

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

**CWP No.19800 of 2015.
Date of Decision: 11.10.2018**

Surinder Singh

.....Petitioner

Versus

Punjab State Power Corporation Ltd. & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. J.S. Maanipur, Advocate and
Ms. Sonam Janjuja, Advocate,
for the petitioner.

Mr. Arvind Seth, Advocate,
for the respondents.

JITENDRA CHAUHAN J.

Through the instant civil writ petition, the petitioner seeks quashing of order dated 25.06.2015 (Annexure P-12) passed by respondent No.2 vide which claim of the petitioner for regularization of his services with effect from 01.02.1996 has been rejected.

The petitioner was appointed as Lower Division Clerk on 25.02.1977 on *ad hoc* basis in the Punjab State Electricity Board. His services were terminated on 04.04.1979. He was reinstated with continuity of service and without back wages by the learned Labour Court, Ludhiana vide Award dated 21.05.1992 (Annexure P-1). The Award has attained finality and the petitioner was reinstated in service.

The respondent-Board issued instructions dated 02.01.1995

(Annexure P-2) for regularization of its employees, who were appointed on *ad hoc* basis as and when they complete three years of service. In pursuance of the said policy, the services of *ad-hoc* L.D.Cs who were recruited before 31.03.1989 were regularised vide office orders dated 30.05.1996 (Annexure P-4). The persons juniors to the petitioner including ad-hoc employees were regularised vide office order dated 25.10.1996 with effect from 01.02.1996 but the services of the petitioner were not regularised with effect from 01.02.1996. Thereafter vide orders dated 24.09.2003 (Annexure P-6) the services of those who were appointed after 01.03.1989 on ad-hoc basis, were regularised. Thereafter, vide office order dated 20.09.2004 (Annexure P-7) the services of the petitioner were regularised with effect from 20.09.2004 instead of 01.02.1996 along with one Balbir Singh Kalsi.

The petitioner and said Balbir Singh Kalsi filed CWP No. 3338 of 2005 which was admitted. During the pendency of that writ petition, said Balbir Singh Kalsi retired on 31.12.2010 on attaining the age of superannuation. He filed CWP No. 6038 of 20121 for granting him pensionary benefits. The said writ petition was disposed of on 05.04.2011 (Annexure P-9) with a direction to the respondents that his services may be regularised with effect from 01.02.1996 when the other similarly placed *ad hoc* employees were regularised vide office orders Annexure P-3 and P-5. In compliance of that order, the services of said Balbir Singh Kalsi were regularised with effect from 01.02.1996. However, vide impugned order dated 25.06.2015

(Annexure P-12) claim of the petitioner for regularization with effect from 01.02.1996 has been denied.

Learned counsel for the petitioner contends that the persons junior to the petitioner have been regularised vide orders Annexure P-3 and P-5 with effect from 01.02.1996. That apart, said Balbir Singh Kalsi has also been regularised with effect from 01.02.1996. Learned counsel relies upon (i) Hari Nandan Prasad and another vs. Employer I/R to Management of FCI and another 2014(2) SCT 234 (Annexure P-14); (ii) Hoshiar Singh vs. State of Haryana and others CWP No. 12392 of 2013 decided on 27.08.2015. (Annexure P-15) and (iii) Pawan Kumar and others vs. State of Haryana and others CWP No. 17150 of 2015 (O&M) decided on 24.01.2017.

On the other hand, the stand of the respondents is that the case of the petitioner is not maintainable as per the decision taken by the Whole Time Members in their meeting held on 22.09.2003 (Annexure R-1) in the memorandum No. 15 dated 15.09.2003 and memorandum No. 19 dated 13.09.2004 (Annexure R-2) wherein it has been decided that regularization should be made applicable from the date of issuance of office order.

Heard.

On 23.03.2018 this Court had passed the following order:-

“Learned counsel for the petitioner contends that the identical placed employee, namely, Balbir Singh has been granted similar relief in CWP-3388-2005 as reflected in Annexure P-11 on the basis of consensus decision taken by

the competent authority (Annexure P-4).

On the other hand, learned counsel for the respondents states that benefit accorded to co-employee, Balbir Singh was inadvertently granted. However, he does not have instructions whether the benefit claimed by the petitioner has not been allowed to any other employee of the Corporation.

Post again on 25.05.2018.

Learned counsel for the respondents is directed to file specific affidavit in this regard whether respondents are inclined to either grant identical relief to the petitioner or take any other remedial measure in this context.”

In pursuance of the order dated 23.03.2018 learned counsel

for the respondents has filed affidavit dated 25.05.2018 of Deputy Secretary Recruitment, PSPCL, Patiala which was taken on record as Mark-'A'. The relevant portion of affidavit Mark 'A' is reproduced as under:-

“4. That after going through the record, it is transpired that the benefit granted to Shri Balbir Singh Kalsi was contrary to the decision taken by the Whole Time Members. However, the decision to grant the benefit to Shri Balbir Singh Kalsi was taken in view of COCP No. 1149 of 2012 filed by Shri Balbir Singh Kalsi.

5. That now the competent authority of the Corporation has taken a decision on the basis of legal advice given by the Legal Advisor, PSPCL, Patiala vide UO No. 1142/LB-2(91916)15 dated 18.05.2018, not to grant the similar relief to the present petitioner Shri Surinder Singh. Relevant extract of the decision taken by the competent authority is reproduced hereunder for the kind perusal of this Hon'ble Court:-

“The relief granted to Shri Balbir Singh Kalsi was in compliance to COCP No. 1149 of 2012 in CWP No. 6038 of 2011 filed by him. At that time, the Legal

Advisor PSPCL, Patiala had also advised that there is no other option except to implement/comply the High Court order as the case is not appealable. So, the relief was granted to dispose of the pending COCP. As such, issuing notice to withdraw the relief provided to an employee in response to a COCP may

create legal/administrative complications. It is also intimated that the similar benefit cannot be granted in other similar cases beyond WTM's decision dated 22.09.2003 implemented vide order No.49 dated 20.09.2004."

A copy of the decision taken by the competent authority is annexed herewith as Annexure A-1."

It is to be seen that the factum of regularization of similarly situated employee Balbir Singh Kalsi with effect from 01.02.1996 has not been denied. It has also not been denied that he was appointed on *ad hoc* basis as is the case of the petitioner. The petitioner being identically placed deserves to be treated identically. The State being a model employer cannot discriminate amongst equals and the impugned order dated 25.06.2015 (Annexure P-12) amounts to invidious discrimination qua the petitioner and is certainly violative of Articles 14 & 16 of the Constitution of India. Accordingly, the present civil writ petition is allowed. The impugned order dated 25.06.2015 (Annexure P-12) is bad in law and is thus set aside. The respondents are directed to regularize the services of the petitioner with effect from 01.02.1996. The necessary exercise be done within a period of two months from the date of receipt of certified copy of the order.

11.10.2018.

SN

(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No