

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 13.02.2017

<i>SATNAM SINGH & OTHERS</i>		<u><i>CWP-15827-2013 (O&M)</i></u> <i>... Petitioners</i>
	<i>V/s.</i>	
<i>STATE OF PUNJAB & OTHERS</i>		<i>...Respondents</i>
<i>SANJAY & OTHERS</i>		<u><i>CWP-9845-2014</i></u> <i>...Petitioners</i>
	<i>V/S</i>	
<i>STATE OF PUNJAB & OTHERS</i>		<i>...Respondents</i>
<i>AMARJIT SINGH AND OTHERS</i>		<u><i>CWP-10239-2014 (O&M)</i></u> <i>...Petitioners</i>
	<i>V/S</i>	
<i>STATE OF PUNJAB AND ANOTHER</i>		<i>...Respondents</i>
<i>PARAMJIT KAUR</i>		<u><i>CWP-10273-2014</i></u> <i>...Petitioner</i>
	<i>V/S</i>	
<i>PSEB</i>		<i>...Respondents</i>
<i>AVTAR SINGH AND OTHERS</i>		<u><i>CWP-10407-2014</i></u> <i>...Petitioners</i>
	<i>V/S</i>	
<i>STATE OF PUNJAB AND OTHERS</i>		<i>...Respondents</i>
<i>KAMALJIT & OTHERS</i>		<u><i>CWP-11088-2014</i></u> <i>...Petitioners</i>
	<i>V/S</i>	
<i>STATE OF PUNJAB & OTHERS</i>		<i>...Respondents</i>
<i>SHINGARA SINGH AND OTHERS</i>		<u><i>CWP-24434-2014</i></u> <i>...Petitioners</i>
	<i>V/S</i>	
<i>STATE OF PUNJAB AND ANOTHER</i>		<i>...Respondents</i>
<u><i>CORAM:</i></u>	<u><i>HON'BLE MR. JUSTICE KULDIP SINGH</i></u>	

Present: Mr. Berjeshwar Singh Jaswal, Advocate,
for the petitioner(s).
(in CWP Nos. 15827 of 2013, 9845 of 2014 and 11088 of 2014)

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Mr. Arvinder Singh, Advocate,
for the petitioner(s).
(in CWP Nos. 10239 of 2014 and 24434 of 2014)

Mr. J.S. Maanipur, Advocate,
for the petitioner(s).
(in CWP No. 10407 of 2014)

Mr. Vivek Sharma, Advocate,
for the petitioner(s).
(in CWP No. 10273 of 2014)

Mr. R.S. Pathania, DAG, Punjab.

Mr. J.S. Puri, Advocate,
for respondents No. 2 and 3.
(in all the writ petitions)

KULDIP SINGH, J. (Oral)

This order of mine shall dispose of seven connected civil writ petitions bearing numbers *CWP-15827-2013*, *CWP-9845-2014*, *CWP-10239-2014*, *CWP-10273-2014*, *CWP-10407-2014*, *CWP-11088-2014* and *CWP-24434-2014*.

For the purpose of brevity, the facts have been extracted from leading writ petition bearing No. *CWP-15827-2013*.

The facts of these cases are that the petitioners in all the writ petitions are working as Junior Assistants/Senior Assistants in Punjab School Education Board. The petitioners claim that their services rendered on the basis of contract/*ad hoc*/daily wages/work charge, prior to their regularization, should be treated as a qualifying service for grant of retiral benefits. They further seek quashing of the Government letter dated 09.12.2011 (*Annexure P-8*) whereby the Government has directed that the benefit of old pension scheme cannot be given to the petitioners in view of the new 'Defined

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Contributory Pension Scheme' (*Annexure P-9*) which came into force w.e.f. 01.01.2004.

