

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

CWP No. 11187 of 2014

Date of Decision:-24.07.2018

Shanti Devi and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. C.S. Bagri, Advocate
for the petitioners.

Ms. Harsimrat Rai, DAG Punjab.

JITENDRA CHAUHAN J.(Oral)

At the very outset, learned counsel for the petitioners submits that during pendency of the present writ petition, services of petitioner No.2-Rajo Devi have been regularized, therefore, he prays for withdrawal of the present petition qua petitioner No.2.

Dismissed as withdrawn qua petitioner No.2.

Prayer in this petition filed under Articles 226/227 of the Constitution of India is for issuing direction in the nature of mandamus to the respondents to regularize the services of the petitioners in view of the policy decision issued by respondent No.3-District Education Officer, Sangrur vide Letter No.Arra-3/()2010-11/518 dated 23.6.2010 (Annexure P-13) and as per the judgment passed by this Court in **Gurdev Kaur vs.**

Secretary to Govt. (Punjab) Department of Education, (P & H) (DB)

1998(2) S.C.T. 659 : 1998(2) PLR 207 and as per policy circular letter No.11/15/98-4 PP-3/2803 dated 04.3.1999 (Annexure P-14) issued by the Department of Personnel Punjab Government.

Learned counsel for petitioner Nos.1 and 3 has contended that petitioner No.1 was appointed as part time Kuhar on 1.10.1977 in Government Senior Secondary School, Khanori Kalan (Sangrur) vide appointment order No.E-3/79-80-106 and since then she has been continuously working as such. The date of birth of petitioner No.1 is 1.1.1934 as per her Aadhar Card and due to extreme poverty she is compelled to discharge her duties at the age of 82 years with the fond hope that her services would be regularized. The services of Kuhar are still required at the said school as reflected in its requirement letter sent to respondent No.3-District Education Officer, Sangrur. Similarly, petitioner No.3, who is 1970 born as per Aadhar Card, had been appointed as part time Sweeper on 1.1.1993 in Government Elementary School, Baranasi, Sangrur and since then she is continuously working there. It is also contended that the Principal/Head Master(s) of the Schools, where petitioner Nos.1 and 3 have been working, are in need of full time employees on that posts on which they are working and in this regard they have written letters, demand letters etc. to the authorities. The petitioners are having good moral character and continuous attendance above 80% since the time of their appointment. The certificates regarding more than 80% attendance of the petitioners on work and their good moral character

etc. have also been issued by the Principal/Head Masters of the concerned Schools. Learned counsel for the petitioners further submits that some IV class employees of Punjab including Sweepers, Kuhars, Water Carriers etc. approached this Court in 1997 on the same ground as in the present case, for regularization of their services and filed **CWP No.13565 of 1997**, titled 'Gurdev Kaur vs. State of Punjab'. The operative part of the decision in the said writ petition is reproduced hereunder :-

“Keeping in view the facts that the number of part-time employees in various departments is fairly significant as also the fact that pay scales etc. for these posts have not been fixed or sanctioned, it appears to be appropriate to direct that the State Government shall draw up a policy on the same lines as it has in case of the part-time employees in the Police Department within three months from the date of receipt of a certified copy of this order. It will also fix reasonable scale of pay for employees after taking into consideration the nature of duties and the level of responsibility etc. Thereafter, the claims of the part-time employees shall be considered in accordance with the policy. The exercise should be completed within six months from the date of receipt of a copy of this order.”

Learned counsel further contends that in compliance of the judgment passed by a Division Bench of this Court in aforesaid CWP No.13565 of 1997, the Department of Personnel of Government of Punjab issued a policy circular Letter No.11/15/98-4 PP-3/2803 dated 04.3.1999 (Annexure P-14) to regularize the services of Class-IV employees working on part time basis. Respondent No.3-DEO issued a letter (Annexure P-13)

to the Principal/Head Master(s) of all schools to send the cases of part-time employees as per policy (Annexure P-14) for regularization of their services. In compliance to the said correspondence, names of the petitioners were conveyed by the Principal/Head Master(s) of their respective schools to respondent No.3, which are still pending consideration. It is also pointed out that the petitioners at present are getting ₹2250/- per month as salary, which was increased in the year 2012 and prior to this their salary was ₹1850/- per month. It is also contended that the services of certain part time IV class employees, who are juniors to the petitioners, have been regularized vide order dated 12.11.2012 (Annexure P-15) and they are getting higher salary than the petitioners.

