

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

- (1)

CWP No. 18812 of 2014 (O&M)
Date of decision: 30.08.2018

Harnek Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)
- (2)

CWP No. 18816 of 2014 (O&M)
Date of decision: 30.08.2018

Gurmail Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)
- (3)

CWP No. 18819 of 2014 (O&M)
Date of decision: 30.08.2018

Darshan Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)
- (4)

CWP No. 18845 of 2014 (O&M)
Date of decision: 30.08.2018

Santokh Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Amrik Singh, Advocate for the petitioner(s).

Ms. Kanica Sachdeva, AAG, Punjab.

Jitendra Chauhan, J. (Oral)

The aforementioned four petitions are being decided by way of common order, as common questions of law and facts are involved in the matter. However, the facts are being derived from CWP-18812-2014 in order to avoid repetition.

By way of the instant writ petition, the petitioners seek quashing of the impugned order dated 19.02.2013 (Annexure P-9) and order dated 08.07.2013 (Annexure P-14) whereby the claim of the petitioners for regularization has been rejected.

It is contended that the petitioners have been serving the respondent-department as daily wager since 1971, however, their services were illegally terminated in the year 1988. However, on 24.08.1990, the Government of Punjab made a reference which was decided by Labour Court vide which petitioners were reinstated in service with continuity of service without any back wages, vide award dated 23.01.1992 (Annexure P-1). Pursuant to the award, the petitioners again joined the department, however, again their services were terminated in September, 1992. Aggrieved thereby, an industrial dispute was raised and vide order dated 13.08.2001 (Annexure P-3), passed by Labour Court, Ludhiana, the petitioners were reinstated into service with continuity of service along with 25% of back wages and since then, the petitioners were working as

daily wager, however, their services were not regularized.

It is contended that the petitioners are having more than 25 years of service, however, their cases for regularization were not considered by the respondents on one pretext or the other.

On the other hand, the learned State counsel submits that since the petitioners have failed to submit the requisite documents, therefore, their cases were not considered for regularization. Even, the petitioners have not challenged the seniority list on the basis of which they had laid their claim for regularization.

Heard, learned counsel for the parties and perused the record.

Clause 2 of policy dated 15.12.2006 (Annexure P-11) is reproduced as under:-

- 1. The employee should have worked for not less than 10 years as on 10.04.2006 without the intervention of the orders of the Courts or Tribunals against duly sanctioned posts;*
- 2. The employee fulfills the minimum basic qualification for the post against which he was appointed.*
- 3. It shall be certified by the competent authority that no supernumerary posts were created to retain the employees in service, when the persons were appointed on regular basis; and*
- 4. It shall be the duty of the Administrative Department that while considering the case of each employee, the orders of the Hon'ble Supreme Court of India passed in the aforesaid case are implemented in letter and spirit, it shall be ensured that there should be no further by passing of Constitutional requirements and regularizing or making permanent those, who are not appointed as per the said constitutional scheme.*

Further, Clause 3 of the policy dated 18.03.2011 (Annexure

P-12) reads as under:-

3.1 Those daily wages/work charges employees who had completed 10 years service in December 2006, for regularizing their services the posts be created in the concerned departments and against these posts the employees those who fulfills the education qualifications and experience as per rules and instructions be given regular appointments.

3.2 These regular appointments will be done after assuring the under mentioned conditions and fulfilling these conditions:-

a. The regular appointment will be considered regular from the order of date of regular appointment and these employees to be regularized will not be given any benefit of the previous appointment i.e. notional or otherwise, but if in any department in the same cadre employee through direct appointment are appointed by proper procedure in those conditions these employees to be regularized will be kept under them in seniority.

b. They will be given the initial scale of the concerned cadre at the appointment time.

c. The compliance of reservation policy in toto will be ensured.

d. On the employee to be regularized, the new contributory pension scheme will be applicable.

e. The decision of Hon'ble Supreme Court given in case of Uma Devi's should be complied in toto.

It is an admitted position that the petitioners joined the respondent department as daily wagers in the year 1971. Their services were terminated in the year 1992. In view of the fact that awards dated 23.01.1992 (Annexure P-1) and 13.08.2001 (Annexure P-3) were answered in favour of the petitioners and they were reinstated into service with continuity of service, it is made out that the petitioners are in continuous service since more than three decades. The ground for not admitting the claim of the petitioners and consequent regularization has been projected to be non submission of requisite documents in support of

their claim of regularization and further that they now have attained the age of superannuation. The case of the petitioners is fully covered by Clauses 2 and 3 of the policies dated 15.12.2006 (Annexure P-11) and 18.03.2011 (Annexure P-12) respectively in view of the award dated 23.01.1992 (Annexure P-1) whereby they were deemed to be in continuous service on the date of consideration under the policy dated 15.12.2006 (Annexure P-11). As the petitioners were fully eligible for regularization as per policies (Annexure P-11) and (Annexure P-12) *ibid*, the respondents cannot be allowed to deny the relief to the petitioners on flimsy and hyper-technical grounds. During the course of arguments, learned State counsel has circulated a photocopy of letter dated 01.08.2012, which is taken on record as Mark 'A' but that is a communication sent by respondent No.2 to intimate the petitioners for sending the requisite documents for regularization. However, there is nothing on record that in fact, the communication by the said officer was sent to the petitioners or not. Therefore, in the garb of letter (Mark 'A') which as per record had never been communicated to the petitioners, the benefit of regularization cannot be denied to them.

In **Narendra Kumar Tiwari and others** Vs. **State of Jharkhand and others** in Civil Appeal No.s7423-7429-2018, decided on 01.08.2018, Hon'ble the apex Court observed as under:-

“10. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an

irregular basis. This is hardly good governance.

11. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.

12. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants.

13. The appeals are accordingly disposed of.

14. We may add that that it would be worthwhile for the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.”

From the material available on record, it stands established on record that the petitioners have worked continuously as daily wagers for more than 30 years and thus, shall be deemed to be on the roll of the establishment of the respondents for all intents and purposes.

The case of the petitioners is fully covered by the policies (Annexure P-11) and (Annexure P-12) *ibid* and as such these petitions are allowed. The respondents are directed to regularize the services of the petitioners on the basis of policies of the State issued from time to time and release all the consequential benefits from the date of their regularization, within a period of three months from the date of receipt of a certified copy of this order.

30.08.2018

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No