

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 04.07.2018****CWP No.13569 of 2016**

Sunil Kumar & another

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ramesh Goyat, Advocate, for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Deepak Sabharwal, Advocate, for respondent No.3.

RAJIV NARAIN RAINA, J. (ORAL)

This joint writ petition has to be allowed for reasons to follow.

The petitioners were appointed as Malis in the Municipal Corporation, Faridabad vide appointment letters dated 07.02.1997 (Annex P-1 & P-2) in the grade of ₹750-12-870-EB-14-940 plus usual allowances admissible from time to time under the Rules. Their services were placed on probation for a period of two years. It would be apt to reproduce the relevant extract from the appointment letter:

“Reference your application dated for employment for the post of Mali, you are hereby appointed as Mali in the Corporation at ₹750/- P.M. in the grade of ₹750-12-870-EB-14-940 plus usual allowances admissible from time to time under the rules. You will be on probation period of two years with effect from the date of joining or to such period as may be extended and your services will be liable to be terminated during the period without any reason or notice with immediate effect. If at any time you resign this post, you

shall have to give one month's notice or deposit one month's salary in lieu thereof.

xxx xxx xxx”

However, on 11.01.2001, the services of the petitioners were terminated. They took the matter to the Labour Court, Faridabad and succeeded vide awards dated 08.08.2006. The Labour Court set aside the termination order as illegal and granted reinstatement with continuity of services and part back wages amounting to ₹70,000/-.

The Municipal Corporation, Faridabad feeling aggrieved came to this Court challenging the Awards of the Labour Court, which attempt remained unsuccessful. Both the writ petitions i.e. CWP No.8932 of 2007 and CWP No.8948 of 2007 were dismissed on 05.02.2009 and the awards were maintained. Thereafter, the Corporation preferred appeals to the Letters Patent Bench, which both were dismissed on 14.12.2009. Still dissatisfied, the Corporation went to the Supreme Court and their SLP was dismissed on 12.11.2013. Ultimately, both the petitioners were reinstated to service on 13.03.2014 by office orders which are placed at Annex P-9 & P-10.

With the award in hand and aggrieved by the office order/s which reinstated the petitioners on daily wage basis, they served legal notice/s dated 20.01.2016 upon the Corporation claiming that their services may be regularized in terms of the awards of the Labour Court, which have attained finality up to the Supreme Court. The relief of regularization to the petitioners was declined by the Corporation vide letter/order dated 25.03.2016 stating that no Courts have at any point of time issued any direction for regularization of the petitioners' services. It is, thereafter, the instant petition has been filed for setting aside the impugned order/letter

dated 25.03.2016 and for directing the Corporation to treat the petitioners as regular employees.

A perusal of the judgment delivered by the Letters Patent Bench clearly reveals that it was specifically argued by the Corporation with great stress that the workmen (petitioners) were daily wagers and were not, therefore, entitled to the protection awarded by the award of the Labour Court and the judgment of the learned Single Judge. The Bench read the appointment letters and rejected the argument of the Corporation by returning a positive finding in the concluding paragraph of the judgment holding that the letters of appointment clearly indicate that the appointments were made on regular basis. This finding has become final. Therefore, it is no longer open to the Corporation to still insist that the petitioners were not serving on regular basis at the time of termination and consequently, the awards of reinstatement with continuity of service will go back to restore the status of the petitioners as regular employees of the Corporation as per appointment letters and in the light of findings recorded by the Division Bench and affirmed by the Supreme Court. When this is the ground position, nothing remains to be examined any further in this case and the orders of reinstatement impugned in this petition are liable to be set aside to the extent it takes back the petitioners in service on daily wage basis when they are for all intents and purposes regular hands as observed by the LPA Bench in its order and judgment. Accordingly, the offensive part of the reinstatement orders is struck down as illegal and invalid.

In view thereof, the petition is allowed. The respondent – Corporation is directed to issue corrected orders to the petitioners treating them as regular employees from the date of their initial appointments with

all consequential benefits arising there from. Monetary benefits be calculated and paid to the petitioners within eight weeks from the date of receiving of certified copy of this order.

The petitioners are held entitled to punitive costs of ₹50,000/- each to be paid by the Officer/s responsible for passing irresponsible and vexatious orders paying scant respect to and flagrantly disregarding the orders of this Court and of the Supreme Court dismissing the petition for grant of special leave to appeal.

04.07.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No