

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.

C.W.P. No. 18713 of 2014 (O&M)

Sukhjinder Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents
2.

C.W.P. No. 21499 of 2010 (O&M)

Mohan Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents
3.

C.W.P. No. 22234 of 2010 (O&M)

Ashok Kumar and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents
4.

C.W.P. No. 23540 of 2014 (O&M)

Parveen Kumar and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents
5.

C.W.P. No. 22532 of 2014 (O&M)

Raj Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

6.

C.W.P. No. 22164 of 2014 (O&M)

Kashmir Singh and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

7.

C.W.P. No. 23091 of 2014 (O&M)

Malkiat Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

8.

C.W.P. No. 23099 of 2014 (O&M)

Tarsem Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

9.

C.W.P. No. 21540 of 2014 (O&M)

Angrej Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

10.

C.W.P. No. 21545 of 2014 (O&M)

Manjit Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

11. C.W.P. No. 21560 of 2014 (O&M)

Balwinder Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

12. C.W.P. No. 21817 of 2014 (O&M)

Sukhwinder Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

13. C.W.P. No. 21819 of 2014 (O&M)

Ajit Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

14. C.W.P. No. 21826 of 2014 (O&M)

Kamaljit Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

15. C.W.P. No. 21827 of 2014 (O&M)

Bishan Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

16. C.W.P. No. 21838 of 2014 (O&M)

Kulwant Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

17. C.W.P. No. 21839 of 2014 (O&M)

Harjinder Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

18. C.W.P. No. 21846 of 2014 (O&M)

Harbhajan Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

19. C.W.P. No. 22519 of 2014 (O&M)

Baljinder Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

20. C.W.P. No. 22546 of 2014 (O&M)

Nirmal Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

21. C.W.P. No. 25718 of 2014 (O&M)

Resham Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

22. C.W.P. No. 25808 of 2014

Malkit SinghPetitioner

Versus

State of Punjab and othersRespondents

23. C.W.P. No. 6954 of 2015 (O&M)

Kashmir SinghPetitioner

Versus

State of Punjab and othersRespondents

24. C.W.P. No. 20693 of 2015

Jaswinder Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

25. C.W.P. No. 20290 of 2016

Charan Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

C.W.P. No. 18713 of 2014 (O&M) & other connected cases (6)

26. C.W.P. No. 20348 of 2016

Gurdev SinghPetitioner

Versus

State of Punjab and othersRespondents

27. C.W.P. No. 17128 of 2017

Sukhjinder Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

28. C.W.P. No. 22605 of 2017

Major Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

DATE OF DECISION: 7.12.2017

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Gagneshwar Walia, Advocate and
Mr. Onkar Singh, Advocate
for the petitioner(s).

None for the petitioner in C.W.P. No. 25808 of 2014.

Ms. Anu Chatrath, Addl. A.G., Punjab.

Mr. N.C. Sahni, Advocate
for Gramin Bank.

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of total 28 cases bearing

C.W.P. Nos. 18713 of 2014, 21499 of 2010, 22234 of 2010, 23540, 22532, 22164, 23091, 23099, 21540, 21545, 21560, 21817, 21819, 21826, 21827, 21838, 21839, 21846, 22519, 22546, 25718 and 25808 of 2014, 6954 and 20693 of 2015, 20290 and 20348 of 2016, 17128 and 22605 of 2017 as common questions of law and facts are involved in all the cases. However, for the sake of convenience, facts are being extracted from C.W.P. No. 18713 of 2014.

The petitioners have filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to regularize their services from the date of their initial appointment along with all consequential benefits in terms of the judgment of Hon'ble Apex Court in Civil Appeal No. 1059 of 2005 titled as **Nihal Singh and others Vs. State of Punjab and another** decided on 7.8.2013. A further prayer has also been made for issuance of a writ in the nature of certiorari for quashing of impugned order dated 6.8.2014 passed by respondent No.3, whereby, claim of the petitioners has been rejected contrary to said judgment of Hon'ble the Apex Court in **Nihal Singh's case (supra)**.

Briefly, the facts of the case as made out in the present petition are that the petitioners, who are ex-servicemen, were registered with employment exchange as SPO (Bank Guards) under Section 17 of Police Act, 1861 (hereinafter referred to as 'the Act'). A requisition was sent by respondent-Bank to the Police Department vide Annexure P-1 and thereafter the petitioners were deputed to work as guards with different branches of Punjab Gramin Banks situated in District Gurdaspur. The petitioners are stated to be working with the respondent-Bank for the last 8-22 years. They

have approached the authorities concerned to regularise their services by considering their satisfactory length of service in view of judgment of Hon'ble the Apex Court in **Nihal Singh's case (supra)**. Claim of the petitioners was rejected vide order dated 6.8.2014 (Annexure P-11), which is subject matter of challenge in the present petition.

