

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

CWP No.11866 of 2015 (O&M)

Date of Decision: May 17, 2017

Neelam Jayal

...Petitioner

vs.

Punjab State Electricity Regulatory Commission and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Namit Kumar, Advocate
for the petitioner.

Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Akshit Chaudhary, Advocate
for respondents No.1 and 3.

Mr. L.S. Virk, AAG Punjab
for respondent No.2-State.

JAISHREE THAKUR, J.

The instant writ petition has been filed inter alia with the
following prayers:-

“i) issue a writ in the nature of mandamus directing the respondents to treat the appointment of the petitioner as regular appointment on being declared surplus by the Punjab National Fertilizers and Chemicals Ltd., Chandigarh, a Punjab Government Undertaking, in terms of order dated 19.12.2000 (Annexure P-2) or in the alternative regularize the services of the petitioner in view of the instructions of the State Govt. dated 15.12.2006 and 18.03.2011, Annexure P-11 and P-12 and

allow the petitioner to continue in service upto the age of 68 years in the same manner as other employees are being allowed to continue as per Draft Service Regulations known as “Punjab State Electricity Regulatory Commission (Appointment and Service Conditions of Employees) Regulations, 2014.

iA) issue a writ in the name of certiorari quashing the order dated 17.08.2015 (Annexure P-13A), whereby her claim for extension in service upto the age of 68 years has been rejected in a totally illegal and arbitrary manner.

ii) issue a writ in the nature of mandamus directing the respondents to grant regular pay-scale to the petitioner w.e.f. 02.05.2002 with all consequential benefits including arrears along with interest at the rate of 18% per annum.

iii) to direct the respondents not to terminate the services of the petitioner and allow her to continue in service beyond 30.06.2015, during the pendency of the present writ petition”

2. In brief, the facts are that the petitioner was appointed as Clerk-cum-Typist/Receptionist on 17.01.1981 with Punjab National Fertilizers and Chemicals Ltd., Chandigarh, a Punjab Government Undertaking (hereinafter referred as 'the PNFCL'). Thereafter, on the basis of a regular appointment, she was appointed on regular basis as Receptionist-cum-EAPBX Operator vide appointment letter dated 24.09.1984. After setting up of the Punjab State Electricity Regulatory Commission(hereinafter referred as 'the Commission'), 111 posts were sanctioned by the Punjab Government, to make the Commission operational. The name of the petitioner was forwarded by the PNFCL, by letter dated 17.08.2001 and consequently, the petitioner was appointed as a Receptionist with the Commission on deputation by letter dated 30.04.2002. The petitioner was paid salary equal to the salary paid at PNFCL. The PNFCL was declared as defunct and the

staff became surplus and adjusted in various Boards and Corporations. The petitioner herein, too was declared surplus with PNFCL, and was taken on contract with the respondent-Commission for a period of two years and further extended from time to time. By letter dated 04.01.2005, the services of the petitioner was extended only for a period of two months, which led to the filing of the instant writ petition, in which, it was requested to direct the Commission to consider the claim of the petitioner for extension in service, which came up for hearing and by order dated 29th May, 2015, it was directed to consider her claim, which came to be rejected on 17.08.2015. Against the rejection, the petitioner filed the instant amended writ petition seeking to challenge the impugned order dated 17.08.2015.

3. Mr. Namit Kumar, learned counsel appearing on behalf of the petitioner contends that the petitioner herein is entitled to continue in service upto the age of 68 years as per Draft Service Regulations known as "Punjab State Electricity Regulatory Commission (Appointment and Service Conditions of Employees) Regulations, 2014" (hereinafter referred to as 'the Draft Service Regulations'). It is contended that the petitioner has been continuing with the Commission since the last 13 ½ years and persons similarly situated have been given extension in service. It is argued that one Sh. H.R. Nagra, retired Tehsildar from U.T. Chandigarh, has been appointed as Superintendent Grade-I in March 2011. Sh. C.S.Rai, on retirement has been adjusted in the Commission on re-employment. It is also argued that the petitioner has already attained the age of 57 years and would not be able to get a job elsewhere and whereas, the Draft Service Regulations permits an employee to continue in service upto the age of 65 years and if working

on contract basis upto the age of 68 years and therefore, the petitioner being on contract basis, would be entitled to continue in service upto the age of 68 years. It is further contended that having worked satisfactorily, the petitioner would be entitled to seek regularization as well in terms of Policy dated 18.3.2011.

