

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

CWP No.3692 of 2014

Date of Decision: 08.09.2016

Harpreet SinghPetitioner

Versus

State of Punjab and othersRespondents

CWP No.18591 of 2011

Harpreet Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Arjun Pratap Atma Ram, Advocate
for the petitioner(s).

Mr. Anshul Gupta, A.A.G., Punjab
for the respondent-State.

Mr. Vijay Kumar Kaushal, Advocate
for respondents No.2 and 3,.

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of ***CWP No.3692 of 2014***
and ***CWP No.18591 of 2011*** as common question of law and facts are
involved. However, for the sake of convenience, the facts are being derived
from ***CWP No.3692 of 2014***.

CWP No.3692 of 2014 has been filed by petitioner-Harpreet
Singh for issuance of a writ in the nature of *certiorari* quashing the order of

Censure dated 14.02.2012 passed by respondent No.3 and order dated 21.06.2013 rejecting regularisation of his services. A further prayer has also been made for issuance of direction to respondent No.2 to regularize the services of the petitioner as per Regularization Policy dated 10.06.2013 from the date the services of similarly situated employees were regularized.

CWP No.18591 of 2011 has been filed by the petitioners- Harpreet Singh and Ravinder Singh for issuance of a writ in the nature of *mandamus* directing the respondents to regularize their services in terms of Punjab Government Notification dated 18.03.2011. A further prayer has also been made for issuance of a direction to the respondents to consider the representation made by the petitioners by passing a speaking order.

Briefly, the facts of the case, as made out in the petition bearing ***CWP No.3692 of 2014*** are that the petitioner was appointed on the post of Sub Divisional Engineer (Civil) on contract basis initially for a period of two years in the Department of Punjab Water Supply and Sewerage Board vide order dated 13.03.2008. During this period, a notice was issued to the petitioner to explain as to how the payment of ₹ 20,000/- was made through cheque to one Sh. Ashok Kumar Contractor. In response thereto, he submitted reply stating therein that the cheque was issued at the instance of Sub Divisional Clerk-Sh. Lallan Parsad as the same was filled up by him under the seal of Sub Divisional Engineer and he had signed the same under good faith. The matter was inquired into and the order of censure was passed. Subsequently, the period of contract of petitioner was extended on the recommendation of Executive Engineer by considering his work and conduct as satisfactory. Thereafter, the Government of Punjab issued a policy for regularization of the services of the employees working on

contractual basis vide Memo dated 10.06.2013. Petitioner applied for regularization of his services along with other colleagues but his claim was rejected.

The order of rejection has been challenged in the present petition by raising various grounds.

Learned counsel for the petitioner submits that the impugned order of censure was passed by respondent No.3 without there being any jurisdiction vested with him and being lower in rank as the petitioner was appointed by the Managing Director. Learned counsel also submits that the order of censure was never communicated to the petitioner and he came to know about this only when his services were not regularized, whereas, the services of other employees were regularized. Learned counsel also submits that the punishment of censure cannot be considered as a ground for non-regularization of services of the petitioner. At the end, learned counsel for the petitioner submits that the Executive Engineer was the party in dispute and he could not have gone into the allegations and issued charge sheet to the petitioner. Said cheque and hand receipt were prepared and initiated by one Lallan Parsad under the seal of Sub Divisional Engineer. Thereafter, it was sent to Executive Engineer to pass the same and hence, the petitioner cannot be held responsible for the same.

Learned counsel for respondents No.2 and 3 submits that the claim of the petitioner was rightly rejected as he was working on contract basis. As per condition of the policy, the work and conduct should be satisfactory, whereas, petitioner was charge sheeted under Rules 8 and 12 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for misuse of his official powers as a fraud was played with the department. He was

responsible for not checking the initial record at the time of passing the hand receipt. After a detailed inquiry, the petitioner was awarded the punishment of censure. Learned counsel further submits that earlier also, the petitioner was charge-sheeted for negligence in the performance of his official duties causing damage to the structure and causing financial loss to the respondent-Board. Enquiry in this matter was completed on 20.05.2014 and another charge sheet was also issued to the petitioner on 25.08.2014 for dereliction in performance of his official duties; loss of confidence; tarnishing the image of the board and non-commissioning of water supply lines laid under MDF and PMIDC projects and hence, it cannot be said that the work and conduct of the petitioner was satisfactory. Learned counsel further submits that the period of contract of the petitioner was extended as he had filed ***CWP No.18591 of 2011*** for regularization of his services, wherein, *status quo* order was passed.