It comes out that the petitioners were appointed on the basis of contract/*ad hoc*/daily wages/work charge in the years between 1993 to 1996. One writ petition bearing CWP No. 10047 of 2003 was filed by the petitioners and other co-employees against the State of Punjab and Punjab School Education Board, seeking regularization of their services who were appointed on the basis of contract/*ad hoc*/daily wages/work charge. During the pendency of the said petition, the petitioners and other employees working with the Board prior to 1998, were regularized and they were given regular pay scales w.e.f. August, 2004 and accordingly the said writ petition was withdrawn on 06.08.2004. The service of the petitioners, who were appointed on contract/*ad hoc*/daily wages/work charge prior to 1998, were regularized on the basis of Punjab Government's notification dated 23.01.2001 (*Annexure P-2*) which was duly adopted by the Board on 13.07.2004. Thereafter, the petitioners demanded the pension. In this regard, various meetings were also held wherein it was decided that the case of the petitioners may be referred to the Punjab Government and further action be taken on receipt of the approval from the Punjab Government. The matter was thereafter referred to the Government for the approval for granting the benefit of pension as per the old pension policy of the Government on 28.11.2011. The Punjab Government vide letter dated 09.12.2011 (*Annexure P-8*) has declined the said approval.

The petitioners now have two claims; first, that their services on the basis of contract/*ad hoc*/daily wages/work charge should be computed for the purpose of grant of retiral benefits. Second, that since, according to

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petitioners, their services have been regularized w.e.f. August, 2004, therefore, they are governed by the old pension scheme and not by the new 'Defined Contributory Pension Scheme' and the Government letter dated 09.12.2011 (*Annexure P-8*) is illegal and liable to be quashed.

Respondent No. 2 and 3 in the written statement claimed that the services of the petitioners were never regularized. In fact, they were issued fresh appointment letter in August, 2004.

While tracing out the history, it is stated that in the year 1993-96 various persons including petitioners were appointed as Clerk on the basis of contract/ad hoc/daily wages/work charge for 89 days. However, in CWP No. 1046 of 1994 titled as Sukhwinder Singh Vs. PSEB, this Court vide order dated 30.05.1994 had directed that the contract appointment will not continue for more than six months or till the appointment to the posts of clerks and peons are made on regular basis, whichever is earlier. It was further stated that *ad hoc* appointment, beyond advertised posts of Clerk, shall not continue beyond six months. Consequently, on 31.01.1995, the services of 224 *ad hoc* Clerks were terminated. It was also directed that in case any of the *ad hoc* Clerk has been regularized before 31.01.1995, his services shall deemed to be terminated from that date and also that out of these 224, those who were shown at Sr. No. 211 to 224 were in fact working as a Class IV employees and were appointed as *ad hoc* Clerks would now go back on their earlier posts.

Thereafter, due to exigencies of work and due to commencement of examination, 184 employees were kept on contract basis for six months on fixed salary vide order dated 08.02.1995, 09.02.1995 and 13.02.1995 (*Annexure R-2/3*) and thereafter continued from time to time due to exigencies

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of service. In the year 1996, Board advertised for recruitment of 134 posts of Clerks but the same was cancelled. It was again issued on 11.05.1998 but due to ban on recruitment by the Government, it was kept in abeyance. Most of these Clerks, who were kept on contract basis, have filed various writ petitions bearing numbers CWP No. 3222 of 2000, CWP No. 3480 of 2000, CWP No. 3488, CWP No. 3488 of 2000, CWP No. 3489 of 2000, CWP No. 3515 of 2000, CWP No. 3516 of 2000, CWP No. 3523 of 2000, CWP No. 3611 of 2000, CWP No. 3632 of 2000, CWP No. 3677 of 2000, CWP No. 3688 of 2000, CWP No. 3817 of 2000, CWP No. 4577 of 2000 and CWP No. 4658 of 2000 which were dismissed on 12.07.2000 with a direction that the petitioners shall be allowed to continue in service for the period of four months or till the availability of regularly selected persons, whichever is earlier. It was further observed that process of selection in pursuance of advertisement of 1998 and make the appointments within four months and that the continuance of the petitioners in pursuance of this direction shall be purely fortuitous and shall not confer any right upon them to claim other service benefits. The SLP No. 12819 of 2000 filed against the said order was dismissed by the Apex Court on 28.08.2000. Thereafter, another round of litigation has started whereby four writ petitions were filed bearing CWP Nos. 11983 of 2001, 7834 of 2001, 12584 of 2001 and 12585 of 2001 seeking regularization of service in view of the Government Policy dated 23.01.2001. But the said bunch of four writ petitions were dismissed by the Division Bench of this Court vide order dated 14.12.2001 (Annexure R-2/6), on the ground that this policy has not been adopted by the Board. Thereafter, the service of 134 Clerks by way of direct recruitment was completed but their services were dispensed with vide order

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dated 02.08.2002. Thereafter, another writ petition i.e CWP No. 16002 of 2002 titled as Sarabjit Kaur and others Vs. PSEB challenging the order of termination has been filed, wherein the Division Bench of this Court, on the basis of the compromise, constituted a High Powered Committee headed by Hon'ble Mr. Justice N.K. Aggarwal (Retd.) to inquiry into the matter which gave a finding that selection was not proper.