By way of filing the present petition, the petitioners are claiming that they are entitled for regularization as well as pay scale and allowances as granted to other similarly situated guards working with respondent-Bank from the date of their appointment.

Learned counsel for the petitioners submit that during disturbances in the State of Punjab in the year 1980 onwards on account of militant activities, State was not in a position to handle the prevailing law and order situation with the available police personnel and it was decided to recruit additional police officers by exercising powers under Section 17 of the Act and the petitioners were appointed accordingly. Learned counsel further submit that a decision was taken at the higher level in the meeting held on 27.3.1984, wherein, it was decided to provide requisite guard to the Banks by raising additional forces. The bank authorities undertook to bear the financial burden of SPOs to be appointed as the police officers as they would be under the discipline and control of Senior Superintendent of Police of district concerned. In view of the decision, a requisition was sent by the respondent-Bank to Police Department for appointment of SPOs, Bank Guards for protection and security of the Banks. Learned counsel also submit that as per provisions of Section 17 and 18 of the Act, the SPOs so appointed were given the same powers, privileges and protection, which was given to other officers under the Act. It is also the argument of learned

counsel that the petitioners were appointed by the concerned SSP and only the wages on DC rates were being paid by the bank authorities, which were released by the police department itself. At the end, learned counsel for the petitioners submit that the impugned orders dated 6.8.2014 (Annexure P-11) are totally illegal, unlawful and contrary to the judgment of Hon'ble the Apex Court rendered in **Nihal Singh's case (supra)**.

Learned counsel for respondent-State has opposed the submissions made by learned counsel for the petitioners and submits that the petitioners except petitioner No.3 were never appointed as SPOs under Section 17 of the Act and no appointment letters were issued by the police department. Such appointments were made during terrorism in the State of Punjab only but subsequently when it came to an end, the recruitment of SPOs was completely stopped. The petitioners were appointed by the respondent-Bank at its own level and salary was also paid to them by the Bank only. Learned State counsel further submits that the petitioners were never allotted any SPO numbers and this fact has also been concealed by the petitioners while filing the present petition. Learned State counsel also submits that only the verification of the petitioners was made by the police department and the petitioners have no cause of action to file the present petition and to compare themselves with the petitioners, who were party in **Nihal Singh's case (supra)**. It is also the argument of learned State counsel that SPOs who were appointed during terrorism were ordered to join as Home Guards but the petitioners were neither considered for the post of Constables nor they were transferred to the Punjab Home Guard as they were never appointed as SPOs. The petitioners earlier approached this Court by way of filing C.W.P. No. 15938 of 2003, which was disposed of

on 22.4.2004 and in compliance of said order, a detailed speaking order was passed by the respondent-State, wherein, it was specifically mentioned that the petitioners were never included in the temporary sanctioned strength of SPOs, therefore, they cannot be considered to be employees of the Police Department and cannot compare themselves with the petitioners in **Nihal Singh's case (supra)** neither by considering their mode of appointment nor in view of terms and conditions of the appointment. At the end, learned State counsel submits that the present petition is liable to be dismissed only on the ground that the petitioners cannot be considered as employee of the Police Department and have no cause of action to file the present petition.

Learned counsel for respondents No.4 and 5 submits that the present petition is not maintainable as there is no relationship of the employer and employee between them and the petitioners. The petitioners are working after their retirement and are being paid honorarium being daily wagers. Leaned counsel further submits that the petitioners were sent by the police department being ex-servicemen or retirees from the Army service as they were possessing licensed weapons. At the end, learned counsel for respondents No.4 and 5 submits that there was no vacancy with respondent-Bank for appointment as Bank Guards.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on record including the impugned orders of rejection.

Facts relating to enrolment of the petitioners with employment exchange and appointment with respondent-Bank are not disputed. It is also not disputed by the respondents that the petitioners are being paid salary on day-to-day basis. The petitioners are claiming the relief of regularization of

their services in view of judgment of Hon'ble the Apex Court in **Nihal Singh's case (supra)**, wherein, the SPOs were regularized. The claim of the petitioners with regard to regularization and payment of regular pay scale has been denied by the respondent-State as well as by the respondent-Bank on the ground that the petitioners cannot claim parity with the petitioners in **Nihal Singh's case (supra)** as SPOs in aforesaid case were appointed during terrorism and banks were asked to pay salary but in the present case the situation is totally different. Both respondent-State as well as Bank authorities are denying their liability by saying that the petitioners are not entitled for regularization and regular pay scale as either they are retirees or ex-servicemen and they are not entitled for the relief sought for in the present petition. The claim of the petitioners was rejected by passing a speaking order, wherein, it was specifically mentioned that the judgment of Hon'ble the Apex Court in **Nihal Singh's case (supra)** is not applicable as petitioners in said case were appointed as SPOs by the Police Department under Section 17 of the Act, whereas, in the present case, the petitioners were deputed in Banks for Bank Guard duties. The relevant portion of order of rejection dated 6.8.2014 is reproduced as under:-

