

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

1. **CWP No.2828 of 2016**
Date of Decision:-27.7.2018

Surinder Singh and others

...Petitioners

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

2. **CWP No. 14503 of 2018**

Jaspal Singh

...Petitioner

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

3. **CWP No. 2400 of 2016**

Nasib Singh and others

...Petitioners

Versus

Punjab State Power Corporation Limited and another

...Respondents

4. **CWP No. 12123 of 2015**

Sher Singh and others

...Petitioners

Versus

Punjab State Power Corporation Limited

...Respondent

5. **CWP No. 8181 of 2015**

Rajpal and others

...Petitioners

Versus

Punjab State Power Corporation Limited and another

...Respondents

6. **CWP No. 7069 of 2016**

Jain Kumar and others

...Petitioners

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

7. **CWP No. 5273 of 2013**

Joginder Pal and others

...Petitioners

Versus

State of Punjab and others

...Respondents

8. **CWP No. 3541 of 2018**

Vijay Kumar and others

...Petitioners

Versus

Punjab State Power Corporation Limited and others

...Respondents

9. **CWP No. 2399 of 2016**

Harbans Singh and others

...Petitioners

Versus

Punjab State Power Corporation Limited and another

...Respondents

10. **CWP No. 23551 of 2017**

Paramjit Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

11. **CWP No. 11096 of 2015**

Harbans Singh and others

...Petitioners

Versus

Punjab State Power Corporation Limited and another

...Respondents

12. **CWP No. 3973 of 2018**

Ashok Singh and others

...Petitioners

Versus

Punjab State Power Corporation Limited and others

...Respondents

13. **CWP No. 3612 of 2018**

Harjinder Singh and others

...Petitioners

Versus

Punjab State Power Corporation Limited and others

...Respondents

14. **CWP No. 19935 of 2016**

Renu Bala and others

...Petitioners

Versus

State of Punjab and another

...Respondents

15. **CWP No. 15445 of 2017**

Gurpreet Singh and others

...Petitioners

Versus

Punjab State Power Corporation Limited and others

...Respondents

16. **CWP No. 28354 of 2017**

Charanjit Kaur and others

...Petitioners

Versus

Punjab State Power Corporation Limited and others

...Respondents

17. **CWP No. 11495 of 2016**

Raj Rani and others

...Petitioners

Versus

State of Punjab and another

...Respondents

18. **CWP No. 14884 of 2015**

Ajay Kumar and others

...Petitioners

Versus

Punjab State Power Corporation Limited and others

...Respondents

19. **CWP No. 4030 of 2018**

Sunder Preet Kaur and others

...Petitioners

Versus

Punjab State Transmission Corporation Limited and others

...Respondents

20. **CWP No. 4501 of 2018**

Sunita Rani and others

...Petitioners

Versus

Punjab State Power Corporation Limited and others

...Respondents

21. **CWP No. 3262 of 2018**

Sukhpreet Singh

...Petitioner

Versus

Punjab State Transmission Corporation Limited and others

...Respondents

22. **CWP No. 4719 of 2018**

Sunil Kumar and another

...Petitioners

Versus

Punjab State Power Corporation Limited and others

...Respondents

23. **CWP No. 4693 of 2018**

Kulwinder Kaur and others

...Petitioners

Versus

Punjab State Power Corporation Limited and others

...Respondents

24. **CWP No. 7175 of 2018**

Vinod Kumar and others

...Petitioners

Versus

State of Punjab and another

...Respondents

25. **CWP No. 7254 of 2018**

Surjit Kaur

...Petitioner

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

26. **CWP No. 5131 of 2018**

Balwinder Singh and others

...Petitioners

Versus

Punjab State Power Corporation Ltd. and another

...Respondents

27. **CWP No. 8325 of 2018**

Prem Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

28. **CWP No. 13097 of 2018**

Tulsi Ram and others

...Petitioners

Versus

State of Punjab and another

...Respondents

29. **CWP No. 7867 of 2018**

Neelam Rani

...Petitioner

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

30. **CWP No. 4456 of 2018**

Angrej Singh

...Petitioner

Versus

Punjab State Power Corporation Limited and another

...Respondents

31. **CWP No. 4199 of 2018**

Jeet Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. V.K. Shukla, Advocate
for the petitioners (in CWP Nos.2828 of 2016, 3612, 4030 and
4456 of 2018).

Mr. M.J.S. Bedi, Advocate
for the petitioner(s) (in CWP No.4199 of 2018).

Mr. Mohit Jaggi, Advocate
for the petitioners (in CWP Nos.12123, 8181, 11096 of 2015,
2399, 2400, 11495, 19935 of 2016, 23551 of 2017, 5131, 8325
of 2018).