Learned counsel for the petitioners points out Para 'C' of the policy (Annexure P-14) at page 35 that in the cases where there is a requirement for creation of full time regular post but work is now done by a part time worker, the case will be referred to Finance Department for creation of a regular post. For this, the initial recommendations will be made by the screening Committee to the Secretary of the Department who in turn will seek the approval of Finance Department/Council of Ministers as requirement may be. Further, the educational qualification prescribed for the post of class-IV like Peon, Mali, Chowkidar etc. is Middle standard except for the post of Sweeper for which no educational qualification has been prescribed and it is submitted that the petitioners being illiterate women, may be considered for the post of Sweepers.

Learned counsel for the respondent-State has argued that in

compliance of directions of this Court in CWP No.13565 of 1997, titled '**Gurdev Kaur vs. State of Punjab**', State of Punjab vide Letter No.11/15/98-4 PP-3/2803 dated 04.3.1999 (Annexure P-14) formulated the policy regarding regularization of services of part-time workers who have worked for 10 years or more who will be considered for regular appointment in the concerned Department and in the concerned District against 25% Class-IV vacancies which will become available subject to certain conditions. It is further submitted that the educational qualification prescribed for the post of Class-IV like Peon, Mali, Chowkidar etc. is Middle standard except for the post of Sweeper, for which no educational qualification has been prescribed. The petitioners are illiterate women and could only be accommodated against the post of Sweeper. A seniority list of all part-time workers like petitioners, at each District level on the basis of length of service of such workers has been prepared and when the vacancies of Class-IV became available, which are required to be filled amongst part-time-workers, the same would be filled on the basis of seniority position and as per eligibility of such workers. The Rule of seniority in such matters has already been upheld by this Court in **LPA No.43 of 2006**, titled '**Smt. Tejinder Kaur and others vs. Kamlesh Rani and others**', decided on 17.3.2008 vide Annexure R-1. It is further submitted that the seniority list appended by the petitioners (Annexure P-16) was provisional seniority list, which was not implemented. It is further contended that date of birth of petitioner No.1 is 1.1.1930, therefore, she had already attained the age of superannuation on 31.12.1989 and upto the said date i.e. 31.12.1989 the

turn of petitioner No.1 for regularization of her services did not come as per seniority position. The name of petitioner No.3 is at serial No.210 in the seniority list of part-time workers of District and the turn for regularization of services of petitioner No.3 has still not come. Learned State counsel further states that a number of similarly situated persons are still awaiting regularization of their services for want of vacancies. The case of the petitioners for regularizing the services shall be considered alongwith similarly situated part-time workers as and when name of petitioner No.3 would come in the zone of consideration in view of her length of service, if found to be suitable otherwise.

I have heard learned counsel for the parties and gone through the records.

Concededly petitioner Nos.1 and 3 are getting meagre salary and their claim for regularization of services is pending since long. Since the petitioners are working for the past 21 to 35 years in their respective schools, it is manifest that there is requirement of the posts. The stand taken by the State that a number of similarly situated persons are still awaiting regularization of their services for want of vacancies, cannot be accepted as gospel truth. The Court feels that it is a fit case where there is a requirement for creation of full time regular posts on which petitioner Nos.1 and 3 are currently working as part time employees.

So far as petitioner No.1 is concerned, she had put in more than 12 years of service on the date of her superannuation on 31.12.1989 and she is still continuing her services. She cannot be denied her legitimate claim.

After perusing the records and in view of the age of petitioners, who are working in their respective Schools from the last 21 to 35 years and still continuing in services, which are perennial in nature, the present petition is disposed of with a direction to the respondents to regularize the services of petitioner Nos.1 and 3 as per policy (Annexure P-14) as they were fully eligible for regularization on the date of its commencement, within a period of three months from the date of receipt of certified copy of this order.

July 24, 2018
Vijay Asija

(**JITENDRA CHAUHAN**)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No