

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 216

Case No. : C. W. P.No. 13098 of 2012

Date of Decision : March 30, 2015

Yashpal Singh Petitioner

Vs.

State of Punjab 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. Sanjiv Ghai, Advocate
for the petitioner.

Mr. Sushant Maini, DAG, Punjab
for respondents no. 1 and 2.

Mr. Amit Aggarwal, Advocate
for respondents no. 3 and 4.

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DEEPAK SIBAL, J. :

Through the present writ petition, the petitioner prays for the issuance of a direction to the respondents to release the salary of the petitioner w.e.f. 01.11.2011 i.e. the date when the petitioner joined as

Section Officer (Civil) on regular basis in the pay scale of 10300-34800+3800 Grade Pay, as according to the petitioner, in spite of regularization of his services vide orders dated 01.11.2011 (Annexure P-4) and 25.11.2011 (Annexure P-6), he is not being paid the salary as per regular pay scales applicable to the post, on which his services have been regularized. It is the case of the petitioner that his services had been regularized as per the policy of the Government of Punjab dated 17.11.2011.

On notice having been issued, the State of Punjab, as also the respondent – Punjab School Education Board (hereinafter referred to as – the Board), have filed separate written statements. So far as the Board is concerned, it has been stated that the services of the petitioner have been regularized by the Board in view of circular dated 17.11.2011 of the State Government, but the salary, as claimed by the petitioner, has not been paid to him in view of audit objections. As per these objections, the services of the petitioner, in view of circular dated 17.11.2011, could not have been regularized by the Board itself as according to the above referred circular, the respondent Board could only recommend the case of the petitioner to the State Government and it was the State Government, which was competent to take a final decision thereon. In view of the above audit objection, the respondent Board has submitted that the case of the petitioner for regularization of his services has been sent to the Government for post

facto approval and as soon as approval is granted by the State Government, he shall be paid as per pay scales applicable to regularly appointed Section Officers (Civil).

The written statement filed by State of Punjab is on the same lines as the objections by the audit. In addition, it has been submitted that the respondent Board has been asked by the Government to review its earlier Resolution, through which services of the petitioner have been ordered to be regularized and proceed with the matter as per procedure laid down in the instructions dated 17.11.2011.

I have heard learned counsel for the parties and with their able assistance, have also perused the record of the case.

Before I proceed further with the matter, it would be appropriate for me to refer to the relevant portion of the instructions dated 17.11.2011, under which the petitioner claims regularization of his services. They are as under :-

“No.1/40-A-2011-F.F.(DM)BH.A-2/7309-11

*Government of Punjab
Department of Finance
Directorate of Disinvestment*

Dated 17.11.2011

To

All Financial Commissioner/ Chief

*Secretaries/ Administrative
Secretaries Government of
Punjab*

*Subject Regarding the regularization of
the daily wager/work charged
and contractual employees,
which are working at present in
Boards/ Corporations/
Cooperative Institutions other
societies and other institutions
under different departments.*

*In relation to above mentioned
subject :-*

2. xx xx xx
3. xx xx xx
4. xx xx xx

5. The concerned Board of
Directors/Competent Authority shall
recommend for the regularization of
services of the daily wager/work charged
and contractual employee, who fulfill the
conditions mentioned in the above said
letter, while taking into consideration, the
Financial Condition of the Institution.
Therefore only those institutions shall
recommend the regularization of the
employees who can bear their financial
burden at their own. For this purpose, there
shall be no financial assistance directly or
indirectly made by the Government.

6. Concerned Boards/ Corporations will send the proposal with their recommendations to the Administrative Department, who after examination of such proposal along with its recommendation, forward the proposal to the Finance Department in Directorate of Disinvestment for obtaining approval of the Chief Minister of Punjab through Chief Secretary, regarding regularization of the services of these employees.

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|-----|----|----|----|
| 7. | xx | xx | xx |
| 8. | xx | xx | xx |
| 9. | xx | xx | xx |
| 10. | xx | xx | xx |

Sd/-
Jaspal Singh
Director
[Emphasis supplied by me].”

A perusal of the above quoted portion of the instructions makes it abundantly clear that the concerned Board is only to make recommendation for the regularization of services of contractual employees. While making such recommendations, the financial condition of the Institution is also required to be taken into consideration. These recommendations have to be made to the Government, which is the

competent Authority to take a final decision on such recommendations with regard to regularization of services of the employees.

In the case in hand, the services of a contractual employee, like the petitioner have been ordered to be regularized under the policy dated 17.11.2011 by the respondent Board itself and before ordering the regularization of the services of the petitioner, the respondent Board had not made any recommendation whatsoever to the Government. As per the procedure laid down in the policy dated 17.11.2011, the respondent Board was not the competent Authority to order regularization of the services of the petitioner as it has been done in the case in hand. According to me, the Government of Punjab has rightly asked the respondent Board to review its Resolution and consequent orders through which the services of the petitioner have been ordered to be regularized and then make recommendations as per the policy dated 17.11.2011, as reproduced above.

In fact, the petitioner seeks regularization of his services as per the policy dated 17.11.2011 and if that is so, the terms and conditions of such policy, in the absence of any challenge to the same, are required to be followed. The above terms and conditions of the policy clearly provide that the concerned Board can only make recommendations and the final decision with regard to regularization of the service of the employees like the petitioner rests only with the State Government, which has not been done in the case in hand.

So far as seeking of post facto approval by the respondent Board from the Government, with regard to the order of regularization of the petitioner's services is concerned, that is like putting the cart in front of the horse and is in complete violation of the procedure prescribed in the policy dated 17.11.2011.

In view of the above peculiar facts of the case, I direct the respondent Board to review its earlier decision, through which it had straightway ordered regularization of the services of the petitioner and then send recommendations, if any, to the Government, strictly as per the terms of the regularization policy dated 17.11.2011. The respondent Board may do the needful within one month from the date of receipt of a certified copy of this order.

In case, any recommendations, as above, are made to the Government by the respondent Board, then I further direct the State Government to take a final decision thereupon within two months of receipt of such recommendations.

Needless to add that in case, the respondent Board decides not to make any recommendations for regularization of services of the petitioner, then such decision is required to be conveyed to the petitioner so that he can take appropriate steps to challenge the same in accordance with law, if so advised, but in case, such recommendations in favour of regularization of services of the petitioner are made by the respondent

Board to the Government of Punjab, and if such recommendations are not accepted, then such order of rejection to be passed within the time stipulated above, is required to be communicated to the petitioner and needless to say that the petitioner would be at liberty to take legal recourse against the same, as he would be advised.

The writ petition stands disposed of in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

March 30, 2015

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