

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

CWP No.5382 of 2013 (O&M)

Date of decision: 17.09.2018

Kashmir Singh and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

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

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Atul Kaushik, Advocate for respondent No.2.

Mr. Sukhwinder Singh Sudan, Advocate
for respondent No.3.

None for respondent No.4.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioners seek quashing of impugned order dated 22.01.2013, (Annexure P-15) passed by respondent No.2 vide which the claim for regularization of the services of the petitioners, working as drivers in the respondent corporation for the last more than 10 to 17 years had been rejected on the ground that the same was not covered by instructions/guidelines issued on 18.03.2011 and 17.11.2011.

The petitioners are working as drivers on the ambulance service under Punjab Health System Corporation on contract basis from

Punjab Ex.servicemen corporation for more than 10 years.

The sole contention raised on behalf of the petitioners is that since the petitioners are working as drivers with the respondent corporation for the last more than 17 years as of now, therefore, their services ought to have been regularized in view of the policy/notification dated 18.03.2011 (Annexure P-9). However, the respondents have denied the benefit of regularization by stating that the petitioners are on the roll of respondent No.3 which has placed the services of the employees at the disposal of respondent No.2.

Learned State counsel states that the petitioners have been deployed by respondent No.2, vide agreement between respondent No.2 and respondent No.3, therefore, no cause of action has been arisen qua the State-respondent No.1.

Learned counsel for respondent No.2 submits that the petitioners are working on the roll of respondent No.3, therefore, their claim cannot be acceded to by respondent No.2.

Per contra, learned counsel for respondent No.3 submits that the petitioners have been deployed as drivers with respondent No.2 by respondent No.3 under an outsource arrangement, vide agreement to this effect, hence, respondent No.2 is the competent authority for redressal of the grievance raised in the present petition.

There is no representation on behalf of respondent No.4.

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

The petitioners being Ex.servicemen were appointed as

drivers on ambulance service on contract basis in different district of the State under Punjab Health System Corporation and they have been working for the last more than 15 years. They were deployed with respondent No.2 through outsource management of respondent No.3 which is an independent corporation and established under the statute of the Government. The petitioners are seeking regularization of their services on the basis of Punjab Government Policy dated 18.03.2011 (Annexure P-9) and the subsequent notification dated 17.11.2011 (Annexure P-10), which stipulates that the services of contractual/work charge/ ad hoc employees were required to be regularized subject to fulfilment of the eligibility conditions laid down therein. It is to be noticed that the services of 350 contractual employees were regularized by respondent No.2, vide order dated 23.12.2011 (Annexure P-11). The petitioners have been denied the benefit of regularization on the ground that their cases are not covered by the instructions 18.03.2011 and 17.11.2011 issued by the State. It is not the case of the respondents that the petitioners do not fulfil the eligibility conditions. The salary and wages are being paid by respondent No.2 through respondent No.3, the outsource agency, as per agreement (Annexure R-2/1). Respondent No.2 is the Corporation of the State. Respondent No.3 has merely sponsored qualified drivers to cater to the requirement of respondent No.2. As per record, the petitioners are in continuous service of large number of years and their services are still required, therefore, the State and all its instrumentalities being a model employer cannot be allowed to create to

an artificial mechanism to deny the benefit of regularization as are available to a Government employee. Hon'ble the Supreme Court in **The Workmen of Bhurkunda Colliery of M/s Central Coalfields Ltd. Vs. The Management of Bhurkunda Colliery of M/s Central Coalfields Ltd.**, 2006(1) SCT 584 observed as under:-

*“16. This Court in **S.M. Nilajkar and Others v. Telecom Distt. Manager, Karnataka, 2003(2) SCT 1013 : (2003)4 SCC 27** was of the opinion that the labour laws being beneficial pieces of legislation are to be interpreted in favour of beneficiaries. According to the Court, in case of doubt or where it is possible to take two views of a provision, the benefit must go to the labour.*

*17. This Court in **State of Haryana v. Piara Singh, 1992(3) SCT 201 : (1992)4 SCC 118** held that so far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person.*

18. In the matter of regularization, the main concern of the Court is to see that the rule of law is respected and to ensure that the executive acts fairly and give a fair deal to its employees consistent with the requirement of Articles 14 and 16 of the Constitution of India. The State being a model employer should not exploit the employees nor take advantage of helplessness and misery of either the unemployed person or the person concerned, as the case may be.

19. Where a temporary or ad hoc appointment is continued for long, the Court presumes that there is regular need for his services on a regular post and accordingly considers regularization.

20. It is also our bounded duty to give expression to the legislative intention for creating a healthy environment leading to proper understanding and cooperation and in true sense a partnership between the employers and the employees in cases of industrial disputes.

26. The industrial jurisprudence, likewise, seeks to evolve a rational synthesis between the conflicting scheme of the employers and employees. In finding out solutions to industrial disputes great

care is always taken, as it ought to be, to see that the settlement of industrial disputes does not go against the interests of the community as a whole. In the decision of major industrial disputes, three facts are thus involved. The interests of the employees which have received constitutional guarantees under the Directive Principles, the interests of the employers which have received a guarantee under Article 19 and other Articles of Part III, and the interests of the community at large which are so important in a Welfare State. It is on these lines that industrial jurisprudence has developed during the last few decades in our country.

27. When we modulate our thinking process and attitude according to the underlying philosophy of Industrial and Labour jurisprudence and apply the laws meant for industrial peace and harmony, then the conclusion becomes irresistible that the employees who have been working since 1973-74 required to be regularised as expeditiously as possible.

28. Both employers and employees have their respective obligations. They must have the appreciation of each others's responsibilities, duties and obligations. The Trade Union and Labour Union should understand and appreciate the fact that Labour is not a commodity nor is it a mere supply of Labour force at the management's disposal. Essentially, Labour is the real basis that underlines the production of goods and services. Through the work should the human personality and its sense of responsibility be able to unfold, management should appreciate this and always attribute its success to the trained and effective labour force. It must be understood by all concerns that both the employees and employers are vital for any industry and unless there is proper coordination, a smooth functioning of any industry would be difficult.”

In view of the above, the present petition is allowed.

Consequently, the order dated 22.01.2013 (Annexure P-15) is hereby set aside. The respondents are directed to regularize the services of the petitioners in terms of the notification dated 18.03.2011 (Annexure P-9) read with subsequent notification dated 17.11.2011 (Annexure P-10) and release the admissible benefits, if any, within a period of three months from the date of receipt of a certified copy of this order.

17.09.2018

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Whether speaking/reasoned :
Whether Reportable :

(JITENDRA CHAUHAN)
JUDGE

Yes	No
Yes	No