4. Per contra, Mr. Ashwani Kumar Chopra, learned Senior counsel along with Mr. Akshit Chaudhary, appearing on behalf of respondents No.1 and 3 submit that the petitioner was initially an employee of PNFCL and taken on deputation for a period of two years. The said Corporation was wound up by order dated 27.07.2001 of this court passed in CP No.71 of 2000. Vide letter dated 19.04.2004, the petitioner was engaged on contract basis with the Commission at her request which was considered by the competent authority and she was engaged on compassionate grounds by letter dated 18.01.2004. Moreover, the petitioner claim to continue under the Draft Service Regulations, cannot be taken into consideration on account of the fact that Punjab State Electricity Regulatory Commission (Appointment and Service Conditions of Employees) Regulations, 2015 have been duly approved by the State Government and have subsequently been notified in the Punjab Government Gazette dated December 24, 2015. As per the Regulations of 2015, the appointments in the Commission are to be filled up either by way of direct appointment (either on contract or outsourcing basis), promotion and deputation. Moreover, as per the regulations, all posts starting from the Secretary of the Commission till the post of Sweeper are to be filled up on contract basis on a lumpsum payment as provided in Annexure 'B' to the Regulations and as

such, there is no regular post in the Commission and therefore, the claim of the petitioner for regularization too cannot be accepted.

5. I have heard learned counsel for the parties and have also perused the record of the case.

6. The only question that would arise for consideration of this court is whether the petitioner, who was initially sent on deputation to work with the Commission and then kept on contract, would be allowed to continue in service in terms of the Draft Service Regulations, 2014, whereby, the maximum age of contractual employee was 68 years and whether she would be entitled to regularization, as claimed.

7. The Apex court in the **State Of Haryana and others vs. Piara Singh and Others, 1992 (3) SCT 201** has frowned upon replacing an ad hoc or temporary employee with another set of ad hoc or temporary employees. The same question arose before Apex court in **Hargurpratap Singh vs State of Punjab, 2007 (13) SCC 292**, wherein it was held that it would not be appropriate to displace one ad hoc arrangement by another ad hoc arrangement, as persons had gained experience which would be more beneficial and useful rather than to appoint persons afresh on ad hoc basis. The principle of replacing ad hoc, temporary, contract employees with another set of ad hoc, temporary, contract employees has been deprecated time and time again in a catena of judgments both by this court and by the Apex court in **Malwinder Singh Mali vs. Punjabi University Patiala, 2000 (1) S.C.T 651, Sangeeta Sharma vs. Union Territory Of Chandigarh, 2005 (3) SCT 274, Rajwinder Kaur and others vs. State Of Punjab Etc., Civil Writ Petition No. 7882 of 2004.**

8. The petitioner was initially sent on deputation with the respondent corporation in the year 2002 as the same was being set up. Punjab National Fertilizer Corporation, the parent Department of the petitioner was ordered to be wound up on 27.07.2001 and the employees of the Corporation stood discharged or adjusted within some Board or other Corporations. The petitioner herein represented to the Corporation for adjustment on contract basis on personal grounds, and she was engaged w.e.f. 18.05.2004 with PSERC on contract basis which was extended from time to time. Since the Corporation herein initially did not have any rules , the Punjab State Electricity Regulatory Commission (Appointment and Service Conditions of Employees) Regulations 2015 were notified in the Punjab Government Gazette (Extra Ordinary) dated December 2015. As per the provisions of the Regulations of 2015, all posts starting from the post of the Secretary of the Commission to the post of the sweeper are to be filled in on contract basis, on a lump sum payment as provided in Annexure 'A' to the Regulations or as per the rates approved by the Deputy Commissioner.

