 was upheld. Liberty was given to the Chandigarh Administration to file an application before the Tribunal to continue the services of all the persons transferred by virtue of the said notification as deemed deputationists. Thereafter the Chandigarh Administration issued another notification dated 15.04.2005 and 06.06.2005 for transferring employees to Municipal Corporation, Chandigarh, which again became a subject matter of challenge before this Court in number of OAs with leading case titled Lalit Kumar & Ors. Vs. UOI & Ors. in OA No.218/CH/2005. This Court decided the said OA vide order dated 24.02.2006 (Annexure A-17) allowing the same and held that the notifications dated 15.04.2005 and 06.06.2005 to be non sustainable and quashed / set aside the same.

7. Further, similar issue regarding regularization and grant of pension qua colleague of the present applicants also working as Chowkidar with the same respondents came up for consideration before this Court in OA No.060/00501/2014 titled Rajinder Kumar Vs. UT Chandigarh Administration & Ors. wherein also the respondents had taken similar objection of jurisdiction. This was decided on 02.12.2014 whereby this Tribunal while considering judgments Annexure A-16 and A-17 ibid in the operative para of the said order held as under:-

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“14. Hence, for all intents and purposes, the applicant whose name was included in the notification dated 21.05.1996 as a work charged employee has to be considered to have continued to be an employee of the Chandigarh Administration and on deemed deputation with the MC, Chandigarh during the period that he worked there. Since the judgments in Badri (supra) and Sampat (supra) are applicable to the work charged employees of the Chandigarh Administration, we are of the view that the applicant is also entitled to the benefits of these judgments. This is also justified since it is possible that juniors of the applicant may have been retained in the Chandigarh Administration while he was sent to the MC and the junior may have got the benefit of regularization / pension in view of various judgment/pronouncements while the claim of the applicant in this regard is being contested by the respondents.

15. Keeping the above discussion in view, respondents no.1 and 2 are directed to consider the claim of the applicant for regularization of his services and consequential benefits in terms of Badri (supra) and Sampat (supra). Action in this regard may be completed within three months of a certified copy of this order being served upon the respondents.”

8. It is also stated that the direction of Hon'ble Supreme Court of India in Sampat's case to expedite the regularization coupled with the policy / scheme of regularization issued by Chandigarh Administration, Department of Personnel dated 10.02.2014 (Annexure A-2) squarely covers the cases of the present applicants as the said policy has been formulated by the respondent Chandigarh Administration for the benefit and in favour of the employees who are working on daily wage / work charge basis since a long period and their claim for regularization is covered by the judgments of Hon'ble Supreme Court of India in the case of UOI & Ors. Vs. Dharam Pal & Ors. as well as in accordance with Constitution Bench judgment in Uma Devi's case as all the conditions as laid down the regularization policy as well as in Uma Devi's case are fulfilled by the

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present applicants. The applicants place reliance on the documents Annexure A-19 whereby the o/o Executive Engineer, Horticulture under respondent no.2 has in terms of the regularization policy of Chandigarh Administration dated 10.02.2014 (Annexure A-2) has regularized the services of similarly situated and circumstanced daily wage employees working in the office of respondent no.2 i.e. Chief Engineer, U.T. Chandigarh though belonging to different cadre of Malis. The perusal of the communications / documents (Annexure A-19) categorically shows that the respondent Chandigarh Administration is regularizing the services of daily wage / work charge employees in terms of its regularization policy / scheme dated 10.02.2014 (Annexure A-2) and similar claim of relief of regularizing the services of the present applicants has been made by the applicants in the OA.

9. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant dwelt at great length on the claim of the applicants for regularization stating that the Government must act in a reasonable and non arbitrary manner. He cited Uma Devi's case to press that since the applicants had put in long years of service as work charged employees, they were entitled to regularization. In this regard he also referred to Maninder Kaur Vs. State of Punjab, 2003 (4) RSJ 98, wherein it has been held as follows:-

"B. Constitution of India, Articles 14 and 16 - Daily wage workers -- Regularization of services - Length of daily wage service - Presumption of existence of regular posts - Where the work on which persons are engaged on daily wage basis continues for considerably long period, say two-three years, there is presumption

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of existence of regular work and requirement of regular posts – Such workers, fulfilling all requisite qualifications, are entitled to be regularized by adopting a rational policy – Once a policy is framed it must be implemented concurrently in future to regularize such workers – Engaging daily wagers on casual basis is one of the recognized source of employment – Non-availability of sanctioned regular posts / vacancies is no ground to deny such right of the workers – The goal of our Constitution is to provide employment certainty of regular source of livelihood, not to snatch it.

- C. Constitution of India, Articles 14 and 16 – Punjab Govt. Policy dated 23.01.2001 for Regularization of Services – Regularization – Ban on creation of new posts – The policy dated 23.01.2001 of Punjab Govt. does not impose an absolute bar on creation of posts – The purpose is only that new recruitments be not made without concurrence of the finance department – The very dominating purpose of the policy is regularization of services of eligible daily wagers which cannot be defeated by exception clauses of provisions.”

He also referred to Nihal Singh & Ors. Vs. State of Punjab & Ors., 2013 (4) SCT 469 to press that since the applicants were on deemed deputation with the Municipal Corporation, Chandigarh, it was the bounden duty of the Chandigarh Administration to create posts for their regularization. The applicants were working for paltry remuneration since long and had not got any benefit of financial upgradation. He stated that equity demanded that the requisite posts for regularization of the services of the applicants be created and their services be regularized.

10. Learned counsel for the respondents reiterated the content of the short replies filed on behalf of the respondents.

11. We have given our thoughtful consideration to the matter and perused the judgments cited by the learned counsel. The issue of the applicants

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as being on deemed deputation from Chandigarh Administration to the Municipal Corporation is already settled as per judgments cited on behalf of the applicants and also in Rajinder Singh (supra). In UT Chandigarh and others Vs. Sampat & Ors, decided on 03.04.2014, the Apex Court has directed as follows:-

“However, we make it clear that if no post is available in the regular establishment, the employees may continue in the work charged establishment but they will be entitled to full salary which they are already drawing including dearness allowance and the pensionary benefits to which they are entitled under the ‘CPWD Work Charge Establishment Manual and Rules’. Those who have been already regularized in the regular establishment are entitled for the benefits of a regular employee of regular establishment including the gratuity and pension which they are entitled as per rules. Widows shall get the family pension. Those who have retired from service shall get pensionary benefits. The interim order dated 07.03.2005 passed by this Court is vacated. The appellants are directed to expedite the regularization of service of those respondents who have not yet been regularized and pay pension, if not yet made. The appeals are dismissed but with aforesaid directions to the appellants.”


12. Creation of posts is a matter within the domain of the executive and since the number of such posts required for the regularization of the daily wagers / work charged employees working with the Chandigarh Administration / Municipal Corporation is quite large, we do not considerate it appropriate to issue any direction regarding creation of these posts for regularization of the persons who are claiming regularization. However, as and when vacancies arise, the Chandigarh Administration is required to regularize the services of the daily wagers / work charged employees who are on deemed deputation as per their seniority on the basis of the combined seniority list that is maintained in respect of such employees by the Chandigarh Administration and Municipal Corporation.

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The benefits of regularization and pensionary entitlement will be governed by the directions of the Apex Court in Sampat & Ors. (supra).

13. The OA is disposed of accordingly.
14. No costs.


(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.


(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh

Dated: 14.9.2015

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