

**Ramesh Kumar v. State of H.P. & Anr.  
CWP No.967 of 2022**

**13.08.2024** Present: Ms. Tanu Sharma, Advocate, for the petitioner.

Mr. Pushpinder Jaswal, Additional Advocate General, for respondent No.1-State.

Mr. J.L. Bhardwaj, Senior Advocate, with Mr. Sanjay Bhardwaj, Advocate, for respondents No.2 and 3.

Heard for some time. The case of the petitioner is that he was initially engaged in the year 1996 as a Peon on muster roll basis, though, he actually performed the duty of driver with the respondents-Authority. Learned counsel for the petitioner has argued that the services of the petitioner were arbitrarily terminated in the year 2006-07 and feeling aggrieved, he approached learned Labour Court. In the meanwhile, petitioner was reengaged by the respondents-Authority, as is evident from Annexures P-1 to P-3, appended with the petition and he joined his duties on 14.12.2007 as a driver on daily wage basis. Learned counsel has also drawn the attention of the Court to the memorandum of settlement that was entered under Section 12(3) of the Industrial Disputes Act between the parties as well as the contract that was subsequently entered into between the parties. She has submitted that as the petitioner actually performed the duties of a driver from the year 1996 onwards till date, the act of the respondents of not regularizing his service as such, after completion of requisite years of service as from the year 1996, is bad and she prays

that the petition be allowed by directing the respondents to regularize the services of the petitioner from the year 2004 with all consequential benefits. She further submits that the contract entered into between the petitioner and the Authority cannot subvert the right of the petitioner, because, the bargaining power of the petitioner, who is just a Class-III employee cannot be compared with that of the employer and as the agreements/contracts entered by the Authority with the petitioner are dotted line agreements, they have to be ignored and they cannot mar the legal right of the petitioner of regularization as per the State policy.

Learned Senior Counsel appearing for the Authority on the other hand has submitted that, though, the petitioner was engaged in the year 1996, but initially, he served as a sweeper. He continued to serve as such till the year 2007, where after, he was reengaged in terms of the documents which have been appended with the petition as a Driver w.e.f. 14.12.2007 and he continues to serve as such. Learned Senior Counsel has further submitted that the Authority has also taken up the matter with regard to the regularization of the petitioner in terms of the policy of the State Government against the post of a Driver after completion of the requisite number of years, but, in the absence of their being any sanctioned post of Driver in SADA and in the absence of the creation of any such post in the respondents-Authority by the State, the respondents-

Authority is also helpless. Learned Senior Counsel has drawn the attention of the Court to the documents appended with the reply, from which, it is evident that the Authority has been taking up the matter with the State Government for regularization of daily wage workers working in SADA Reckong Peo and creation of posts thereof, which includes the petitioner.

Having heard the respective submissions of the learned counsel for the petitioner as well as learned Senior Counsel for the Authority and having perused the pleadings as well as the record appended therewith, this Court is of the considered view that the continuation of an incumbent like the petitioner since the year 1996 on daily wage basis is nothing, but, flagrant exploitation of an employee. The Court is not entering into this controversy, at this stage, as to whether as from the year 1996 the petitioner actually performed the duties of a Driver or not, but, fact of the matter remains that as from the month of December 2007 onwards, there is no denial of this fact by the respondents-Authority also that the petitioner is serving as a daily wage Driver. On one hand, the respondent-State has reduced the number of years, which an incumbent has to serve on daily wage basis for regularization from ten years to two years, on the other hand, here is an incumbent, who for the last 24 years is serving with the respondents-Authority on daily wage basis without any assurance of his services being regularized in the near future. This Court cannot

allow such situation to continue, but then, as far as administrative decisions are concerned, they should at the first instance be better left to the Department concerned. The very fact that petitioner is serving as a driver since 2007 is self-peaking that there is need of a regular driver in the Authority.

Accordingly, the case is ordered to be listed on 28.08.2024 with the direction to the learned Additional Advocate General to positively take a call on the requests that have been made by the respondents-Authority with regard to the creation of posts in SADA Reckong Peo so that incumbents like the petitioner can be regularized, failing which the High Court would not hesitate in exercising its power of issuance of a mandamus taking into consideration the peculiar facts of the case.

**(Ajay Mohan Goel)**  
**Judge**

August 13, 2024  
(*Vinod*)