9. The argument raised that the services of the petitioner are not going to be replaced by merely appointing another person on contract in violation of settled law, but in terms of the new Regulations of 2015 that had come into force, would have merit. The Regulations having statutory force, provided for appointment and service conditions of employees of Punjab State Electricity Regulatory Commission. As per Regulation 4-Mode of Appointment to service has been provided by (a) direct appointment, (b) promotion, (c) deputation, with a proviso that direct appointment shall be only on contract or service can be outsourced. As per Regulation 5

Qualifications and Experience for appointment to various posts in the Commission has been specified in Annexure 'C' with a stipulation that no relaxation in educational qualification and experience for appointment shall be made. Regulation 6 lays out the terms and conditions of appointment. As per which the Commission is to consider suitable persons having requisite qualifications and experience for appointment on contract basis, with a further rider that applications will be invited through advertisement in the press and through commissions website. Such appointment shall be made initially for one year which can be extended from time to time by the appointing authority the maximum duration of service will be up to 65 years of age for the employee taken on contract basis. Regulation 7 provides for filling up vacancies of posts other than group 'A' services through contract by advertisement and press and commissions website or to be filled up either on deputation by circulating vacancies to concerned departments of the state governments/ State Power Utilities by advertisement and press or on commissions website. The post of receptionist is a group C post and qualifications have been prescribed at serial No. 23 of Annexure C which is educational qualification of graduate in any discipline from a recognised University, minimum 5 years working experience on equivalent post with competency in handling EPBAX system, good verbal and written communication skills in English Hindi and Punjabi with Matric in the Punjabi language. As per the regulations only the services of the driver, security guard and peon are to be outsourced.

10. **In State of Karnataka vs. Umadevi (3), (2006) 4 SCC 1**, it has been held as under:

“3. A sovereign Government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. Going by a law newly enacted, the National Rural Employment Guarantee Act, 2005, the object is to give employment to at least one member of a family for hundred days in a year, on paying wages as fixed under that Act. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.

4. But, sometimes this process is not adhered to and the constitutional scheme of public employment is bypassed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called “litigious employment”, has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over. It is time, that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities,

irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.”

11. The law clearly mandates that a regular recruitment through a regular selection should be the mode of appointment and only in exceptional circumstances and in order to meet the exigencies of Administration, that ad hoc or temporary appointment should be made. If Regulations of 2015 have come into effect which in turn provides for a mode of appointment, qualifications and experience for appointment, the effort of the Commission would be to comply and fill up the posts accordingly by an open selection. Contractual/adhoc/temporary employee can be replaced only by regularly selected employees in order to avoid any favouritism, ad hocism and arbitrary action on the part of the appointing authority. Therefore, it is not within the jurisdiction of this court to stop the process of regular selection under the Regulations of 2015. It is not as if the petitioner is sought to be replaced by another contractual employees, since all appointments are on the basis of a contract, but would be replaced after a selection process is initiated under the Regulations. The Commission would have to follow the procedure as laid down in the Regulations for making an appointment by advertising, putting up a public notice, invite applications while looking into the educational qualifications etc. The petitioner would of course be at liberty to apply in terms of the advertisement and face the test of selection along with others.

12. The argument raised by the counsel for the petitioner regarding regularization of services in terms of the Policy dated 18.3.2011 is also

without merit. The petitioner would not be entitled to regularization of her services against the post she has been engaged on , as the said engagement has not been done by following any procedure as provided for filling up the post. She was initially on deputation and when PNFCL was wound up, she requested by letter dated 19.04.2004 on humanitarian grounds and on account of illness of her husband, she may be retained within the Commission. Moreover once the Regulations have come into effect there is no provision for regularization of services, in view of all appointments being contractual. With the Regulations of 2015 in effect, as a natural colliery, the argument raised that the petitioner is entitled to be retained till the age of 68 years on the basis of Draft Regulations 2014 is negated. The Regulations as in force provide for a maximum age of 65 years. The plea for a regular salary would also not be sustainable in the light of the discussion herein above where the petitioner is a contractual employee.

13. Therefore, in view of the above, the writ petition is dismissed as being without merit. However, while dismissing the petition it is directed that the petitioner would be allowed to continue to discharge her duties till the process of filling in the post of a receptionist is not initiated under the Regulations of 2015. Needless to say, as there is only a maximum age limit set out under the Regulations ,the petitioner would be entitled to participate in the selection process, which is to be considered on merit.

14. Writ petition stand disposed of with the aforesaid directions.

May 17, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No