Mr. A.S. Kakkar, Advocate
for the petitioner(s) (in CWP No.7069 of 2016 and 3262 of
2018).

Mr. Brijesh Nandan, Advocate
for the petitioner(s) (in CWP Nos.28354 of 2017 and 7254 of

2018).

Mr. Dinesh Mahajan, Advocate
for the petitioner(s) (in CWP No.4693 of 2018).

Mr. Ashish Grover, Advocate
for the petitioner(s) (in CWP Nos.3541 and 4501 of 2018).

Mr. Vipin Mahajan, Advocate
for the petitioner(s) (in CWP No.3973 of 2018).

Mr. P.K. Mutneja, Advocate
for the petitioner(s) (in CWP No.5273 of 2013).

Mr. O.P. Gabba, Advocate
for the petitioner(s) (in CWP No.14884 of 2015).

Mr. Shakti Bhardwaj, Advocate
for the petitioner(s) (in CWP No.15445 of 2017).

Mr. Impinder Singh Dhaliwal, Advocate
for the petitioner(s) (in CWP Nos.4719 and 7867 of 2018).

Mr. Sanjiv Gupta, Advocate
for the petitioner(s) (in CWP Nos.7175 and 13097 of 2018).

Mr. B.S. Baath, Advocate
for the petitioner(s) (in CWP No.14503 of 2018).

Ms. Harsimrat Rai, DAG Punjab.

Mr. Vikas Chatrath, Advocate and
Ms. Mandeep Kaur, Advocate
for respondent Nos.1 to 3 (in CWP No.2828 of 2016, CWP-
8181, 14884 of 2015, CWP-3973, 3262 & 4030 of 2018).

Mr. Vinod S. Bhardwaj, Advocate
for respondent-PSPCL (in CWP Nos.11096 of 2015,
3612,3541,4501 & 4456 of 2018).

Mr. B.S. Mittal, Advocate
for respondent-PSPCL (in CWP No.7069 of 2016).

Mr. Suveer Sheokand, Advocate
for respondent Nos.1 to 11 (in CWP No.28354 of 2017).

Mr. Sehaj Bir Singh, Advocate
for respondent Nos.2 and 3 (in CWP No.4693 of 2018) &

for respondent Nos.1 and 2 (in CWP No.4199 of 2018).

JITENDRA CHAUHAN J. (Oral)

The aforementioned batch of 31 petitions is being decided by way of common judgment as common questions of law and facts are involved in these petitions.

By way of present writ petition(s) under Article 226/227 of the Constitution of India, the petitioners seek issuance of directions to the respondents to regularize their services in view of Policy dated 4.3.1999 (Annexure P-2) and the judgments passed by this Court in **CWP No.12199 of 2000**, titled 'Sukhdev Kaur vs. State of Punjab and others', decided on 23.9.2002 (Annexure P-5) and **CWP No.1933 of 2014**, titled as 'Kanta Rani vs. State of Punjab and others', decided on 28.10.2014 (Annexure P-13) and to give all the consequential benefits arising therefrom and further seek issuance of a writ of certiorari declaring the action of the respondents not regularizing the services of the petitioners and intending to change their service conditions from direct employment to that of placing them on outsource basis in view of Memo dated 23.7.2015 (Annexure P-14) in the present Civil Writ Petition i.e. CWP-2828 of 2016 and by issuing similar communications dated 1.2.2018 in CWP No.3612 of 2018, CWP No.4030 of 2018, CWP No.4456 of 2018 and other connected writ petitions as wrong, illegal, unlawful, unfair and unconstitutional and therefore to quash/set aside the said communications.

Learned counsel for the petitioners submit that the petitioners are working as part-time Sweepers with the respondent-Punjab State Power

Corporation Limited (hereinafter referred to as 'Corporation') for the last more than 10 years in its different offices. They are working continuously and without any break and are being paid salary as per the Deputy Commissioner Rates. It is further submitted that the Punjab Government had issued a policy dated 4.3.1999 (Annexure P-2) for regularization of the services of part-time employees, who had completed their 10 years of continue service on part-time basis on the date of issuance of policy or thereafter. The said policy was adopted by the respondent Corporation vide its office order dated 7.5.2014 (Annexure P-3) and further ratified by the Board of Directors of the Corporation vide order dated 10.6.2014 (Annexure P-4). Learned counsel for the petitioners further submit that in view of the Memo dated 30.5.2014 (Annexure P-9), the respondent Corporation directed its field offices to take action regarding regularization of services of the part-time employees in view of the Punjab Government Policy dated 4.3.1999 mentioned *ibid* having regard to the judgment passed by this Court in **CWP No.24394 of 2011**, case titled as 'Harbans Singh and others vs. State of Punjab and others', decided on 09.5.2012 (Annexure P-6) and the judgment passed by the Division Bench of this Court in **LPA No.689 of 2013**, case titled as 'Punjab State Power Corporation Ltd. vs. Harbans Singh and others', decided on 12.4.2013 (Annexure P-7) and order dated 31.1.2004 (Annexure P-8) passed by the Hon'ble Supreme Court in **SLP (Civil) CC 486 of 2014**, case titled 'The Chairman, Punjab State Power Corporation and others vs. Harbans Singh and others'. Learned counsel for the petitioners further relied upon their claim qua regularization of the

