

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. C.W.P. No. 17375 of 2015(O&M)
Date of decision: 28.11.2018

Ashwani Kumar and anr. .. Petitioners

vs.

The Central Administrative Tribunal, Chandigarh and ors.

.. Respondents

2. C.W.P. No.6821 of 2016(O&M)

The Secretary, Transport Department of Transport, Chandigarh

.. Petitioner

vs.

The Central Administrative Tribunal, Chandigarh and ors.

.. Respondents

Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. P.M. Kansal, Advocate for
Mr. D.R. Sharma, Advocate
for the petitioners in CWP No.17375 of 2015 and
Respondent Nos.3 and 4 in CWP No.6821 of 2016.

Ms. Aakanksha Sawhney, Advocate and
Ms. Priyanka Dalal, Advocate
for the petitioner in CWP No.6821 of 2016 and
respondents No.3 to 5 in CWP-17375 of 2015.

Mr. P.C. Goyal, Advocate with
Ms. Aarti Goyal, Advocate
for respondent No.2 in both cases

-

Rajiv Sharma, J.

Since common questions of law and facts are involved in both these writ petitions, referred to above, therefore, both these petitions have been taken up together for disposal. However, the facts are being taken from CWP No. 17375 of 2015.

The petitioners in CWP no.17375 of 2015 have sought judicial review of the order rendered by Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'the Tribunal') passed in OA No. 1081/CH/2012 decided on 24.09.2014. The Secretary, Transport Department, Chandigarh, has also challenged the order dated 24.09.2014 rendered by the learned Tribunal by way of CWP no.6821 of 2016.

The brief facts necessary for disposal of the present petitions are that petitioner no.1 was appointed as Clerk on 15.03.2001 whereas petitioner no.2 was appointed as Peon on 29.01.2001. The petitioners made representations seeking their regularisations, which were rejected. In the meantime, the Department decided to fill up the posts on contractual basis by issuing advertisement. The petitioners are praying for their regularisations in the regular pay scale on the principle of "equal pay for equal work".

The Tribunal disposed of the Original Application on 24.09.2014 by observing that since the petitioners have served the respondent department for the last 13 years, the Administration may continue with their employment and at a later stage as and when vacancies against regular posts arise, these persons could be considered for being appointed on regular basis. It is in these circumstances, the present petition has been filed.

Petitioner no.1 had been working as Clerk since 15.03.2001 and petitioner no.2 as Peon since 2001.

Learned counsel appearing on behalf of the Chandigarh Administration was directed to seek instructions as to whether the post of Clerk has been created or not.

Learned counsel apprised this Court that vide order dated 08.08.2017 received from Govt. of India Ministry of Road Transport and Highways, (Transport Section) Govt. of India has sanctioned the creation of one post of Driver and one post of Clerk in the State Transport Authority, Chandigarh.

So far as petitioner no.1 is concerned, he can be ordered to be regularised against the post of Clerk sanctioned vide order dated 08.08.2017.

It is settled law that a contractual employee can not be replaced by another contractual employee.

Similarly, now we advert to the facts of the case of petitioner no.2- Atma Ram, who was appointed as Peon on 29.01.2001.

Learned counsel appearing on behalf of Chandigarh Administration has drawn the attention of this Court to Government order dated 07.11.2014 whereby as per the Punjab Government instructions dated 18.03.2011 coupled with the recommendations of the 6th Central Pay Commission Report, all the Group 'D' posts as and when fallen vacant are to be filled up through outsourcing after following proper procedure.

The instructions dated 07.11.2014 shall apply prospectively and will not deprive the rights of employees for consideration of regularisation over appointed on 07.11.2014.

Petitioner no.2 is working as Peon since 29.01.2001. It pre-supposes that work is perennial in nature. He has worked for more than 15 years. The Chandigarh Administration cannot be permitted to extract the work from the workman for 15 years and then not to regularise him. He was also not permitted to work after 15 years without regularising him.

Accordingly the writ petition no. 17375 of 2018 is allowed. The respondents are directed to absorb petitioner no.1 against the post of Clerk within 4 weeks. The termination of petitioner no.2 is set aside and he would be deemed to have been regularised as Peon by moulding the relief, but without back wages. Consequently the writ petition no.6821 of 2016 preferred by the Central Administrative Tribunal, Chandigarh is dismissed.

(Rajiv Sharma)
Judge

28.11.2018
Atul/Davinder Kumar

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No