

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

**CWP-17189-2014 (O&M)
Date of decision : 03.08.2018**

Bahadur Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Akshay Jindal, Advocate for the petitioner.

Mr. Naveen S. Bhardwaj, Advocate for the respondents.

JITENDRA CHAUHAN, J.

By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner, *inter alia*, seeks issuance of a writ in the nature of Mandamus directing the respondents to consider the case of the petitioner for regularization as per policy dated 04.03.1999 (Annexure P-2) adopted by the respondents vide order dated 07.05.2014 (Annexure P-7).

It is the case of the petitioner that he had been working as Part Time Sweeper with respondent No.2 since 1990. On 31.12.2013, his services were dispensed with as the Transformer Repair Workshop had been closed. This Court in CWP-24394-2011 titled as ***Harbans Singh and others Vs. State of Punjab and others***, decided on 09.05.2012 (Annexure P-3), directed respondent No.1 to frame a policy of regularization at par

with the employees of the State of Punjab within a period of six months. In the review application filed by respondent No.1, time to frame the policy aforesaid was further extended till 30.06.2013 (Annexure P-4). However, respondent No.1 adopted the policy of the State Government dated 04.03.1999 vide circular letter dated 07.05.2014 (Annexure P-7). Meanwhile, judgment Annexure P-3 had attained finality upto Hon'ble the Supreme Court on 31.01.2014 (Annexure P-6).

The grouse of the petitioner is that the Policy of Regularization of part-time employees of the respondent-corporation has to be made effective w.e.f. 30.06.2013, i.e. the date determined by this Court vide Annexure P-4, and not from the date of action adoption i.e. 07.05.2014.

On the other hand, learned counsel for the respondents contends that the policy adopted by the respondent-corporation is prospective in nature. The petitioner had already been dismissed from service, therefore, he cannot claim benefit of the said policy. As per the policy, only the part-time employee who had been inducted into service through employment exchange or open advertisement are entitled to regularization, whereas, it is not the case with the petitioner.

The services of the petitioner after having worked for almost 23 years as part-time Sweeper were dispensed with vide order Annexure P-1 on the ground that the workshop where he was working, had been closed. Had the regularization policy been in place within the time period specified by this Court, the petitioner would have been entitled to be considered under the said policy of 1999 (Annexure P-2). For the inaction of the respondent-corporation, the petitioner cannot be allowed to suffer. It is

equally important to note that his services had been dispensed with without serving any notice, charge-sheet etc., which is against the law and principles of natural justice. Therefore, the policy (Annexure P-2) is deemed to be adopted by the respondents vide Annexure P-7 retrospectively, i.e. w.e.f. 30.06.2013, the date indicated by this Court vide order Annexure P-4. Furthermore, except the bald assertion that the petitioner was not inducted through employment exchange or against an open advertisement, there is nothing on record to substantiate the same. It was for the respondents to prove the exact mode of induction of the petitioner which they have failed to do.

In view of the above discussion, the instant petition is allowed. Termination order dated 31.12.2013 (Annexure P-1) is set aside. The respondents are directed to accord benefit of regularization to the petitioner in terms of policy (Annexure P-2). The petitioner shall be deemed to be in continuous service; the break from 31.12.2013 to 07.05.2014 notwithstanding, however, the petitioner shall not be entitled to any backwages for the said period. The needful be done within a period of three months from the day of receipt of a certified copy of this judgment. The respondents shall also pay a sum of Rupees ten thousand to the petitioner as costs of litigation.

03.08.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No