

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CWP No.15322 of 2012

Date of Decision:21/04/2015

Pardeep Kumar and another ...Petitioners

Versus

Punjab Water Supply and Sewerage Board and another ... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Premjit Kalia, Advocate for the petitioners.

Mr. Vijay Kaushal, Advocate for the respondents.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest.

DEEPAK SIBAL, J.

The petitioners, who are two in number, were appointed as Pump Operators with the respondent-Punjab Water Supply and Sewerage Board (hereinafter referred to as “the Board”) on work charge basis on 17.4.1995 and 28.4.1995 respectively.

On termination of their services on 9.5.1996, they raised a dispute under the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”) which was referred for adjudication to the labour Court. After considering the entire issue, the labour Court vide its award dated 11.2.2004 held the termination of the services of the petitioners to be bad in law and as a consequence directed their reinstatement with continuity of service with 50% back wages from the date of issuance of demand notice. The award of the labour Court was challenged by the respondent-Board before this Court through CWP No.14940 of 2004; Executive Engineer, Punjab Water Supply and Sewerage Board and another v. Sh. Pardeep Kumar and others.

A Division Bench of this Court considered the writ petition filed by the respondent-Board and vide order dated 24.9.2004 dismissed the same. It is the admitted position between the parties that the respondent-Board did not challenge the above-said order dated 24.9.2004 passed by this Court and thus the above issue so decided between the parties became final.

In spite of the above, when the award passed by the labour Court was not fully implemented, the petitioners were again forced to knock the doors of this Court through CWP No.11506 of 2010; Pardeep Kumar and another v. Punjab Water Supply and Sewerage Board and others.

While allowing the writ petition, this Court observed that it was totally discriminatory to keep the petitioners as work charge employees and that they could not be deprived of the benefits of the various policies of regularization of the Government of Punjab which may have been adopted by the respondent-Board. After observing as above, the respondents were directed to consider the case of the petitioners for regularization of their services. It was further directed that till the time the services of the petitioners were regularized, they shall be paid applicable minimum wages.

In spite of the above referred order passed by this Court, the respondent-Board through order dated 20.10.2011 did not regularize the services of petitioners.

The petitioners then filed COCP No.2223 of 2011 in which on 24.01.2012, following order was passed:

“The order dated 20.10.2011 is ex-facie a crude attempt to wriggle out of the order dated 25.03.2011 passed by this court. Suffice it to observe that the petitioners are being treated as contractual employees despite the Labour Court reinstating them and a direction by this Court to treat their service uninterrupted and then consider their claim for regularization in terms of the Government Policy

under which even 'daily wagers' have been made regular. Respondent No.1 as well as Executive Engineer who passed the order are directed to remain present in court to show cause as to why not further action be taken against them."

Apparently after seeing the tone and tenure of the above quoted order, through order dated 3.2.2012, the services of the petitioners were ordered to be regularized but only w.e.f. 25.3.2011 i.e. the date of the order passed by this Court in CWP No.11506 of 2010; Pardeep Kumar and another v. Punjab Water Supply and Sewerage Board and others.

Against the above decision of the respondent-Board of regularizing the services of the petitioners with effect from 25.3.2011 and not with effect from the date the services of the juniors of the petitioners had been regularized, the present writ petition has been filed.

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

Admittedly, the petitioners were appointed as Pump Operators on work-charge basis on 17.4.1995 and 28.4.1995 respectively. The respondent-Board terminated their services on 9.5.1996 and when the petitioners took up this matter before the labour Court, vide award of the labour Court dated 11.2.2004, the termination of the services of the petitioners was held to be illegal. Resultantly, the petitioners were directed to be reinstated with continuity of service and 50% backwages. The writ petition filed by the respondent-Board challenging the award of the labour Court was dismissed by this Court vide order dated 24.9.2004.

In spite of the above, the respondent-Board did not fully implement the award for which the petitioners had to again knock the doors of this Court through CWP No.11506 of 2010; Pardeep Kumar and another

v. Punjab Water Supply and Sewerage Board and others.

