

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.1824 of 2014 (O&M)

Date of Decision : 16.01.2015

Surjit Kaur

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers may be allowed to see the judgment?Yes

2) To be referred to the Reporters or not?Yes

3) Whether the judgment should be reported in the Digest?Yes

Present : Mr.R.K.Arora , Advocate for the petitioner

Mr. Harkesh Manuja, Addl. AG, Punjab

MAHESH GROVER, J.

The petitioner was employed by the respondents in the year 1983 initially on part time basis. She was given a consolidated salary and continued to discharge her functions till the time she attained the age of 60 years. Despite their being numerous policy decisions of the Government, the services of the petitioner were never regularized on the premise that the respondents have drawn up a seniority list to cater to the dictates of the instructions warranting regularization.

The case of the respondents even today is that the services of the petitioner could not be regularized on account of non-availability of the regular vacancy as also the fact that the petitioner was lower down in the seniority list which was being adhered to in the matter of regularization of services.

The petitioner claims that the denial of the benefit of regularization has deprived the petitioner of regular benefits of service and after the age of superannuation she has nothing to fall back on inspite of the fact that she has served the respondents throughout her life for as many as more than three decades.

On due consideration of the matter, I am of the considered opinion that the action of the respondents in denying the benefit of regularization to the petitioner is totally unjust. Some of the instructions of the State Government warrant that case of regularization has to be decided within a period of three years. Such a benefit obviously did not flow to the petitioner on account of the indecisiveness.

The plea of the respondents is that posts were not available can only be taken with a pinch of salt. If an employee's services are utilized for more than 3 decades then such a plea of the respondents can hardly be accepted. Evidently its a case of utter exploitation of human resource by the State of Punjab and at best be termed to be a unfair practice. This Court has already taken a similar view in CWP no. 15342 of 2012 titled as **Bhag Singh vs. State of Punjab and others** decided on 15.12.2014. In CWP no. 1169 of 2011 titled as **Balwinder Kaur vs. The State of Punjab and others** decided on 16.12.2014 this Court has observed as under:-

“There is no dispute on facts. The deceased having worked with the respondents for almost three decades and the policy of the Government entitling the employee to regularisation of his services after having completed three years of service is a crucial fact from which this Court would proceed to determine the issues raised before it. Considering the length

of service rendered by the deceased employee without the benefit of regularisation can at best be termed to be an exploitative action on the part of the State and human resource whose service are so desired and utilized for such an inordinate long period, cannot be kept away from the fruits of a regular employment on the premise of non-availability of vacancies. The State which professes to be a Welfare State, bound by the dictates of the Constitution of India which mandates adherence to Articles 14 and 16 of the Constitution in terms of public employment, can ill afford to seek refuge in such hypocrisy. If the services of an incumbent are required for more than three decades and practically utilized for that purpose, then the plea of non-availability of regular posts is unacceptable.

It is because of the fortuitous circumstances that the deceased employees were kept away from regularisation firstly on account of the will of providence and secondly on account of laxity on the part of the State.

Clause-4 of the Regularisation Policy would require the process of regularisation in the case of workcharge/daily wage workers within a period of four months. It is not the fault of the employee if the process is kept in abeyance for as long as 8 to 9 years to deprive him of the benefit of regularisation. Rather, such an approach of the respondent/State would necessarily result in the virtual negation of the policy itself. The policy talks of regularisation on the completion of 3 years of service and there can be no

justification absolutely to keep the employees away from regularization if they have put in more than three decades of service and that too, when the policy contemplates the process to be completed within 4 months which was permitted to linger on for 8 to 9 years thereafter.

The Court is thus of the considered view that it is only on account of the fault of the State that the deceased employees were kept away from the benefit of regularisation.

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In the present case, as has been observed earlier, the Court feels that the action of the respondents is violative of Article 16 of the Constitution of India, if an employee is to be denied the benefit of regularisation, as this would tantamount to negation of the principle of equality in matters of employment. It is not a case of misplaced sympathy as the Court is conscious that rules are to be adhered to and enforced, but the Court cannot overlook the exploitation of human resource at the hands of the State and this action at best, can be termed an unfair labour practice when it choses to keep the fate of the employee hanging in balance to take advantage of his need for employment.”

For the aforesaid reasons, I would accept the instant petition and direct the respondents to grant the petitioner deemed date of regularization in terms of the policy instructions (Annexure P-1) and thereafter determine the consequential benefits in favour of the petitioner.

Let needful be done as expeditiously as possible but not later than within a

period of six months from the date of receipt of the certified copy of this order.

January 16, 2015
rekha

(MAHESH GROVER)
JUDGE