Learned counsel for respondents No.2 and 3 has relied upon the judgments of Hon'ble the Apex Court in cases ***Gridco Limited vs Sri Sadananda Doloi AIR 2012 SC 729, Surendra Prasad Tewari vs Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad 2006(7) SCC 684, Punjab State Warehousing Corp., Chandigarh vs Manmohan Singh 2007(9) SCC 337, Punjab Water Supply and Sewerage Board vs Ranjodh Singh 2007 (2) SCC 491*** and ***Andhra Pradesh State Federation of Cooperative Spinning Mills Limited vs P.V. Swaminathan 2001(10) SCC 83***, in support of his contentions.

Heard the arguments of learned counsel for the parties and have also gone through the record available on the file.

Admittedly, the petitioner was appointed on the post of Sub

Divisional Engineer (Civil) on contract basis vide order dated 13.03.2008 for a period of two years. A charge sheet was issued to him alleging therein that an amount of ₹ 20,000/- was paid by him to Contractor-Ashok Kumar through cheque. His explanation was called for and an inquiry was also conducted. He was awarded the punishment of censure. Thereafter, the claim of the petitioner for regularization of his services was rejected vide Order dated 21.06.2013 on the ground that he was awarded the punishment of censure. The impugned order has been challenged on the ground that the period of contract of the petitioner was extended by considering his work and conduct as satisfactory but still his claim has been rejected. It is also contended that the impugned order was passed by the incompetent authority, who was lower in rank to the appointing authority. It is also the argument of learned counsel for the petitioner that the petitioner was working on contractual basis but he was treated as a regular employee as not only the charge sheet was issued to him but the inquiry was also conducted. Petitioner is claiming regularization on the basis of total length of service keeping in view the policy of State Government, whereas, on perusal of terms and conditions of appointment of the petitioner, it is clear that he was initially appointed for a period of two years from the date of his joining and salary was to be paid to him at the rate of ₹ 20,000/- per month. It is also mentioned in the appointment letter that the appointment is purely on contractual basis and he will not have any right for regular appointment in the respondent-Board. Petitioner is also claiming regularization of his services on the ground that similarly situated employees have been regularized. As per policy of regularization, the work and conduct of the employee should be satisfactory but certain allegations were levelled

against the petitioner and the charge sheet was also issued to him. Learned counsel for respondents No.2 and 3 is not in a position to show as to how the provisions of Punjab Civil Services (Punishment and Appeal) Rules, 1970 are applicable when the petitioner has been working on contractual basis. It is also not disputed that the petitioner was never given an opportunity of hearing while conducting the inquiry. On the basis of preliminary inquiry, the punishment of censure was awarded. For consideration of regularization of services of the petitioner, the work and conduct should be satisfactory but as certain allegations were levelled against him, it cannot be said that his work and conduct was satisfactory. There is no compliance of provisions of said Rules as an opportunity of hearing was required to be given to the petitioner under the Rules but the same has not been granted. It has been stated by learned counsel for respondents No.2 and 3 that because of interim order passed in favour of the petitioner, no action could be taken against him, otherwise, he was not entitled for continuation of his contract.

The judgments relied upon by learned counsel for the respondents are not applicable to the facts and circumstances of the present case.

The claim of the petitioner cannot be considered at this stage as the departmental proceedings initiated against him are not in accordance with law. The respondent authorities are not sure as to whether the Punjab Civil Services (Punishment and Appeal) Rules, 1970 would be applicable or he would be governed by the terms and conditions of the appointment letter.

Accordingly, nothing can be said at this stage as to whether the work and conduct of the petitioner has been satisfactory or not. It is left to

the respondent authorities to reconsider the matter afresh and to conduct inquiry, if necessary after association of the petitioner. However, it is also directed to the respondent that till the case of the petitioner is considered, his services shall not be terminated.

Respondents no.2 and 3 are also directed to consider the representation of petitioner-Harpreet Singh and to decide the same in accordance with policy and by considering his work and conduct after giving opportunity of hearing to the concerned employee, if necessary.

Both the petitions bearing ***CWP No.3692 of 2014*** and ***CWP No.18591 of 2011*** are accordingly disposed of.

08.09.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes