

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

**CWP No. 2981 of 2016
Date of Decision: 26.04.2017**

Sukhdev Singh

...Petitioner

Versus

State of Punjab & Others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R. K. Girdhar, Advocate
for the petitioner.

Mr. L. S. Virk, Addl. A.G., Punjab.

JAISHREE THAKUR, J. (Oral)

The petitioner herein is aggrieved against the denial of regularization from 01.12.1995, i.e. the date when the services of the persons, junior to him, had been regularized.

The petitioner came to be appointed as a P.R. Chowkidar in the Food and Supplied Department, Punjab, vide memo dated 12.01.1983 through the Employment Exchange. On his appointment, he was deputed at as P.R. Chowkidar at Bagha Purana. The services of the Chowkidars, who were originally appointed on *ad hoc* basis, were regularized. Since there was no avenue of promotion for Class-IV employees, the Department provided that first proficiency step up would be given to the employees after completion of 08 years of service and the second proficiency step up after completion of 18 years of service. An Office order dated 04.02.1992 was issued by the Director, Food and Supplies Department that if any Chowkidar has been given the benefit of proficiency step up, the same be withdrawn. The petitioner and others approached the respondents on a

number of occasions and requested them to grant the benefit of proficiency step up increments and to grant all service benefits with effect from the date of their initial appointment on *ad hoc* basis. This benefit was allowed to a number of similarly situated Chowkidars and their services were regularized w.e.f. 01.12.1995. However, the same benefit was not given to the petitioner who was constrained to file a ***CWP No. 17161 of 2011*** which was disposed of with a direction to the respondents to take appropriate decision with a period of two months. Thereafter, a contempt petition was filed for non-compliance of the orders and subsequent thereto, respondent No. 3 regularized the services of the petitioner w.e.f. 01.01.2011 and the benefit of proficiency step up would be given to the petitioner on completion of 04 years of service. Aggrieved against the action of the respondents in not regularizing the services of the petitioner w.e.f. 01.12.1995, when the services of the persons, junior to him, were regularized, this instant writ petition has been filed.

Learned counsel for the petitioner contends that the services of the several persons, who were junior to the petitioner, were regularized w.e.f. 01.12.1995 whereas the petitioner has been discriminated upon.

Per contra, learned counsel appearing on behalf of the respondents-State submits that the petitioner joined service as P.R. Chowkidar on 12.01.1983 and was given salary/wages according to the scale fixed by the Government of Punjab. It is submitted that the services of the petitioner could not be regularized w.e.f. 01.12.1995 because those Chowkidars, though junior to petitioner, were regularized as per the orders dated 06.04.2010 passed by this High Court in ***CWP No. 7229 of 2009***. The juniors were only regularized in compliance with the orders passed by the

High Court and the judgment rendered is in 'personam' and not in 'rem'. Moreover, the petitioner would not be entitled to the benefit of proficiency step up increments on completion of 08, 16 and 24 years of service by virtue of law as laid down by the Supreme Court in ***State of Punjab vs. Ashwani Kumar and others, 2009 1 RSJ 452***, wherein, it has been held that an *ad hoc* service could not be included in calculating the period of service for giving higher scale of pay.

I have heard learned counsel for the parties and with their assistance have perused the record of the case.

It is not disputed that the petitioner came to be appointed as P.R. Chowkidar on 12.01.1983 and was given salary/wages according to the scale fixed by the Government of Punjab. It is also not in dispute that persons, junior to petitioner, were regularized w.e.f. 01.12.1995. The only argument that has been raised is that the petitioner cannot seek parity since the juniors were regularized on account of directions issued by the High Court and the judgment being in 'personam', the same could not have been made applicable to the petitioner herein. This argument is not sustainable. Admittedly, the petitioner herein is senior to the persons whose services were regularized w.e.f. 01.12.1995. This becomes incumbent upon the State Government itself to regularize the services of the employees as and when it becomes due to them.

In the instant case, if the directions had been issued to regularize the services of the juniors, as an actual consequence and corollary thereto, the State Government should have acted prudently and should have also regularized the services of those persons who were senior, in case they fulfilled all other criteria which has not been done in the instant case.

Therefore, in view of the fact that the juniors have been regularized, the petitioner herein would be entitled to the same benefit as well. It is also to be noted that there is no avenue of promotion for Class-IV employees and the only benefit, he would be entitled to is proficiency step up increments. It also cannot be said that by regularizing the services of the petitioner, there would be any person who is likely to be effected.

As regards the second contention raised that the petitioner would not be entitled to proficiency step up being on *ad hoc* services, the law in this regard is already well laid. Even otherwise, the petitioner is claiming benefit of proficiency step up w.e.f. 01.12.1995 i.e. the date he seeks to be regularized from. Once the services of the petitioner is regularized w.e.f. 01.12.1995, all the consequential benefits should also be granted to him.

Therefore, in view of the above discussion, the present writ petition is allowed. It is directed that the services of the petitioner be deemed to have been regularized w.e.f. 01.12.1995 with all the consequential benefits like proficiency step, increments etc.

April 26, 2017

Ansari

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No