

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

CWP-15977-2014

Date of decision: 6.2.2018

Mukesh Kumar and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.RD Bawa, Advocate for the petitioner

Mr.Navdeep Chhabra, DAG, Punjab

Mr.Suvir Kumar, Advocate for respondent No.3

JITENDRA CHAUHAN, J.

The present writ petition under Articles 226/227 of the Constitution of India has been filed for issuance directions to the respondents to regularize the services of the petitioners, in view of regularization Policy dated 14.11.2011 (Annexure P1).

It is asserted that the petitioners were appointed as Firemen and Driver in the Municipal Council, Fazilka on contract basis on various dates in the years 2009 and 2010. For rehabilitation of the temporary employees, the Punjab State Government framed a Policy dated 14.11.2011 (Annexure P1) and pursuant to the said Policy, services of certain employees working in Municipal Council, Rajpura were regularized. The petitioners had also laid their claim but the same was denied by the State Government on the basis of the Clarification dated 26.12.2013 (Annexure P11), whereby the

Policy dated 14.11.2011 has clarified to the extent that it was one time offer and the cases of those employees, who have completed three years of service after the date of issuance of policy i.e. 14.11.2011 are not covered by this policy.

On the other hand, learned counsel for the State as well as counsel for respondent No.3- Municipal Council Fazilka state that inadvertently, in the Policy dated 14.11.2011 (Annexure P-1), the cut off date was not mentioned and vide Clarification dated 26.12.2013 (Annexure P-11), it was clarified that the case has been considered at the Government level and has been decided that the cases of those employees, who have completed three years of services after the above said date of issuance of the Policy i.e. 14.11.2011 are not covered by this Policy. Thus, the cases of the present petitioner are not covered under the said policy.

Heard.

Policy dated 14.11.2011 (Annexure P1) framed by the Punjab State Government under the Chairmanship of the then Hon'ble the Chief Minister, Punjab for regularization of temporary employees in the State, reads as under:-

“Proceedings of the meeting held on 31.10.2011 at 4.00 PM under the Chairmanship of Hon'ble Chief Minister, Punjab at his residence for considering the demands of Safai Karam Charis and temporary employees.

The list of officers/ representatives of the Union, who participated in the meeting is annexed as Annexure A.

After discussing with the representatives of different branches set of employees regarding their demands the following decision is taken:-

1. Regarding regularization of temporary employees:-

a) As per letter No.S1-JS-DLG-08/36066-70 and 36071-76 dated 25.11.2008 issued by Local Government all the Commissioners, Municipal Corporations, all the Regional Deputy Directors, Local Govt were directed that the cut of date for regularization of services of Safai Sewaks working in Mohalla Sanitation Committees was fixed at 01.04.2008. Now it is decided that those temporary or other employees working in Mohalla Sanitation Committees, who were in service as on 01.04.2008 and are still in service, their services are regularized. The concerned municipal bodies will take action in this regard at their own level.

b) It has been decided to regularize the service of those non provincialized employees, working on contract basis, who were appointed as such by following due procedure and have completed three years of service.

c) It has been decided to regularize the services of other daily wages employees, work charge employees etc., who have completed 10 years services in September, 2006. In this regard, the necessary action will be initiated by the concerned municipal institutions at their own level.

2. Regarding pension scheme:-

All such workers/ employees, who could not exercise their option within the stipulated period in their case it has been decided that those workers/ employees, who want to adopt the pension scheme they can submit

their options upto 31.12.2011.

The meeting is concluded with resolution of thanks to the Chairman.

Director, Local Govt.,
Punjab Chandigarh
(General Branch)

Endst.No.S1/JS-DLG-11/34583-607 dated 14.11.2011.”

A perusal of the policy suggests that Clause B of Para No.1 of the Policy deals with the matter *lis* in question. It states that the State has a conscience decision to regularize the services of non-provincialized employees working on contract basis, who had been appointed after following due procedure and had completed three years of service.

The terms and conditions of the policy are clear and unequivocal and leave no scope for any ambiguity. The assertion of the State that the policy in question was one time offer, is not reflected anywhere. The policy decision was taken under the Chairmanship of Hon'ble the then Chief Minister, Punjab to address the demand of Safai Karmachari and the temporary employees.

The clarification Annexure P11, in the garb of which the petitioners have been denied the benefit of the Policy does not spell out the explanation that the employees who had completed three years of services after the date of issuance of the policy i.e. 14.11.2011 are not covered by the policy. The positive mandate of the policy is that the employees whosoever complete three years service on contract basis, qualify to be regularized, otherwise also, the decision was taken at the higher level in a meeting chaired by Hon'ble the Chairmanship of the Chief Minister, the reasons for

taking a contrary stand through a Clarification Annexure P11, have not come forward. Except the Clarification Annexure P11, there is nothing on record that debars the petitioners from the purview of the policy Annexure P1.

Admittedly, after following the due procedure, petitioner Nos. 1 to 4 were joined as Firemen on contract basis in the Municipal Council, Fazilka on 19.11.2010 and petitioner No.5 joined as Driver on contract basis on 21.2.2009. After completion of three years of their services, the petitioners moved a representation dated 19.11.2013 before the Director, Local Govt. Punjab, Chandigarh for regularization of their services on the basis of Policy dated 14.11.2011 (Annexure P1). However, in the light of Clarification (Annexure P11), the claim of the petitioners was rejected by the State Government.

In her additional affidavit dated 2.5.2016, Director-cum-Special Secretary, Local Govt. Punjab Chandigarh has admitted that Municipal Council, Rajpura had passed the Resolution No.56/11 dated 31.12.2012, whereby 8 persons, who were appointed on 19.2.2009 and 23.2.2009, although they had not completed three years of service as on 14.11.2011 i.e. on the date of issuance of the Policy Annexure P1) but had completed three years of service subsequent thereto and the said Resolution was approved by her vide order dated 30.7.2013, in view of the Policy dated 14.11.2011 as no cut off date had been prescribed for the contractual employees.

In view of the above, the present petition succeeds and this

Court holds that Clarification dated 23.12.2013 (Annexure P11) being bad in law is ordered to be set aside and the services of the petitioners are ordered to be regularized in terms of the policy dated 14.11.2011.

6.2.2018
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No