services in view of the judgment dated 23.9.2002 passed by this Court in **CWP No.12199 of 2002**, case titled 'Sukhdev Kaur vs. State of Punjab and others (Annexure P-5) and the judgment dated 28.10.2014 (Annexure P-13) passed by this Court in **CWP No.1933 of 2014**, case titled as 'Kanta Rani vs. State of Punjab and others'.

Learned counsel for the petitioners further submit that despite entitlement of the petitioners for regularization of their services in view of the Policy dated 4.3.1999 and judgments mentioned above, no action has been taken by the respondent Corporation in this regard rather on the contrary, the respondent-Corporation, under the garb of Memo dated 23.7.2015 (Annexure P-14) and similar communications dated 1.2.2018 challenged in the connected writ petitions sent to the petitioners whereby intending to change their service conditions from direct employment to that of placing them on outsource basis.

Per contra, learned counsel for the respondents in their written statement(s) raised the objection that the services of the petitioners cannot be regularized as they do not fulfil the conditions as laid down in the policy dated 4.3.1999 as they were not employed through Employment Exchange or through open advertisement. Learned counsel for the respondent-Corporation in some of the petitions further raised objection that since the petitioners had not completed 10 years of service on part-time basis on 4.3.1999, when the policy was issued, therefore, they are not entitled to regularization. They in support of their contentions relied upon the judgment passed by Hon'ble Supreme Court in **State of Karnataka vs.**

Uma Devi 2006(4) SCC(1).

Learned counsel for the respondent further refers to a Division Bench judgment passed in **Yogesh Tyagi and another vs. State of Haryana 2018 (3) S.C.T. 181** to contend that the State has not been permitted to carry out appointment of employees as adhoc/contractual basis in different departments in perpetuation and only one time exception was carved out. Merely because temporary employee continues to work beyond term of his appointment, he will not be entitled to be absorbed in regular service merely on the basis of length of service continues.

Heard learned counsel for the parties and perused the record in CWP No.2828 of 2016.

Perusal of the Regularization Policy dated 4.3.1999 reflects on regularization of Class-IV part-time employees on completion of their 10 years of service or more against 25% Class-IV vacancies, which will become available hereinafter. Para 2 of the said policy reads as under :-

“2. After thorough consideration Government have decided to formulate a policy for the regularization of the services of Part-time workers as follows :-

(A) The part time workers who have worked for 10 years or more will be considered for regular appointment in the concerned department and in the concerned District against 25% Class-IV vacancies which will become available hereinafter subject to the following :-

(i) that during the tenure of their employment on part-time basis for 10

years or more, their presence on duty should have been minimum 80%.

(ii) That they fulfil the qualifications for the new job as prescribed under the rules at the time of their consideration for regularization;

(iii) That they will be entitled to relaxation in upper age limit upto the extent of years they have served as part time workers;

(iv) That they had been appointed initially on part time basis through Employment Exchange or through open advertisement in the Press; and

(v) That they are otherwise found suitable for the job.

(B) Each department will constitute a Screening Committee for completing the exercise for regularization of the services of such part time workers who are eligible for regularization against the Class IV vacancies available in the department.

(C) In the case where there is a recruitment for creation of a full time regular post but work is now being done by a part time worker, the case will be referred to Finance Department for creation of a regular post. For this, the initial recommendation will be made by the Screening Committee to the Secretary of the Department who in turn will seek the approval of Finance Department/Council of Ministers, as the requirement may be.

(D) To ensure that part-time workers working in the different departments in the State are paid wages at uniform rates, Labour Commissioner shall fix the rates for such part-time workers keeping in view the quantum and quality of work done by such employees with the approval of the Finance Department from year to year.”