“The judgment dated 7.8.2013 passed by the Hon'ble Supreme Court in Civil Appeal No. 1059 of 2005 titled as Nihal Singh Bank Guard Vs. State of Punjab and others is not applicable in the case of the petitioners because in Nihal Singh's case, petitioners were appointed as SPOs by the Polic Department under Section 17 of the Police Act, 1861 and they were further deputed to Banks for Bank Guard duty. In their case the appointing authority was concerned district SSP. But in the

present case the petitioners were appointed as Bank Guards by the Bank authorities at their own level. They were not appointed as SPOs by the Police Department as per Section 17 of the Police Act, 1861. So the petitioners have not claim for regularization of their service in Police Department.

In view of the said position, representation dated 20.2.2014 of the petitioners is rejected. They may approach the Bank authorities for regularization of their services because the bank is their appointing authority.”

Undisputedly the petitioners were deputed through the police authorities to work as SPOs for different Gramin Banks and they were paid wages by the Bank only. There is no record or terms and conditions of the appointment to show that the petitioners were appointed by the police department. It appears that the assistance of the police was taken for verification purpose only.

To ascertain as to whether there has been relationship of the employee and employer during service, it is necessary to be seen as to whether any employee works under the supervision and direction of his employer. Control over the employee is an important factor in determining the employer-employee relationship. Prima facie test for the determination of the relationship between master and servant is the existence of the right of the master to supervise and control over the work done by the servant not only in the matter of directing as to what work the servant has to do but also the manner in which he will do his work. In determining the relationship of employee and employer, no doubt control is one of the important tests but it

is not to be taken as a sole test for determining such relationship. All other relevant facts and circumstances are also required to be considered i.e. terms and conditions of the Contract; as to what is the role of the employer to select and to pay remuneration or to remove from service. Whether there were any terms and conditions of the contract between the principal employer and the employees is also a factor to be determined. While deciding this issue, it is to be seen or ascertained as to whether there has been a complete control and supervision by the employer but in the present case, no such documents have been placed on record by the petitioners. Neither any terms and conditions were fixed while appointing the petitioners nor the salary was paid by the respondent-State. The salary has been paid by the Bank and disciplinary action could have been taken by the Bank only.

Similar issue was there before Hon'ble the Apex Court in the case of **State of Rajasthan and others Vs. Daya Lal and others** 2011 (1) SLR 646. In that case the pay parity was sought by the part time cooks and chowkidars employed on temporary basis in Government hotels. They were appointed/employed for a period of one or two years or in continuation for some more years and remained posted because of interim orders. They claimed benefit of regularization and parity in pay at par with regular employees. It was held in that case that the respondents were not entitled for any relief and the appeal filed by the appellant-State was allowed and order of High Court was set aside. The relevant portion of said judgment is reproduced as under:-

“We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant

in the context of these appeals:

(i) High Courts, in exercising power under [Article 226](#) of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.”

Same issue was there before Hon’ble the Apex Court in the case of **State of U.P. and others Vs. Rekha Rani** 2011 (2) SLR 787. It was held in that case that regular appointment can only be made after selection by the Public Service Commission and respondent-employee cannot take benefit of her service by claiming parity. It has also been held in **Daya Lal’s case (supra)** as well judgment in the case of **Secretary, State of Karnataka and others Vs. Uma Devi and others** 2006 (2) S.C.T. 462 that High Court

in exercise of his power under Article 226 of the Constitution of India cannot regularize an employee only on the ground that some others have been regularized. It does not give any right to claim parity.

In the present cases also neither any terms and conditions nor any administrative control of respondent-State was there.

From the facts as mentioned above, it is clear that no relationship of employer and employee has been established between the parties and the petitioners cannot claim parity with the petitioners in **Nihal Singh's case (supra)**. Accordingly, by considering the facts and circumstances as well as law position explained above, there is no merit in the contentions raised by learned counsel for the petitioners and the petitions being devoid of any merit are hereby dismissed.

7.12.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes