

CWP No. 8742 of 2010 and
CWP No. 7727 of 2010 and
CWP No. 7641 of 2010 and
CWP No. 9963 of 2010

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

CWP No. 8742 of 2010
DATE OF DECISION :- February 25, 2016

Bejinder Kumar and others **...Petitioners**

Versus

Union Territory Chandigarh and others **...Respondents**

CWP No. 7727 of 2010

Kaka Singh and others **...Petitioners**

Versus

Union Territory Chandigarh and others **...Respondents**

CWP No. 7641 of 2010

Vishwa Nath and others **...Petitioners**

Versus

The Chandigarh Administration and others **...Respondents**

CWP No. 9963 of 2010

Kaula and others **...Petitioners**

Versus

Union of India and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. G.S. Bal, Senior Advocate with Mr. ADS Bal, Advocate for the petitioners in CWP No. 8742 of 2010, CWP No. 7727 of 2010 and CWP No. 7641 of 2010.

Mr. Ayush Arora, Advocate and Mr. Jeevan Gautam, Advocate for the petitioners in_CWP No. 9963 of 2010.

Mr. Amit Kumar Goel, Advocate for respondent-U.T. Chandigarh.

Ms. Alka Chatrath, Advocate for respondent-Municipal Corporation, Chandigarh.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

M.JEYAPPAUL, J.

CWP No. 8742 of 2010

1. The Writ Petitioners aggrieved by the interpretation given by the learned Tribunal to the directions/orders passed in Original Application No. 218/CH/2005 titled Lalit Kumar and others versus Union of India and others decided on 24.2.2006 have preferred the present Writ Petitions.

2. Heard the submissions made on either side.

3. These Writ Petitioners were originally appointed as Daily Wagers in Chandigarh Administration and thereafter their services

were regularized during the period commencing from 1998. The Municipal Corporation, Chandigarh was formed in the year 1994. Distribution of the employees working in the Chandigarh Administration was necessitated on account of the formation of Municipal Corporation. As the notification issued by Chandigarh Administration on 20.5.1996, 392 Work Charged (Regular) Malis were transferred from Municipal Corporation. It is found that at the time when those 392 Work Charged (Regular) Malis were transferred from Chandigarh Administration to Municipal Corporation, Chandigarh, their options were not properly obtained. Later on, Chandigarh Administration sought for options from all the employees who have been transferred to Municipal Corporation as well as employees retained by Chandigarh Administration to switch over to Municipal Corporation, Chandigarh.

4. The above initiation taken by Chandigarh Administration was under challenge in O.A. No. 218/CH/2005 titled Lalit Kumar and others Versus Union of India and others. In Lalit Kumar, the learned Tribunal held that the provisions of Section 428-A (2)(h) of the Punjab Municipal Corporation (Extension to Chandigarh) Act, 1994 are applicable to the employees working under the Chandigarh Administration on or before the transfer of the functions to Municipal Corporation, Chandigarh. The Tribunal also directed that fresh options should be invited from all the employees from Chandigarh

Administration who were in service as on the cut off date i.e. 20.05.1996. As per the decision of the learned Tribunal in Lalit Kumar's case no option shall be taken from the employees recruited after the crucial cut off date. But in case where some posts in Municipal Corporation, Chandigarh remained vacant during the course of the above exercise contemplated under Section 428-A (2) (h) of the Act and there were surplus employees in Chandigarh Administration including those recruited after the crucial cut off date, they would be provided with an opportunity to seek absorption in Municipal Corporation, Chandigarh before retrenchment on the basis of 'last come first go'.

5. The connected case in CWP 5492 of 2010 titled Surjit Singh and others versus Union Territory Chandigarh and others was disposed of as infructuous on 29.9.2010 by this Court based on the information furnished by Chandigarh Administration that there was no surplus Tubewell Operator with the Chandigarh Administration.

6. During the course of hearing of this Writ Petition, learned counsel appearing for the Chandigarh Administration as well as the learned counsel appearing for Municipal Corporation, Chandigarh furnished the statistics as regards the sanctioned strength and working strength of Regular Malis working in Chandigarh Administration as well as in Municipal Corporation, Chandigarh.

7. It is an admitted position that 392 Regular Malis were

transferred by Chandigarh Administration to Municipal Corporation, Chandigarh, to fill up the sanctioned strength of 392 therein. Out of the above sanctioned strength of Regular Malis, the statistics furnished by the Municipal Corporation would disclose that 24 had already been promoted, 34 had retired, 108 had died and 2 were dismissed from service. In other words, on account of such contingency, out of 392 Regular Malis transferred by Chandigarh Administration to Municipal Corporation, Chandigarh to fill up the sanctioned strength of 392, the post of 168 Regular Malis had become vacant, and as a result of which the working strength was reduced to 224.