The aforesaid policy envisages regularization of part-time employees who had worked for 10 years or more against 25% Class IV vacancies, which would become available hereafter. In the policy certain conditions were also stipulated for regularization of such employees, which included that during their tenure of employment on part-time basis for 10 years or more, their presence on duty should have been minimum 80% and their initial appointment on part-time basis should have been through Employment Exchange and that they should otherwise found suitable for the job. On perusal of the service particulars of the petitioners, it is evident that all the petitioners have served for more than 10 years of service and accordingly are entitled to get their services regularized from the date of completion of 10 years of service or more.

On the other hand, the respondent-Corporation has taken the stand necessarily that the employees ought to have been appointed initially on part-time basis or through open advertisement, which argument is not sustainable. As per condition No.2A(IV) of the Policy dated 4.3.1999 (Annexure P-2) in the matter of regularization of services of Class IV part-time employees, it was the requirement that the initial appointment should

have been through open advertisement. A Division Bench of this Court in **CWP No.16655 of 2003**, titled 'Paramjit Singh and others vs. State of Punjab and others', had quashed the condition 2A(IV) of the said policy. The operative part of the said judgment reads as under :-

“In view of the above, we hold that the condition embodied in paragraph 2(A)(iv) of Annexure P-8 is arbitrary, unreasonable and unconscionable and is destructive of the very object with which the policy for regularization of the services of part-time employees has been framed.

We are further of the view that paragraph 2(A)(iv) of Annexure P-8 is liable to be struck down being contrary to the law laid down by this Court. In Swaran Kaur's case (supra), a Division Bench of this Court considered the claim of the petitioners, who were part-time Sweepers, for regularization of their services and

'We are of the considered view that once the respondents have considered the cases for regularization of part-time employees of policy battalion and this Court has considered and allowed the claim of an employee working as part-time Water Carrier in the Medical Deptt. Of the State in the case of Gurdev Kaur (supra), the petitioners also deserve to be considered for regularization of their services of their respective posts. It cannot be said that the employees of the police stand on a different footing under the same Government than the petitioners working in the Education Department of the State. Resultantly, this writ petition is allowed to the extent that the

respondents are directed to consider the case of the petitioners for regularization of their services on their respective posts under the relevant instructions expeditiously and preferably within a period of three months from the date of receipt of this order.'

In Sukhdev Kaur's case (supra), another Division Bench of this Court considered the issue relating to regularization of the services of part-time employees and granted relief to them. The relevant extract of that order are reproduced below :-

'Admittedly, the petitioners belong to a poor section of society. They have been working on the posts of Sweepers for substantially long period of 10 years or more. Nothing has been placed on record which may ever prima facie show that the petitioners have been found wanting in performance of their duties. Still further, it is not disputed that there is a continuing need for the posts of Sweepers as it is necessary to have someone to clean the class rooms and toilets etc. in the educational institutions.

In the background of this factual position, the short question that arises for consideration is can the petitioners be denied the relief of regularization merely because their names had not been sponsored by employment exchanges at the time of entry into service ?

To answer this, we have repeatedly asked Mr. D.V. Sharma if the State Government had issued any instruction to the Department requiring that the posts of part-time Sweepers shall be filled up only after submission of a requisition to the

Employment Exchange. The counsel has not been able to point out anything from the record of these cases which may indicate that it was necessary for the Department of the Government to ask for recommendations from Employment Exchange. Still further, it is not disputed that requirement for notification of vacancies to Employment Exchange is not a mandatory pre-condition for filling up the posts in different services of the Government. In fact, a reference to Section 4(4) of the Employment Exchanges Act, 1959 clearly indicates that the provisions have not to be deemed to impose any obligation upon any employer to recruit any person through employment exchange to fill any vacancy merely because that vacancy has been notified under Sub-Section 1 and 2 of Section 4. The provision clearly militates against any plea of a mandatory requirement of law under which the employer may be required to notify the vacancies to the Employment Exchange.

In view of the factual position that there is nothing on record to show that Department of the State Government had ever notified the vacancies of part-time Sweepers under Section 4 to the Employment Exchange or that any instruction had been issued to the Department to notify the vacancies to the Employment Exchange the condition as now sought to be imposed is apparently arbitrary and unfair.

Mr. D.V. Sharma says that the petitioners had not even been recruited after open advertisement. We have asked him if the State

Government has ever advertised the posts of Sweeper ? The learned counsel is unable to place on record any material to show that it had done so. If the Government had never notified the vacancies in press, it cannot blame the petitioners or refuse the relief of regularization to them.

On a consideration of the matter, we are satisfied that the impugned orders are not just and fair. The petitioners have been made to work for a long time without even being placed in regular scale. In fact, they are being paid a meagre sum ranging from Rs.375/-to Rs.600/- per month in the present day when the cost of living has gone very high. It is not a fair wage.'