Thereafter, another CWP No. 20230 of 2003 was filed seeking reconsideration of the case of regularization. The same was disposed of vide order dated 20.12.2003 with the direction to respondents to decide the representation (Annexure R-2/14) of petitioners within four months.

In view of the matter, the Committee, constituted by the Board, has made the recommendations on 09.07.2004 for adopting the policy of the Government, mutatis mutandis, for regularization of services on the basis of new appointment on probation as per the service regulations of the Board. Further, the appointees were placed at the end of the seniority list. The recommendations are annexed as Annexure R-2/15. Consequently, fresh appointment letters to the petitioners were issued as it is a case of fresh appointment. Therefore, the petitioners are not entitled to the relief claimed by them.

I have heard the learned counsel for both the parties and have carefully gone through the case file.

The history of the case as given above is undisputed. The petitioners were initially appointed on the basis of contract/ad hoc/daily wages/work charge. Their services were terminated for one or the other reasons as stated above and then they were re-appointed on contract basis and

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continued to work on the same. It is not disputed that the Government had come out with the policy (*Annexure P-2*) dated 23.01.2001 regarding review of policy of regularization of work charge, daily wages employee and other categories of employees. It appears that it was the one time measure. The Government had decided for regularization of the services of the work charge/daily wages employees and other categories of employees subject to certain conditions.

Undisputedly, the said policy was adopted by the Board w.e.f. 13.07.2004. In the meeting held on 14.06.2004, recommendations made by the Committee (*Annexure R-2/15*) were accepted. The extract of the recommendations of the Committee are reproduced as under: -

1. *The Board may consider adopting the Punjab Government instructions No. 11/34/2000-4PP/III/1301 dated 23.01.2001 to cover the case in hand as a one time measure on purely humanitarian grounds which was the foundation of the order passed by the Hon'ble Supreme Court in Balkar Singh's case. But this will be adopted **mutatis mutandis** as per the advice of Sh. R.N. Raina, Advocate, Punjab and Haryana High Court. The Establishment Branch will prepare the list of all categories of such work charged, daily wages and other categories of workers/employees determining the Seniority on the basis of length of service in the Board upto 23.01.2001, subject to the condition that such work charged, daily wages and other categories of workers/employees should be in the service of the Board on 23.01.2001 and also that they should have served in the Board atleast for three years upto 23.01.2001. Establishment Branch will certify that the list is prepared as per record and there is no mistake and is strictly as per the above mentioned terms and conditions. The Board members namely Sh. C.D. Shastri and Dr. Rita Bawa will also check the correctness of the list of the work charged, daily wages and other categories of workers/employees so prepared by the Establishment Branch. If the*

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Board agrees to the recommendations of the committee, new appointment letters on probation, as per service regulations of the Board, will be issued to such work charged, daily wages and other categories of workers/employees in the order of seniority. They will be placed at the end of the seniority list of the cadre in which they are given the new appointment. This recommendation will be applicable to all the categories of such work charged, daily wages and other categories of workers/employees. Remaining vacant posts of class III and IV categories may be filled through Employment Exchange.”

The decision of the Board dated 13.07.2004 (Annexure R-2/16) while accepting the recommendations, is reproduced as under: -

“Keeping in view all the points entered in this representation, the recommendation of the proceedings attached as Annexure A are accepted after due consideration.

This was also decided that the list of the Staff whose services are being regularized be prepared and placed on the notice board of the office and be circulated through publication in the newspapers and objections be demanded from the concerned within 10 days. After this list be finalized and necessary action be taken as per the decision of the Board.”