8. As far as the Work Charged Malis are concerned, it is found that 132 Work Charged Malis were transferred by Chandigarh Administration to Municipal Corporation, Chandigarh. Out of which, 102 Work Charged Malis have been regularized. 144 Daily Wagers had been transferred by Chandigarh Administration to Municipal Corporation during that period. Out of which 92 Daily Wagers have been regularized. As on today, as per the particulars furnished by Municipal Corporation, 418 Regular Malis (224+102+92) are working in Municipal Corporation, Chandigarh against the sanctioned strength of 392 Regular Malis. With the above surplus strength with the Municipal Corporation, the question of seeking for option to switch over to Municipal Corporation has virtually become redundant.

9. Now let us consider the statistics which has been furnished by Chandigarh Administration to know whether there is any excess strength of Regular Malis available for the purpose of transferring them to Municipal Corporation. It is the admitted case of the Chandigarh Administration that the sanctioned strength of Regular Malis is 246. But the working strength is only 226. In other words, the Chandigarh Administration which required 246 Regular Malis is short of 20 Regular Malis. With such a vacancy available with Chandigarh Administration, the question of parting with any regular Malis who have been appointed after the cut off date i.e. 20.5.1996, does not arise for consideration.

10. It is brought to our notice by the counsel appearing for the Writ Petitioners who are serving in Chandigarh Administration, counsel appearing for Municipal Corporation and counsel appearing for Chandigarh Administration that there was no grievance expressed by any of the employees working either in Chandigarh Administration or in Municipal Corporation as regards their employment in the respective Establishments.

11. In view of the above development in this case, we find that initiation of proceedings by the Chandigarh Administration directing the regular employees appointed after the above cut off date to exercise their option to switch over to Municipal Corporation in terms of the order passed in Lalit Kumar would be an exercise in

futility. When the employees working in Chandigarh Administration and Municipal Corporation do not have any grievance and they are virtually working with full satisfaction, the exercise undertaken by the Chandigarh Administration would create only heart burning for the employees working in these two establishments.

12. In view of the fact that the Writ Petitioners are not found surplus in the services of Chandigarh Administration, they are entitled to continue in the services of Chandigarh Administration. As a result, the Writ Petition is disposed of as infructuous. As far as the vacancies that may arise in either of these Establishments, they are at liberty to go in for recruitment in terms of their Rules and Regulations.

CWP No. 7727 of 2010

1. The Writ Petitioners have furnished the vacancy particulars of the posts of Chowkidars, Beldars, Trade Mate, Keyman and Petrolman which discloses that there is virtually no excess strength in the above posts in Chandigarh Administration. When there is no surplus in the above cadres, the question of directing the employees working in those cadres to exercise their option to go to Municipal Corporation, Chandigarh does not arise for consideration. If there is any vacancy against the sanctioned strength in the above cadres in Municipal Corporation, they are at liberty to go in for recruitment in accordance with the Rules and Regulations.

2. In view of the above circumstances, the Writ Petition is disposed of as infructuous subject to the verification of factual particulars by the Administration/Corporation.

CWP No. 7641 of 2010 and CWP No. 9963 of 2010 :-

1. In the connected Writ Petitions disposed of as above, we have taken a decision that the question of seeking the option from the employees who have been appointed in the Chandigarh Administration after 20.5.1996 does not arise as there was no surplus employees in various categories of posts in Chandigarh Administration. Only when there is excess of employees in the categories of posts concerned in Chandigarh Administration, the question of sending them on transfer from Chandigarh Administration after obtaining their options or otherwise would arise.

2. Learned counsel appearing for the Writ Petitioners submits that this Writ Petition also be disposed of in terms of the observations made by this Court in the other connected Writ Petitions.

3. It is brought to the notice of this Court that there was no surplus of work force in the cadre of Work Charged Munshis, Sweepers and peons in the Chandigarh Administration as on today. Therefore, in our view, the question of sending them on transfer to Municipal Corporation, Chandigarh does not arise.

4. The Writ Petitioners shall not be disturbed from

Chandigarh Administration inasmuch as no occasion has arisen for the Chandigarh Administration to call for any option from the Writ Petitioners as they are not in excess.

5. In view of the above facts and circumstances, the Writ Petitions are disposed of as infructuous giving liberty to the Chandigarh Administration and the Municipal Corporation to approach this Court, if the aforesaid information furnished by the petitioners for disposal of these Writ Petitions is found to be incorrect.

(M. JEYAPPAUL)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

February 25, 2016

p.singh