

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

CWP No. 8451 of 2015

Date of decision: 27.04.2017

Pankaj Mohan Sethi

...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. Avinit Avasthi, AAG, Punjab.

Ms. Anju Arora, Advocate,
for respondent Nos. 2 & 3.

JAISHREE THAKUR, J.

1. The petitioner who is working as a daily wager with Punjab State Forest Development Corporation Ltd. (hereinafter referred to as “Corporation”) seeks regularisation of his services in terms of the policy of the Government dated 18.03.2011.

2. In brief, the facts are that the petitioner was appointed on daily wage basis as a Clerk on 4.07.1995. The petitioner continued to work on daily wages without any complaint. The State of Punjab framed a policy for regularizing the services of daily wage workers who had rendered 10 years of service. As per the policy, the same was also to be applicable to Boards, Corporations etc. under the Punjab Government. The petitioner had submitted a representation on 02.08.2010 for regularizing his services, which was not addressed. Thereafter, another set up of instructions dated 18.03.2011 were issued which again provided for daily wage/ contractual

employees, to be regularised on having completed three years regular service. Respondent No.2 Corporation under which the petitioner was working, recommended regularisation of the services of Ms. Ekta and Mr. Gurbaz Singh along with the others who were junior to the petitioner. Since the name of the petitioner was not being considered, he submitted another representation for regularisation of his services on 08.12.2011. The claim of the petitioner was forwarded by the Divisional Manager of the Corporation-respondent No.2 in which it was submitted that the petitioner had an experience of 16 years with the department. Since no action was not taken, he approached this Court by filing CWP No. 16459 of 2013 which was disposed of by giving a direction to consider the claim of the petitioner for regularisation. By the impugned order dated 27.12.2013, the claim of the petitioner has been rejected only on the ground that the petitioner was not found to be entitled for regularisation in the year 2002. Aggrieved against the said rejection of his claim for regularisation, the instant writ petition has been filed.

3. Learned counsel appearing on behalf of the petitioner contends that the rejection order is illegal and arbitrary and cannot be sustained. It is argued that having successfully worked in the department since the year 1995, he would be entitled for regularisation under the policies that have been issued by the State of Punjab from time to time. Moreover, once persons similarly situated and junior to the petitioner, have been regularised, there is no justification for denying him similar benefits.

4. Per contra, learned counsel appearing on behalf of the respondents contends that the petitioner does not have the requisite

qualification prescribed for the post of Accounts Clerk and Clerk. It is further argued that Ms. Ekta an employee of the Corporation was regularised on account of being eligible and being covered under the policy. Ms. Ekta has a qualification metric 1st Division, B. Com. 2nd Division and M.Com.

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

6. Admittedly, the petitioner herein was appointed with the Punjab State Forest Development Corporation Ltd. on contract basis. The State of Punjab by policy dated 23.01.2001 decided to regularise the services of work-charged/ daily-wage and other categories of workers engaged by various departments of the State Government and the decision would also be applicable to Public Sector undertakings, Corporations, Boards, Local Authorities and other autonomous bodies in the State of Punjab. As per the policy of 2001, the departments were to prepare a list of work-charge, daily-wage and other categories of workers who have completed 3 years of service. The case of the petitioner along with others was considered on the basis of policy of 2001 and he was considered ineligible at that point of time. Again when a seniority list was prepared in the year 2002, he was again considered ineligible. The Department by letter dated 08.12.2011 recommended the case of the petitioner for appointment on regular basis which was ultimately rejected by a speaking order dated 27.12.2013 after the orders of this High Court. These orders have been impugned in the instant petition. A reading of the impugned order shows a total non-application of mind or consideration of the request of the petitioner. The

only ground for rejecting the petitioner's claim is that he did not fulfill the conditions of regularisation under the 2001 Policy and that his matter had been considered as far back as 2002.

7. There is nothing on the record or even whisper in the reply filed that as to why the petitioner is ineligible or what are the qualifications that he is lacking in. The reply filed, is vague and not specific in this regard.

8. The regularisation policy of 2001 was followed by subsequent policy in the year 2006, which specified that an employee seeking regularization should have worked for not less than ten years as on 10.04.2006, without the intervention of the orders of the Courts or Tribunals against duly sanctioned posts. Even under the policy of 2011, the services of those employees were to be regularised who were working on contract basis against sanctioned posts and whose appointments were made by adopting proper procedure on the basis of qualification/eligibility fixed for the recruitment, be regularised w.e.f. 01.04.2011 or on completion of three years contractual service, whichever is later. The petitioner admittedly has more than 22 years of service and persons similarly situated have already been given benefit of regularisation, there is absolutely no justification forthcoming as to why the claim of the petitioner has been rejected merely on a bald statement that he is ineligible.

9. As per the additional affidavit filed in Court, the Corporation had formed a eligibility criteria for regularizing the services of Clerks working on daily wages : (i) he should have completed 3 years of service as daily wages Clerk as on 31.10.2001; (ii) Type Test in English & Punjabi to be cleared within one year; (iii) maximum age 35 years with 5 years

relaxation for SC/BC as on 31.10.2001; and (iv) minimum qualification Matric Ist Division, 10+2 Ist Division or Graduate. The petitioner was not considered eligible in the year 2002.

10. If the State Government has issued policies in which there is a provision for regularizing the services of *ad hoc* daily-wager, temporary employees etc., the petitioner ought to have been considered under the same. The policy of 2001 pertained to work-charge, daily-wage and other categories of employees. The petitioner was not eligible on account of being a contractual employee. Policy of 2006 had a stipulation that a work-charge/daily wage worker and employees working on 89 days/ *ad hoc*/temporary basis, should have worked for not less than ten years as on 10.04.2006 would be eligible for regularization. The petitioner herein would not have been covered under the said policy because, admittedly, he had not completed ten years in service as a daily-wager/ *ad hoc* employee. This is as per the noting given in the seniority list that was prepared on 15.04.2002. However, as per the policy dated 18.03.2011, an employee worked on contract basis against a sanctioned post, on completion of three years service would be eligible, which policy would be applicable to the petitioner. Even otherwise, this is a case of hostile discrimination as the persons junior to the petitioner have been regularised. This fact is borne out from the additional affidavit filed in the Court which would reveal that persons who had been declared as ineligible along with the petitioner have now been made regular as on 23.04.2002. Even in the additional affidavit filed one Gurbaz Singh with the same qualification has been regularized w.e.f. 17.06.2004 Therefore, once persons similarly situated having the

same qualification as the petitioner have been regularized, there is no justification in denying him the same benefit.

11. Therefore, by relying upon the policies of the State Government which have been issued from time to time, it is hereby directed that the petitioner would be entitled to be regularized in service from the date when persons junior to him have been given the benefit of regularisation under the 2011 policy, with all consequential benefits that would flow thereunder.

12. The writ petition stands allowed accordingly.

27.04.2017

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.