

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.12026 of 2018

Date of Decision:-14.05.2018

Gurmail Kaur.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH.

Present:- Mr. P.P.S. Tung, Advocate for the Petitioners.

JASWANT SINGH, J.(ORAL)

The petitioner, who is working as a Sweeper (Class IV employee) in a Government Primary School, has filed the instant writ petition, seeking a writ in the nature of Mandamus for directing the respondents to release his arrears of salary w.e.f. 07/03/2005, as a regular employee although, he has been regularized on 11/10/2017 (P-1).

Learned Counsel for the petitioner has argued that despite petitioner being fully eligible under the regularization policy of the State of Punjab dated 04.03.1999 read with memorandum dated 23/04/2004, the services of the petitioner were not regularized. Consequently, the petitioner was constrained to file a Civil Writ Petition bearing Number 3807 of 2015 whereby, the respondents were directed to pass a speaking order. However, the claim of the petitioner was rejected by passing the speaking order dated

20615 of 2016 and during the pendency of the said writ petition, an order of regularization dated 11/10/2017 (Annexure P-1) was passed. Thus on the strength of the facts mentioned above, Ld. counsel for the petitioner has argued that since the petitioner was entitled for being regularized w.e.f. 07/03/2005 i.e the day District Education Officer Bathinda had written to the higher authorities that the petitioner is entitled to be regularized in view of the aforementioned policies issued by the state.

I have heard Ld. counsel for the petitioner and a perusal the paper book with is able assistance. However I do not find any merit in the present writ petition and the same deserves to be dismissed.

It is not in dispute that petitioner had challenged the order dated 30/04/2015, whereby his claim for regularization was rejected by the respondent Department, by filing CWP No. 20615 of 2016. It is an admitted fact that during the pendency of the writ petition, the services of the petitioner was regularized and consequently, the writ petition was rendered as infructuous (However, no such order has been placed on record of the file). However, in case the petitioner was not satisfied with the issuance of the letter dated 11/10/2017, which regularized his services from 11.10.2017 itself, then the petitioner ought to have pursued his remedy by fighting the above said writ petition. The petitioner chose not to agitate his claim in the said writ petition and was satisfied with his regularization w.e.f. 11/10/2017. Thus, the claim that ought to have been raised in the previous petition was either not raised or not pressed at the time of disposal of the writ petition. Consequently, petitioner cannot be permitted to raise claim on the same cause of action in present petition, as the said claim would be barred by Order 2 Rule 2 of CPC.

Seen from another angle, the petitioner cannot claim areas of salary w.e.f. 07/03/2005 because a mere proposal of regularization of his services by a senior officer to the appointing authority, does not give any vested right to an employee to seek arrears from the said date. It is the date of the appointment letter, through which the services of the petitioner have been regularized, that the actual salary/ benefits of regularization can be awarded.

In view of the above, finding no merit in the writ petition, same is hereby dismissed.

(JASWANT SINGH)
JUDGE

May 14, 2018
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>