

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

CWP-17261-2017

Date of decision: 9.1.2018

Gurpreet Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Ranjit Singh, Advocate for
Mr.GS Nahel, Advocate for the petitioners

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of mandamus directing the respondents to appoint the petitioners in the Department/offices under Municipal Corporation, Amritsar, in pursuance of the advertisement published by respondent No.3 by giving priority to them, as per their educational qualifications/ experience.

The petitioners were appointed in the years 2009 to 2011 on contract basis in various departments of the Municipal Corporation, Amritsar on Deputy Collector rates. The contracts executed between the petitioners and the Municipal Corporation, Amritsar were extended from time to time and last being in the year 2015. It is asserted that though the services of the petitioners are still utilised, however, they are not being paid salary for the same despite the resolution passed by Municipal Corporation

Amritsar Annexure P2 in pursuance of agreement reached between the petitioners and the respondent- Corporation Annexure P1. Municipal Corporation even passed resolution to obtain approval from the Government to fill up 150 posts in various departments of the Municipal Corporation, Amritsar to overcome the difficulties faced by the Corporation. In the aforesaid backdrop, the petitioners by way of this petition have urged to regularise their services.

Heard.

It is the case of the petitioner that they were appointed on contractual basis on Deputy Collector rates in various departments of Municipal Corporation, Amritsar. As per the pleadings, they were inducted in service between 2009 to 2011 and their contract/ periodical services was extended from time to time and the last being in the year 2015. Learned counsel has not referred to any policy of the State or any provision or law on the strengthen of which, the relief sought could be allowed to the petitioners. From the pleadings it emerges that though the Municipal Corporation has recommended to recruit 150 employees for smooth running of the Corporation. Nothing has been stated as to how the petitioners were inducted in the services and while inducted, whether the process to fill the regular vacancies was adopted. Moreover, the appointment being purely temporary and being tenure based came to an end long back in the year 2015.

Division Bench of this Court in **Dharam Pal and another vs.**

State of Haryana and others 1993(3) RSJ 342 has observed as under:

“4. It would be seen that the posts of Cane Clerks to which the petitioners had been appointed were only tenure posts for a period of three years. They could not, therefore, be employed beyond this term. Prior to their appointment as such, the petitioners had been appointed as Cane Clerks (seasonal). After the expiry of their tenure posts of Clerks, they had again been offered the post of Cane Clerks (seasonal) on permanent basis.

5. Such being the circumstances, the petitioners are clearly not entitled to regularisation of their services as Cane Clerks.”

Hon'ble the Supreme Court in **Dr.L.M.Nath vs.**

Dr.S.K.Kacker and others 1996(1) SCC 229 has observed as under:-

“6. We heard elaborate arguments on merits addressed by the learned counsel for the appellant as well as the contesting Ist respondent, only to satisfy our conscience, whether Division Bench of the High Court was justified at that stage, to interfere with the order. Giving our anxious consideration to the contentions, we think that the High Court was justified at that stage, to interfere with the order. Giving our anxious consideration to the contentions, we think that the High Court was not at all justified in its interference. It is seen that the order of appointment of Dr. Kacker as the Director, came to an end in the afternoon of October 14, 1995 since admittedly it is a tenure post. Unless there is an order expressly extending his tenure, he has no right to continue thereafter. The court cannot exercise the power of the authorities under Rule 7(4) except when it deems legal to consider them to be so exercised for the reasons

given in the order. After October 14, 1995 the 1st respondent cannot continue as Director unless he is appointed under Rule 7 (4) which empowers the President or Institute Body to make an interim arrangement till regular Director is appointed or for six months.

7. The main part of the Rule gives power to the President to appoint the senior most Professor. The proviso empowers the Institute Body to appoint any Professor irrespective of seniority. The only condition is that the Institute should record reasons to justify the exercise of the power vested in it. Admittedly, the Institute Body had not passed any orders under the proviso. It had already rejected the claim of Dr. Kacker for reappointment. Since the President passed the order under main part of Rule 7 (4) the question would be whether the President would be justified to pass the order under these circumstances. It is seen that in 1974 seniority list, produced by Dr. Kacker, he is the senior most and the appellant is the second senior most. In our considered view that since Dr. Kacker has already held the office of the Director and the Institute Body had already decided not to reappoint him except through the process of selection, by necessary implication, he would not be considered to be appointed even as interim Director pending regular appointment under Rule 7 (3) of the Rules. The consequence would be that the appellant being the next senior most in order, it would appear, that the President was justified in appointing him as the interim Director pending appointment of the Director or for six months whichever may be earlier. It is reasonable to hold that any other

interpretation would be a negation of the conscious action of the Institute Body.

8. In view of the stalemate created in the selection of Director, since we are informed that the writ petition filed by common cause has already been heard and judgment was reserved, we think that we have to make a special request to the Division Bench of the High Court, which heard it, to consider whether it would not be desirable to deliver the judgment as expeditiously as possible so that the stalemate in the appointment of Director may be put an end to and the appropriate authority may take a decision to make the regular selection and appointment of the Director. We have ventured to give this suggestion keeping the paramount interest of the smooth administration of the premier institution of the nation and not of any inter se claim of any person entitled to these claims.”

Keeping in view the fact that the appointment of the petitioners was a tenure /contractual appointment, therefore, this Court feels that no right has accrued in favour of the petitioners to appoint them on regular basis. As such, the present petition being devoid of merit is dismissed. However, the wages of the petitioners for the period they worked, if not paid till date, be paid to them without further delay.

9.1.2018
vanita/gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No