RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 2960/2023
CNR: RJHC010121912023 | URN: CW / 6289U / 2023

Rajasthan High Court
सत्यमेव जयते
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Smt. Uji Devi W/o Shri Jodha Ram, Aged About 42 Years, R/o Jodhpur Road, Ahore, District Jalore, Presently Working As Cook At Government Ambedkar Boys Hostel Ahore, District Jalore.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Social Welfare Department, Rajasthan, Jaipur.
2. The Director, Social Welfare Department, Jaipur.
3. The Assistant Director, Social Welfare Department, Jalore.

----Respondents

For Petitioner(s) : Mr. Mahipal Rajpurohit assisted by Mr. Pulkeshwar Rajpurohit

For Respondent(s) : Mr. S.D. Chavriya with Mr. Piyush Bhandari for Mr. Praveen Khandelwal, AAG

HON'BLE MR. JUSTICE BIPIN GUPTA

Order

26/10/2026

1. Both parties are *ad-idem* that the matter is squarely covered by the order dated 27.01.2023 passed by a Co-ordinate Bench of this Court in the case of ***Lalita Vs. State of Rajasthan & Ors. in S.B. Civil Writ Petition No.4638/2021*** and other bunch of writ petitions. The order dated 27.01.2023 is reproduced as under:

> "Learned counsel for the petitioners submits that each of the petitioners have completed more than ten years of service on their respective post(s). Learned counsel has placed before this Court, the chart showing the relevant details in respect of the present petitioners,

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pertaining to their service record. The said chart is reproduced as hereunder:

S.No.	Name	CW No.	DOA	Post	Status	As on 27.01.2023
1	Smt. Lalita	4638/21	02.01.01	Cook	Working	More than 21 years
2	Kaushalaya Kanwar	8943/21	15.07.02	Cook	Working	More than 20 years
3	Sohan Lal	11635/21	01.08.98	Chowkidaar	Working	More than 24 years
4	Raju Lal Meena	9546/21	01.08.03	Chowkidaar	Working	More than 19 years
5	Moda Ram	11316/21	01.06.98	Chowkidaar	Working	More than 24 years.
6	Smt. Laxmi Devi Parmar	12449/21	16.08.04	Cook	Working	More than 18 years
7	Smt. Prem Kanwar	12610/21	Yr. 2004	Cook	Working	More than 18 years
8	Ramesh Chandra	12619/21	02.08.00	Cook	Working	More than 22 years
9	Smt.Ramila	12620/21	Aug 05	Cook	Working	More than 17 years
10	Ram Lal Sharma	12675/21	Yr. 2006	Chowkidaar	Working	More than 16 years
11	Smt. Usha Sharma	12676/21	01.12.06	Cook	Working	More than 16 years
12	Smt. Kali	12678/21	July 99	Cook	Working	More than 23 years

Mr. Anil Gaur, AAG submits the controversy is covered by the order passed by a coordinate Bench of this Hon'ble Court in ***Mahaveer Prasad Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.11611/2013)*** on 18.02.2022. The order reads as follows:

"The facts of the case are as under:

The petitioner was appointed as Cook-cum-Chowkidar with the respondent-Department on 01.11.1995. His services were retrenched on 01.03.1997 against which a claim was filed before Labour Court, Bikaner (hereinafter referred to as 'the Labour Court'). Vide award dated 27.01.2001, the Labour Court proceeded on to allow the claim of the petitioner and the petitioner was declared to be entitled to reinstatement with continuity in service. A writ petition was preferred by the State against the award passed by the Labour Court which was dismissed on 25.02.2002 and consequently the petitioner was reinstated in service on 19.10.2002. From 01.08.2005, the petitioner was again not permitted to work. In the circumstances, the petitioner again preferred a writ petition being Civil Writ Petition No.4979/2005 which was allowed vide order dated 02.09.2008 and in pursuance thereof the petitioner was reinstated on 06.06.2009.

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RAJASTHAN HIGH COURT
सत्यमेव जयते

After being reinstated when services of the petitioner were not regularized he preferred a writ petition being Civil Writ Petition No.283/2011 and the same was disposed of vide order dated 12.01.2011. In the said writ petition it was observed and directed as under:

Rajasthan High Court
सत्यमेव जयते
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> *"In this view of the matter, the respondents are directed to consider the case of the petitioner for regularization and at the time of considering his case of the petitioner, the aforesaid notification shall be taken into account and appropriate orders may be passed within a period of three months from today. It is also made clear that if petitioner is found entitled for regularization then all benefits as provided in the notification shall be given to the petitioner."*

In pursuance to the directions of this Court, the petitioner moved a representation before the respondent-Department for regularization of his services but the same was rejected vide order dated 08.06.2011.

"माननीय राजस्थान उच्च न्यायालय, जोधपुर में विचारधीन एकल पीठ याचिका संख्या 283/2011 श्री महावीर प्रसाद ढोली बनाम सरकार एवं अन्य में पारित निर्णय दिनांक 12.01.2011 के संबंध में कार्मिक विभाग की अधिसूचना 27.2.09 के क्रम में गठित स्टीनिंग कमेटी की मिटिंग दिनांक 25.5.11 को सम्पन्न हुई। प्रकरण को माननीय उच्च न्यायालय के आदेश एवं कार्मिक विभाग की अधिसूचना के परिप्रेक्ष्य में परीक्षण किया गया। कार्मिक विभाग की अधिसूचना मे अनियमित चतुर्थ श्रेणी कर्मचारियों को नियमित करने हेतु निम्न शर्ते थी :–

1. सम्यक रूप से स्वीकृत किन्हीं पदों पर अनियमित रूप से नियुक्त किये गये हो।

2. किसी न्यायालय या अधिकरण के मध्यक्षेप के बिना दिनांक 10. 4. 06 को 10 वर्ष की सेवा पूरी कर चुके हो।

3. इन संशोधन नियमों के प्रारम्भ की तारीख को निरन्तर कार्य कर हो।

मिटिंग में लिये गये निर्णयानुसार श्री महावीर प्रसाद ढोली, अंशकालीन रसोईयां/चौकीदार, राजकीय अम्बेडकर छात्रावास सुजानगढ जिला चुरू मैस समिति के माध्यम से दिनांक 01.11. 1995 को रखा गया था। मैस समिति द्वारा रखे जाने के समय पद

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RAJASTHAN HIGH COURT सत्यमेव जयते

स्वीकृत नहीं था तथा इनकी नियुक्ति सम्यक रूप से स्वीकृत रसोईयां के नियमित पद पर नहीं हुई थी।

अतः माननीय राजस्थान उच्च न्यायालय, जोधपुर के निर्णय दिनांक 12.1.2011 के अनुक्रम में श्री महावीर प्रसाद ढोली, अंशकालीन रसोईयां/चौकीदार, नियमितिकरण के पात्र नहीं है। एसडी/–"

Rajasthan High Court सत्यमेव जयते Web Copy - Not Official

Against the order dated 08.06.2011 the present writ petition has been preferred.

Counsel for the petitioner submitted that the order dated 08.06.2011 is totally bad in the eyes of law as all the reasons stated in the said order for rejection of his representation are totally illegal. He submitted that the fact of his being appointed through the Mess Committee, as alleged by the respondent- Department, had already been considered and adjudicated by the Labour Court in the year 2001 and it was the specific finding of the Labour Court that the petitioner was not an employee of Mess Committee but was an employee of the State Government. Counsel argued that therefore, at this stage, the same question cannot be raised by the State and neither can this Court readjudicate the same.

The second ground stated in the rejection order by the respondent-Department that the petitioner had not completed 10 years of service on 10.04.2006 without intervention of the Court, is also refuted by the Counsel on the ground that way back in the year 2001 and then in the year 2008 there has been a specific finding in his favor and his services had been directed to be deemed to be continuous. Counsel argued that therefore, his services ought to have been considered to be continuous and he was entitled for regularization w.e.f. the date of his initial appointment i.e. 01.11.1995. The third ground stated by the respondent-Department for rejection was that the petitioner was not in continuous service on the date of the amended rules i.e. 27.02.2009 therefore, his services cannot be regularized. In rebuttal, counsel submitted that by virtue of the orders of the Labour Court and the High Court his services were to be deemed to be continuous from the year 1995 and therefore, he did complete 10 years of

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RAJASTHAN HIGH COURT
सत्यमेव जयते

service in the year 2009 when the amended rules came into effect.