For the reasons mentioned above, the writ petitions are allowed. Paragraph 2(A)(iv) of Annexure P-8 is quashed. Letter (Annexure R-1) annexed with the written statement filed in CWP No.16084 of 2003 is also declared illegal and quashed. The respondents are directed to consider/re-consider the cases of the petitioners for regularization of their services without taking into consideration paragraph 2(A)(iv) of letter Annexure P-8 and pass appropriate orders within 3 months from the submission of certified copy of this order. If the competent authority comes to the conclusion that the petitioners or some of them are not entitled to be regularized in service, then the orders passed in such cases should be communicated to the concerned petitioner(s).”

The condition that the initial appointment should have been through open advertisement or Employment Exchange is not even

recognized as a condition precedent for regularization under the much more stringent one time regularization permitted by Hon'ble Supreme Court in the case titled as 'State of Karnataka vs. Uma Devi' mentioned *ibid*. The Hon'ble Supreme Court in **State of Karnataka vs. M.L. Kesari (2010) (9) SCC 247** while explaining the term irregular appointments referred to in Uma Devi's case (supra) held that where the person employed possessed the prescribed qualifications and was working against sanctioned post, but had been selected without undergoing the process of open competitive selection, such appointment is considered to be irregular. Relevant extract from the said judgment is as under :-

“7. It is evident from the above that there is an exception to the general principles against “regularization” enunciated in Uma Devi (3)¹, if the following conditions are fulfilled: (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any Court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years. (ii) the appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. **But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open**

competitive selection, such appointments are considered to be irregular.”

This Court as noticed by a Division Bench of this Court in CWP No.16655 of 2003 titled as 'Paramjit Singh and others vs. State of Punjab and others', has settled the controversy by observing that the issue whether the petitioners in that writ petition, who were working as part-time Sweepers could be denied the relief of regularization merely because their names had not been sponsored by the respective Employment Exchanges at the time of their entry into service and ultimately directed the respondents in that writ petition to consider the claim of the petitioners for regularization of their services and granted consequential relief. Thus, in this view of matter, there is no merit in this objection of the respondents that the petitioners cannot be regularized as their initial appointment was not through Employment Exchange or through open advertisement.

The second argument of learned counsel for the respondents that only those employees were entitled to get their services regularized, who completed their 10 years of part-time service on the date of issuance of Policy dated 4.3.1999, is also not sustainable as on perusal of the Policy itself in para No.2(A) it is stated that the part-time workers who have worked for 10 years or more will be considered for regular appointment in the concerned Department against 25% Class IV vacancies which will become available thereafter. Further, even this Court while passing judgment dated 28.10.2014 (Annexure P-13) in **CWP No.1933 of 2014**, case titled 'Kanta Rani vs. State of Punjab and others', has held that the workers are entitled to get their services regularized against the posts

available after issuance of the policy.

There is no dispute about the preposition of law laid down in **Yogesh Tyagi's** case (supra). However, the facts of that case are distinguishable from the facts of the instant case.

Learned counsel for the respondents made a feeble attempt to circumvent the claim of the petitioners for regularization of their services raising argument that the respondent-Corporation has already issued Memo dated 23.7.2015 (Annexure P-14) in CWP No.2828 of 2016 and communications dated 1.2.2018 in other connected writ petitions intending to change the service conditions of the petitioners from direct employment to that of placing them on outsource basis. Such action on the part of the respondent-Corporation is wholly unjustified. The right of the petitioners for consideration of their claim for regularization of their services had already accrued under Policy dated 04.3.1999 (Annexure P-2) on completion of their 10 years of service or more. The said policy has admittedly been adopted by the respondent-Corporation vide order dated 7.5.2014 (Annexure P-3) and further ratified by the Board of Directors of the Corporation with application of mind vide order dated 10.6.2014 (Annexure P-4). The said policy till date holds the field as the same has neither been rescinded nor discontinued by passing any Resolution/Order. Moreso, the respondent-Corporation is a model employer and such an action on its part seems to be illogical.

Accordingly, the writ petitions are allowed. The impugned Memo dated 23.7.2015 (Annexure P-14) and Memos dated 1.2.2018 in the

connected writ petitions are hereby quashed/set aside. The respondents are directed to consider the cases of the petitioners for regularization of their services in view of Policy dated 4.3.1999 and further to grant them all the consequential benefits arising therefrom within a period of three months from the date of receipt of certified copy of this order.

July 27, 2018
Vijay Asija

(**JITENDRA CHAUHAN**)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No