

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 17199 of 2000

Date of Decision : October 08, 2015

Saroj Petitioner

Vs.

State of Haryana and others Respondents

Case No. : C. W. P.No. 17221 of 2000

Date of Decision : October 08, 2015

Kamla Devi Petitioner

Vs.

State of Haryana and others Respondents

Case No. : C. W. P.No. 4494 of 2001

Date of Decision : October 08, 2015

Punjab Singh Petitioner

Vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. I. D. Singla, Advocate
for the petitioner(s) (in all three cases).

Mr. Shruti Jain Goyal, AAG, Haryana (in all three cases).

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DEEPAK SIBAL, J. :

Three writ petitions being **C. W. P. Nos. 17199 & 17221 of 2000 and 4494 of 2001**, involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment. For the sake of convenience, facts are being extracted from **C. W. P. No. 17199 of 2000**.

The petitioner, while serving the respondent Department as a Sweeper on daily wages basis, seeks the grant of minimum of the pay scale, as applicable to the post of Sweeper, with effect from the date of her appointment, which admittedly is 01.02.1994, till the date of regularization of her services, which is 01.10.2003.

The record reveals that vide judgment dated 31.01.2002, a Division Bench of this Court had allowed the petitioners' case, but on an appeal preferred by the State of Haryana, the Apex Court, vide order dated **05.10.2005** passed in **Civil Appeal No. 6562 of 2002 – State of Haryana and others vs. Charanjit Singh and others, etc. etc.**, set aside the above referred judgment of this Court and remitted the matters back for fresh decision after examining each case and scrutinizing the necessary averments made in each of the petitions.

In view of the above order of the Apex Court, the matter is placed before me for adjudication.

The sole issue, which arises for determination is whether the petitioner is entitled to the minimum of pay scales while she served the respondents on daily wages basis. The law in this regard has been settled in

the judgment rendered by a Full Bench of this Court in **Avtar Singh vs. State of Punjab and others** – **2012 (1) SLR 832**, the relevant portion of which is reproduced hereunder :-

“However, it is also noticed that certain daily wagers are permitted to continue for long number of years. Keeping in view the ratio of the aforesaid judgments, we hold that daily wagers, ad hoc or contractual appointees are not entitled to minimum of the regular pay scale from the date they were engaged merely for the reason that the physical activity carried out by the daily wager and the regular employee is similar, but such general principle shall be subject to the following exceptions :

(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services

are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months [Emphasis supplied].”

A daily wager has been held entitled to the grant of minimum regular pay scale, if his/her appointment is against a regular sanctioned post and if he/she has been appointed through a selection process, which is

based upon fairness and after grant of equal opportunity to all other eligible candidates.

It is the unrebutted case of the respondents that for the period, for which the relief is claimed for by the petitioner, she was not appointed against a regular sanctioned post.

On a close scrutiny of the averments made in the writ petition, it is nowhere found that the petitioner was appointed through a selection process, which had the semblance of a fair and transparent one and in which, all eligible persons were granted opportunity to apply and be considered against the post held by the petitioner.

In view of the above, there is no merit in the present petitions and resultantly, all the three petitions - **C. W. P. Nos. 17199 & 17221 of 2000 and 4494 of 2001** are ordered to be dismissed.

No costs.

**(DEEPAK SIBAL)
JUDGE**

October 08, 2015

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