

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

**CWP No. 24735 of 2015
Date of decision: 19.04.2017**

Mahavir Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Manu K. Bhandari, Advocate,
for the petitioner.

Mr. Amit Chaudhary, Addl. A.G., Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein is seeking regularisation of his service as a Sweeper-cum- Chowkidar in the light of policy instructions issued by the State of Punjab with all consequential benefits including arrears of salary and seniority. It is prayed that the respondents may be directed to regularise the services of the petitioner w.e.f. 29.06.2001, the date when persons junior to the petitioner were regularised.

2. It is contended that the petitioner was appointed on 17.05.1996 on daily wage basis. After being interviewed, he was appointed as full-time Chowkidar by the respondent Department. The State of Punjab issued instructions dated 23.01.2001 wherein it was decided that persons who had rendered 3 years of service would be regularised. The Department initially regularised the services of petitioner alongwith 9 others by order dated 04.06.2001, however, later on the said order was withdrawn by the respondents. Thereafter the services of the petitioner were terminated by order dated 08.10.2002, which was initially challenged before the High

Court by way of a writ petition, however, the High Court relegated the petitioner to avail his remedy under the Industrial Disputes Act, thus, ultimately the same was challenged before the Labour Court. The Labour Court by order dated 13.10.2005 held the termination of the petitioner to be bad in law. The award passed in favour of the petitioner was challenged by the respondent State in Civil Writ Petition No. 18624 of 2006 which was dismissed by order dated 11.12.2007. By the said order, the petitioner was permitted to rejoin service w.e.f. 26.12.2007. In 2010, the petitioner filed Civil Writ Petition No. 5854 of 2010 seeking minimum of the pay scale and other admissible allowances, which was allowed by judgement dated 24.01.2012. Since the benefits were not given, the petitioner filed a Contempt Petition and during the pendency of the contempt respondent No. 3 passed an order dated 8.2. 2013 by which it was decided that the petitioner would be considered to be in service notionally w.e.f. 15.06.1996. On the passing of the said order, the petitioner was granted the benefits treating him to be in service and arrears were also granted to him. The petitioner herein sought benefit of regularization in terms of policy instructions dated 23.01.2001. A Justice of demand notice was served upon the respondents on 20.08.2014, however, since the relief of regularization has not been granted, the petitioner has preferred this instant writ petition.

3. Learned counsel appearing on behalf of the petitioner contends that the petitioner has served the Department for more then 20 years and, therefore, in terms of the policy dated 23.01.2001, 15.12.2006 and subsequent policy dated 18.03.2011, he would be entitled for regularization.

It is also submitted that persons Junior to the petitioner have been

regularized in terms of policy instructions dated 23.01.2001 along with all consequential benefits like seniority arrears of pay ertc.

4. Per Contra, learned counsel for the respondents has submitted that policy dated 23.01.2001 would not be made applicable since he was not in service when the case of employees of the department were considered. It is contended that the petitioner would not be entitled to any benefit under the policy dated 15.12.2006 which clearly states that an employee should have worked for not less than 10 years as on 10.04 2006 without the intervention of the orders of the Courts or Tribunal against duly sanctioned posts. Since the petitioner was reinstated by the Labour Court, he would not be covered under the said policy. As regards the Policy of 2011, the same is applicable only to a few departments and not to the Sports Department.

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

6. The petitioner herein was appointed as a daily wage worker in the Sports Department as Safai Sewak on 17.05.1996 and continued to work till 08.10.2002 on which date his services were terminated. By an award of the Labour Court dated 13.10.2005, he was reinstated in service with continuity in service with back wages. He was reinstated in service and was permitted to rejoin service w.e.f. 26.12.2007. In Civil Writ Petition No. 5854 of 2010, the petitioner was held entitled to the minimum of pay scale on the basis of a judgement rendered by this High Court in Civil Writ Petition No. 14796 of 2003 titled Avtar Singh Vs. State of Punjab and Others, wherein it was held that certain daily wagers who continued in service for a long number of years would be entitled to minimum of regular

pay scale from the date of engagement. Subsequently, by order dated 08.02.2013, the petitioner was allowed the minimum pay scale in terms of the judgement rendered in **Avtar Singh**'s case (supra) and it was held that the petitioner would be treated in service from 15.6.1996.

7. On 23.01.2001, the Department of Personnel issued a policy regarding regularization of services of Work Charged/Daily Wage workers with a condition they should have worked for a period of three years. The petitioner who had joined service as far back 1996 would be entitled to be considered for regularisation under the 2001 policy since he had completed more than 3 years in service. It is to be noted that as the termination of the petitioner was held to be unjustified, he was reinstated with continuity in service. The award of the Labour Court was upheld by the High Court. The respondent Department by an order dated 08.02.2013 has held the petitioner to be in service from 15.6.1996 and has released notional benefits accordingly. The case of the petitioner has been reconsidered under the 2011 policy.

8. The Government of Punjab took a one time policy decision dated 18.03.2011 for regularisation of the services of the employees who have completed three years service. This policy covered the daily wagers, work-charged, contractual employees working on permanent posts appointed after fulfilling eligibility criteria as per procedure. The only defence raised herein is that the Government in its policy dated 18.03.2011 has made it applicable to certain departments and the same is not applicable to employees working in the Sports Department. No special reason has been given as to why the Sports Department has been excluded from the purview

of the policy which appear to be restricted to departments of Forest, Health Technical Education, Urban Local Bodies.

9. A Single Bench of this court in Civil Writ Petition No. 24337 of 2012 decided on 17.08.2015 titled ***Shri Pal And Others Versus State Of Punjab And Others*** has held that the exclusion of employees of certain departments from being entitled to the benefits of the regularisation policy of 2011 is unfair discriminatory and violative of Article 14 of the Constitution of India. In deed, there is no such reasonable criteria forthcoming as to why this pick and choose policy has been adopted. Once a decision is taken to extend the benefit of regularization to employees of certain departments, other have to be treated equally.

10. Therefore, in view of the discussion above, it is held that the petitioner who has now served the department for a considerable length of time would be entitled to be considered for regularization under the 2001 policy, as he has been deemed to be in service since 15.06.1996 by the department itself. Let the exercise be carried out within a period of two months from the date of receipt of certified copy of the order and any arrears of pay etc. admissible to him consequent to regularisation, be released to him limited to a period of 38 months prior to filing of this writ petition.

12. The writ petition is allowed with the aforesaid direction.

19.04.2017

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.