The acceptance of the recommendations of the Committee shows that the Board used the word ‘regularization’ while accepting the recommendations. Thereafter, even in the public notice which was issued in the newspaper “Hindustan Times” on 18.07.2004 (Annexure P-3) annexed with the connected writ petition bearing No. CWP No. 9845 of 2014 titled as Sanjay and others Vs. State of Punjab and others, mentioning that Punjab School Education Board in its meeting has decided to appoint work charges/daily wages and other categories of workers/employees on regular basis against the permanent vacancies subject to the condition that they should

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be in service of the Board prior to/on 23.01.2001. They must have served at least three years upto the said date and should be eligible for services as per the service regulations of the Board except the condition of upper age limit. The inter-se seniority list was attached with the publication and objections were invited upto 28.07.2004. It was in pursuance to the said publication, various appointment letters were issued starting from 01.08.2004 giving the fresh appointment to the petitioners. They are also subject to the condition on probation as per the service regulations of the Board. Thereafter, the Board sent a communication dated 20.10.2011 (Annexure P-7) to the Government seeking advice in respect of granting benefit of pension to its employees who were regularized on the basis of Punjab Government notification No. 11/34/2000-4PPIII/1301 dated 23.01.2001. Vide impugned letter dated 09.12.2011 (Annexure P-8), the Government had declined the same.

Now, if the history is traced, it goes to show that the petitioners who are appointed on the basis of contract/ad hoc/daily wages/work charge continued to work from time to time. There were several rounds of litigations earlier in which they failed to get their services regularized. However, the Government policy came on 23.01.2001 for regularization of such employees and such policy was adopted by the Board on 13.07.2004. It was in pursuance to the said policy, advertisement and fresh appointment letters were issued to the petitioners.

Now, the first question would arise for consideration as to whether it is a case of fresh appointment or it is a case of regulation of services?

Though, the word “fresh appointment” was used in the appointment letter, the proceedings of the Committee which are duly approved

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by the Board read with advertisement goes to show that the case of only those employees was considered who were already working on contract/*ad hoc*/daily wages/work charge basis, with the Board. The appointments were not open to the General Public. Therefore, primarily, the advertisement was meant only to appoint the employees belonging to above noted categories of the Board. This was probably done keeping in view their services already rendered to the Board. Consequently, though the word “fresh appointment” is used but in fact it is a regularization of services. The intention of the Board also becomes clear from the decision of the Board where the word ‘regularization’ of services is used and also the letters to the Government mentioning the policy dated 23.01.2001 where the word regularization is used. The said policy of the Government dated 23.01.2001 was also regarding regularization of such class of employees. Therefore, it is held that it is a case of regularization of services. Once, it is held that the services of the petitioners were regularized, then, it has to follow that the earlier service rendered by the petitioners working on the basis of contract/*ad hoc*/daily wages/work charge is to be computed for the purpose of grant of retiral benefits and any notional break has to be ignored.

Further question would arise whether the new “Defined Contributory Pension Scheme” which came into force w.e.f. 01.01.2004 will apply to such employees or the old pension scheme?

The new “Defined Contributory Pension Scheme” dated 12.12.2006 (Annexure P-9) which was made effective from 01.01.2004 makes it clear that for the employees who are appointed after 01.01.2004 it is mandatory and it shall be the discretion of those employees, who were appointed prior to 01.01.2004 to opt for Tier II of the said new pension

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scheme. The service of the petitioners having been held to be regularized, therefore, they will fall in Tier II and it will be the discretion of the concerned employee whether to opt for the new pension scheme dated 12.12.2006 or opt for the old pension scheme.

In the circumstances, all the connected petitions are allowed and it is held that the services of the petitioners were regularized w.e.f. 02.08.2004 and that it is not a case of fresh appointment. The service of the petitioners rendered on the basis of contract/ad hoc/daily wages/work charge shall be computed as qualifying service for grant of retiral benefits after ignoring the notional break as per provisions contained in the Punjab Civil Service Rules. For the purpose of application of the pension as per the policy dated 12.12.2006, the petitioners shall fall under Tier II and it will be their discretion whether to join the new defined contributory scheme or opt for the old pension scheme.

Consequently, the respondent-Board shall give an option to the petitioners to opt for the old pension scheme or the new pension scheme within two months from the date of receipt of certified copy of this order and the petitioners shall be governed by the scheme as per their option.

February 13, 2017

Suresh Kumar

**(KULDIP SINGH)
JUDGE**

Whether speaking / reasoned :

✓
Yes / No

Whether Reportable :

✓
Yes / No