Counsel further argued that vide order dated 12.01.2011 there was specific direction given by this Court to regularize services of the petitioner whereas the Department has proceeded on to reject his representation dehors the specific findings of this Court. Counsel relied upon the following judgments:

Rajasthan High Court
सत्यमेव जयते
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1. D.B. Special Appeal (Writ) No.603/2021
(State of Rajasthan & Ors. Vs. Krishan Kumar Saini)
2. D.B. Special Appeal (Writ) No.347/2019
(JNV University Vs. Mukesh Sharma)
3. S.B. Civil Writ Petition No.1456/2016
(Sunil Kumar Ojha Vs. JNV University)
4. D.B. Special Appeal (Writ) No.354/2014
(JNV University Jodhpur Vs. Jitendra Kumar)
5. S.B. Civil Writ Petition No.6038/2013
(Magan Lal Damor Vs. State of Rajasthan)
6. S.B. Civil Writ Petition No.11029/2011
(Smt. Chandana Devi Vs. State & Ors.)

Per contra, counsel for the respondent submitted that the petitioner was not entitled to be regularized because firstly the post on which he was working was not a sanctioned post. Secondly, he was employed through a Mess Committee and as held by the Hon'ble Apex Court in case of State of Rajasthan & Ors. Vs. Daya Lal & Ors. (Civil Appeal No.486/2011) the cooks appointed through a Mess Committee were not entitled to be regularized. Counsel argued that the petitioner was not in continuous service for a period of 10 years on 27.02.2009 and therefore, he was not entitled for regularization. Besides the judgment passed in Daya Lal's case (supra), counsel also relied upon a Division Bench judgment passed in D.B. Civil Special Appeal(Writ) No.635/2014 (Buta Ram Meghwal Vs. State of Rajasthan & Ors.) and D.B. Special Appeal Writ No.1352/2011 (State of Rajasthan & Ors. Vs. Gulab Singh & Anr.).

Heard counsel for the parties and perused the material available on record.

For the adjudication of the present controversy, a brief discussion of the ratio laid down in Daya Lal's case (supra) is

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RAJASTHAN HIGH COURT
सत्यमेव जयते

essential. The two questions which were under consideration inthat matter were as under:

> *"(i) Whether persons appointed as Superintendent in aided non-governmental Hostels are entitled to claim absorption by way of regularization in government service or salary on par with Superintendents in Government Hostels?*
>
> *(ii) Whether part-time cooks and chowkidars appointed temporarily by Mess Committee of Government Hostels, with two or three years service, are entitled to regularization by framing a special scheme?"*

Rajasthan High Court
सत्यमेव जयते
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While dealing with question No.2 pertaining to the part-time cooks/chowkidars in Government Hostels, the Hon'ble Apex Court proceeded on to held as under:

> *"11. The part-time cooks and chowkidars were employed on temporary basis in the Government hostels in the years 1995, 1996, 1997 and 1998. They approached the High court in the year 1999 (except Madan Lal Yogi who approached in the year 1997). The services of some of them had been terminated within on or two years from the date of temporary appointment. Though the State had taken a decision to terminate all those who were appointed on consolidated wage basis, the other respondents continued because of the interim orders by courts. Service for a period of one or two years or continuation for some more years by virtue of final orders under challenge, or interim orders, will not entitle them to any kind of relief either with reference to regularization nor for payment of salary on par with regular employees of the Department.*
>
> *12. The decision relied upon by the High Court namely the decision in Anshkalin Samaj Kalyan Sangh of the High Court no doubt directed the state government to frame a scheme for regularization of part-time cooks and chowkidars. It is clear from the said decision, that such scheme was intended to be an one-time*

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RAJASTHAN HIGH COURT
सत्यमेव जयते

measure. Further said decision was rendered by the High Court prior to Uma Devi, relying upon the decision of this Court in Daily Rated Casual Labour vs. Union of India [1988 (1) SCC 122], Bhagwati Prasad Vs. Delhi State Mineral Development Corporation [1990 (1) SCC 361] and Dharwad District PWD Literate Dalit Wage Employees Association vs. State of Karnataka [1990 (2) SCC 369]. These directions were considered, explained and in fact, overruled by the Constitution Bench in Uma Devi. The decision in Anshkalin Samaj Kalyan Sangh is no longer good law. At all events, even if there was an one time scheme for regularisation of those who were in service prior to 1.5.1995, there cannot obviously be successive directions for scheme after scheme for regularization of irregular or part-time appointments. Therefore the said decision is of no assistance."