On 25.3.2011, while allowing the above said writ petition this Court had directed the respondent-Board to consider the case of the petitioners for regularization of their services by holding as under:

“5. The fact of the matter is that the petitioners are now deemed to be in service of respondent-Board since 1995. They cannot be exploited by paying the same wages as were offered to them more 15 years back. The payment of wages by a 'State organ' to its employees/workers is referable to its obligation contained in Chapter IV of the Constitution namely, Directive Principles of the State Policy. The wages so paid, firstly, cannot be less than the minimum wages and secondly, the wages ought to be sufficient for the bare sustenance. The meager amount of Rs.1450 does not satiate either of the test. The action of the respondent-Board is, thus, per se arbitrary and amounts to colourable exercise of power. Similarly it appears to be totally discriminatory and iniquitous to keep the petitioners as work-charged employees only, moreso when several Policy decisions for regularization of the contractual/work-charged/ad hoc/ daily wage employees have been taken by the State government meanwhile. The petitioners cannot be deprived of the benefit of such Policies if the same were adopted and implemented by the respondent-Board qua other work-charged employees, merely for the reason that the petitioners were struggling hard before the Labour court to establish their right to continue in employment. The respondents are, thus, obligated to consider the claim of the petitioners for regularization of their services in terms of the Government Policies, if any, adopted followed and implemented by the respondent-Board qua other similarly-placed employees.

6. Ordered accordingly.

7. For the reasons stated above, the writ petition is allowed with a direction to the respondents to undertake the exercise and do the needful as directed above within a period of four months from the date of receipt of a certified copy of this order. The petitioners shall also be entitled for regular pay-scale along with consequential arrears of pay on regularization of their services in terms of the Government Policies. The petitioners shall also be paid the

corresponding revised minimum wages on the basis of the benchmark of Rs.1450/- till their services are regularized. The revised wages shall be paid to the petitioners within two months.”

(Emphasis supplied)

A perusal of the above quoted directions given by this Court clearly show that after observing that it appeared to be totally discriminatory to keep the petitioners as work charge employees and the petitioners could not be deprived of the benefits of the various policies of regularization of the Government of Punjab which may have been adopted by the respondent-Board, the respondent-Board was directed to consider the claim of the petitioners for regularization of their services. In spite of the above observations, the respondents did not regularize the services of the petitioners which forced them to again approach this Court through COCP No.2223 of 2011. When through order dated 24.1.2012 passed in the above referred contempt petition this Court summoned the offices of respondent-Board to be present in Court, the respondent-Board having been drawn into a corner, regularized the services of the petitioners but only w.e.f. 25.3.2011 i.e. from the date of the order passed by this Court in CWP No.11506 of 2010; Pardeep Kumar and another v. Punjab Water Supply and Sewerage Board and others and not from the date when services of persons junior to the petitioners had been regularized.

It is the undisputed position between the parties that the petitioners have served the respondent-Board as Pump Operators w.e.f. 17.4.1995 and 28.4.1995 respectively on work charge basis. In the light of this fact, it would be interesting to refer to an order dated 19.9.2001 (Annexure P-8) through which the respondent-Board had regularized the services of several of its employees working on work charge/daily wage

basis. Through this order, the services of several Pump Operators namely Harjinder Singh, Iqbal Singh, Waryam Singh, Surinder Chawla, Narinder Singh and Chaman Lal were regularized. Harjinder Singh had been appointed as Pump Operator on 6.7.1996, Iqbal Singh on 14.7.1997, Waryam Singh on 15.7.1997, Surinder Chawla on 15.7.1997, Narinder Singh on 4.7.1997 and Chaman Lal on 16.7.1997.

In comparison to the above, the petitioners had been appointed on 17.4.1995 and 28.4.1995. Thus, the services of above-said persons who are undisputably junior to the petitioners had been regularized on 19.9.2001.

The order of regularization dated 19.9.2001 (Annexure P-8) and the contents thereof have not been denied by the respondent-Board.

In view of the above, there was no reason in law or fact not to regularize the services of the petitioners at least with effect from the date the services of their juniors had been regularized. The order regularization the services of persons junior to the petitioners had been passed way back on 19.9.2001. It is unfortunate that in spite of the above order having been passed in case of persons junior to the petitioners, the benefit of the same was not given to the petitioners. It is equally unfortunate that the order of regularization of services of the petitioners was passed only after order dated 24.1.2012 was passed by this Court in a contempt petition preferred by the petitioners.

I find the action on the part of the respondent-Board illegal and arbitrary.

In view of the above, it is directed that the petitioners be treated to be in regular service as pump operators with effect from the date when the services of their juniors had been made regular i.e. 19.9.2001 with all

consequential benefits except that in view of the statement made by the learned counsel appearing on behalf of the petitioners, the arrears to be paid to them on account of such regularization would be limited to period of 38 months from the date of filing of the present writ petition.

For the above referred conduct of the respondent-Board, I deem it proper to burden them with costs amounting to Rs.50,000/-.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

21.04.2015
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