

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.1163 of 2014(O&M)

Municipal Corporation Amritsar

----Appellant

Versus

Salwant Singh and others

----Respondents

and

LPA No.1270 of 2014(O&M)

Municipal Corporation Amritsar and another

----Appellants

Versus

Paramjit Singh and others

----Respondents

Date of decision: May 12, 2015

**Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Sandeep Khunger, Advocate
for the appellants.

Mr.R.S.Ahluwalia, Advocate for
private respondents.

Mr.K.K.Gupta, Addl. AG, Punjab
for respondent – State.

Mr.Indresh Goel, Advocate for
respondent - PSIEC.

HARINDER SINGH SIDHU, J.

This judgment shall dispose of two Letter Patent Appeals
bearing Nos.1163 and 1270 of 2014, as common issues are involved

in both these appeals.

These intra-Court appeals under Clause X of the Letters Patent have been filed against the judgment dated 29.8.2013 of the Learned Single Judge, whereby, CWP No.58 of 2003 filed by private respondents praying for directions to the appellant to treat them as regular employees and pay them the regular pay-scales of the posts, held by them, has been allowed. Vide the same order another CWP No.8861 of 2002 filed by the private respondents wherein they had prayed for directions to the appellant Corporation to release the salary that had been withheld since 1.11.2001 has also been disposed of.

However, facts are being taken from LPA No.1163 of 2014.

The private respondents were all working in the Industrial Focal Point of the Punjab Small Industries and Export Corporation Limited (for short 'PSIEC') at Amritsar. They were appointed on daily-wages/work-charge basis between the years 1986 to 1995. A decision was taken on 27.9.1999 that the maintenance of Industrial Focal Points developed by the PSIEC at Ludhiana and Amritsar be transferred to Municipal Corporations of Ludhiana and Amritsar, respectively. A joint inspection of the Industrial Focal Points was undertaken and respondent No.30 i.e. the PSIEC in consultation with the appellant, agreed to transfer funds to the tune of Rs.39.09 lacs to the appellant towards upgradation of the services of the said Focal Point. The staff employed in connection with the maintenance of the

Focal Point which was to be transferred to the appellant along with the Focal Point was also identified.

It is the case of the private respondents that before their transfer, their services were regularised by respondent No.30 – PSIEC vide order dated 27.6.2001 (Annexure P-1). This was done in terms of the Punjab Government policy dated 23.01.2001 as per which work charged employees/ daily wagers who had completed three years of service were eligible for regularization. Subsequently vide order dated 29.6.2001 (Annexure P-2), their services were transferred to the appellant Corporation and they were ordered to be relieved from the Industrial Focal Point Amritsar w.e.f. 30.6.2001. It was thereafter that they joined with the appellant Municipal Corporation w.e.f., 1.7.2001.

It is further their case that employees working in Industrial Focal Point, Ludhiana were similarly transferred to Municipal Corporation, Ludhiana. The Board of Directors of respondent No.30 in its meeting held on 24.9.2001 granted ex-post facto approval for the creation of 46 (22 and 24) supernumerary posts for one day only on the eve of transfer of work-charged/ daily-wage staff to Municipal Corporations Ludhiana and Amritsar. It is their case that upon their transfer, they were paid the pay-scales of regular employees for the months of July to October. However, after October, 2001, they were not released their salaries. On enquiries it came to their notice that an audit objection has been raised by the Deputy Controller (Local Audit), Punjab Municipal Corporation

Amritsar to the effect that no resolution with regard to transfer of their service had been passed by the General House of Municipal Corporation, Amritsar.

Aggrieved of the action of the Municipal Corporation in not releasing their salaries the private respondents initially filed CWP No.8861 of 2001, wherein, they had prayed for directions to the appellant Corporation to release them the salary which had been withheld since 1.11.2001. This petition was admitted vide order dated 11.11.2002. Meanwhile the appellant Corporation was directed to release wages to them on daily wage basis. In the reply to the writ petition it was disclosed by the appellant that the matter with regard to their transfer was still pending with the General House of the Corporation. This led the respondents to file CWP No. 58 of 2003, inter alia praying for directions to the appellant to pay them the regular pay scales by treating them as regular employees.

The stand of the appellant before the Ld. Single Judge which has been reiterated in the present appeal was that the respondents were not regular at the time of their transfer and that their service record had not been sent to the appellant which would also indicate that they were not regular employees before their transfer.

The Ld. Single Judge while allowing the writ petition took note of Annexures A-3 to A-5,(filed with C.M. No. 6570 in CWP No. 58 of 2003) which are communications from the PSIEC (respondent No.30) to the appellant in response to the latter's request dated

14.8.2007 addressed to the Chief Engineer PSIEC to intimate about the status of the private respondents before their transfer. Through these three communications dated 26.9.2007, 10.4.2008 and 9.10.2008, the PSIEC intimated that all the private respondents transferred to the appellant Corporation were regular employees and that the relevant entries had been made in their service books after due verification. It was clearly indicated that their services had been transferred to the Municipal Corporation after their services were regularised by PSIEC.

Ld. Single Judge concluded that these documents left no room for doubt that the private respondents were working on regular basis before their services were transferred. Consequently no action detrimental to their service conditions could have been taken by the appellant Corporation. It was held that the denial of regular pay-scale to the appellants would amount to affecting their service conditions adversely which could not be done as their services had been transferred and their service conditions were necessarily required to be protected.

Ld. Counsel for the appellant has not been able to dispute the documents Annexures A-3 to A-5 relied upon by the Ld. Single Judge. He has only referred to a document which purports to be an Office Order dated 31.5.2001 which has been annexed as Annexure A/2 with the present appeal. As per this Office Order which has been signed by the Sub-Divisional Engineer, PSIEC, Amritsar the private respondents were relieved w.e.f., 31.5.2001 and directed to

submit joining reports to the Executive Engineer Municipal Corporation. The contention based on this Office Order is that the private respondents had been relieved before the order of regularisation was passed by the PSIEC on 27.06.2001.

This contention cannot be accepted. Apart from the fact that this Office Order has for the first time been annexed along with this appeal, this Office Order cannot be relied upon in view of the document Annexure P-2, which is an Office Order signed by the Chief Engineer dated 29.06.2001 as per which the private respondents are transferred to the appellant Corporation and relieved from the Industrial Focal Point w.e.f. 30. 6.2001.

Moreover, apart from the documents Annexures A 3 to A-5 relied upon by the Ld. Single Judge, the fact that the private respondents were regular employees of the PSIEC was also clarified and conveyed to the appellant Corporation by the Chief Engineer of PSIEC by communication dated 6.12.2001. In this communication the Chief Engineer PSIEC specifically states that the employees which were transferred to the appellant Corporation with liabilities and assets from Industrial Focal Point Amritsar vide his letter dated 29.06.2001 were regular employees of the PSIEC. Based on the above there is no escape from the conclusion that the private respondents were indeed regular employees of PSIEC at the time of their transfer. The order for their regularization was made before their transfer and before they were relieved from PSIEC. The fact that the ex-post facto approval for their regularisation was given by

the Board of Directors of PSIEC on a later date i.e., 24.9.2001 would not make any difference as this approval would relate back to the date of the order of regularisation.

Moreover, it is noteworthy that along with the private respondents the employees working in the Industrial Focal Point Ludhiana were transferred to the Municipal Corporation, Ludhiana. They were also regularized along with the private respondents before their transfer. All those employees have been absorbed as regular employees and are being treated as such. The petitioners who are similarly situated cannot be treated differently.

For all these reasons, there is no merit in these appeals and the same are dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

May 12, 2015

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