Rajasthan High Court
सत्यमेव जयते
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A perusal of the above findings as reached by the Hon'ble Apex Court makes it clear that the Court has proceeded on the ratio as laid down in Secretary, State of Karnataka vs. Uma Devi [(2006) 4 SCC 1] wherein it was held that the scheme of regularization was a one time measure and no further directions can be issued in terms of that scheme. In view of the said observations, the Hon'ble Apex Court proceeded on to allow the appeals of State. It is relevant to note that the same aspect whether the directions issued in Uma Devi's case are one time measure or not has also later been considered in the case of Narendra Kumar Tiwari & Ors. vs. State of Jharkhand & Ors. [(2018) 8 SCC 238]; Shri Basudeb Debnath and Ors. vs. The Union of India and Ors. decided on 09.03.2021; Jai Narain Vyas University and Anr. vs. Mukesh Sharma (D.B. SAW No.347/2019) and State of Rajasthan & Ors. vs. Krishan Kumar Saini (D.B. SAW No.603/2021).

In the recent judgment passed in D.B. Special Appeal Writ No. 603/2021; State of Rajasthan & Ors. v. Krishna Kumar Saini, the Division Bench of this Court after considering the ratio as laid down in Uma Devi's case and in

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RAJASTHAN HIGH COURT सत्यमेव जयते

Jai Narain Vyas University & Anr. v. Mukesh Sharma ; D.B. Special Appeal Writ No. 347/2019, observed that, "..... the government cannot continue to engage the petitioner for decades to come and at the same time deprive him of the benefits of regular scales of pay and regularization."

Rajasthan High Court सत्यमेव जयते Web Copy - Not Official

In Magan Lal Damore v. The State of Rajasthan (S.B. Civil Writ Petition No. 6038/2013, decided on 09.08.2016), a Co-ordinate bench of this Court observed as under:

> *"In the opinion of this Court, the authority who has taken decision not to regularize the services of petitioner has usurped the power to define that adjudication made by the Judge, Labour Court, Jodhpur which is upheld by this Court is intervention of the Court. In fact, it is not interference of the Court but it is an adjudication made by the Court whereby, order of termination was set aside in legal proceeding. Interference can be understood if any person is working under the interim orders of the Court but petitioner has not worked under the interim orders of this Court but while quashing his termination order dated 01.11.1995, the Judge, Labour Court, Jodhpur held that petitioner is entitled for continuity in service."*

In view of the ratio as laid down by the Hon'ble Apex Court in cases of Narendra Kumar Tiwari, Basudeb Debnath, Krishan Kumar Saini and Jai Narain Vyas University, it can be safely concluded that the process of regularization as held in Uma Devi's case in not a one time measure. As held in Narendra Kumar Tiwari's case, the State cannot, in the garb of Uma Devi's case, continue the employees for years together without regularizing their services.

In the present matter, a bare perusal of the award dated 27.01.2001 makes it clear that the services of the petitioner were directed to be deemed to be continuous and the award has become final for all purposes. Therefore, there can be no other view that the initial appointment of the petitioner i.e. 01.11.1995 would be considered for the purpose of regularization. The ratio as laid down in Uma Devi's case was to be applied in those cases where the person

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continued in service because of certain interim orders passed by the Court. In the cases where there was a specific finding in favour of the employee regarding continuity of his services and the same having become final, would have the application.

By all means, the date of initial appointment of the petitioner is to be considered in the present matter for calculating 10 years of his services for the purpose of regularization.

In view of the ratio as laid down in Uma Devi's case and Krishna Kumar Saini's case and in view of the observations as made above, the present writ petition is allowed. The respondents are directed to regularize the services of the petitioner after completion of 10 years from the date of his initial appointment i.e. 01.11.1995. The petitioner would be entitled to all the consequential benefits thereof.

The said exercise be completed by the respondent-Department within a period of three months from the date of receipt of the copy of this order."

In light of the aforesaid order, the present petitions are allowed in the same terms. The respondents are directed to regularize the services of the petitioners after completion of 10 years from the date of their initial appointment. The petitioners would be entitled to all the consequential benefit thereof. The said exercise be completed by the respondent-Department within a period of three months from the date of receipt of the copy of this order.

All pending applications stand disposed of."

2. Without entering into the merits of the case and on the joint statement of the parties, the present writ petition is disposed of in the same terms as in the case of **Lalita** (supra). Pending applications, if any, stand disposed of.

(BIPIN GUPTA),J

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