

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

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**CWP-5100-2015 (O&M)
Date of decision:24.04.2018**

Iqbal Singh

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr.Kapil Kakkar, Advocate for the petitioner.

Mr. R.K.Shukla, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

In the present writ petition, petitioner has challenged the award passed by the Labour court dated 04.08.2014 (Annexure P-1).

2. Petitioner was appointed as a Helper, Attendant and Driver during the intervening period from 2001 to 2009. His appointment is for 89 days and fresh appointment was issued for 89 days on 8 occasions. Thereafter, on yearly basis 4 orders were issued from 2004 to 2008. This is evident from para 12 of the award. Nature of appointment of the petitioner is tenure appointment and not against post so also with reference to any advertisement. Thereafter, in the year 2009 no fresh order of appointment was issued. Thus, he raised an industrial dispute. Labour court proceeded

to pass award of compensation instead of reinstatement to the extent of Rs.50,000/-. Hence the present petition.

3. Learned counsel for the petitioner submitted that in paras 15 and 16 of the award, labour court has given finding that termination of the petitioner is in violation of Section 25-F of the I.D.Act. Such a finding is contrary to the principle laid down by the Supreme Court to the extent that contract appointee has no right to claim over the post. As and when his tenure is completed he has no legal right to claim any benefit before court of law. Learned counsel for the petitioner relied on Annexure P2 decision passed in CWP No. 14550 of 2013 decided on 19.02.2015 titled as ***Gurmail Singh versus Chief Superintendent and others***. Perusal of the same it is evident that case of Gurmail Singh is not a tenure appointment. In other words, he was not contract appointee. Therefore, Annexure P2 is not applicable to the present case. This court in the case of ***Shilpa Jindal versus Central Administrative Tribunal, Chandigarh Bench Chandigarh and others*** held that tenure appointee has no legal right to claim over the post and so also seek any relief before the court of law. Relevant extract of judgment reads as under:-

(28) From the above discussion, it is clear that the law regarding regularisation is now well settled by the decision of the Constitution Bench of the Apex Court in Umadevi's case (Supra). The said judgment holds the field and is binding.

(29) What could be deduced from the cited decision is as under:-

(i)Any public employment has to be in terms of the

Constitutional scheme.

(ii) Adherence to the rule of equality in public employment is a basic feature of our Constitution.

(iii) Regular appointment must be the rule.

(iv) A regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up.

(v) The appointment should be in terms of relevant rules and after a proper competition among the qualified persons. Otherwise, such appointment would not confer any right on the appointee.

(vi) If a contractual appointment is made, the appointment comes to an end at the end of the contract. The Government or the instrumentality of the State cannot confer any permanency of such employment either by way of regularisation or by way of absorption.

(vii) If it were an engagement or appointment on daily wages or casual basis, the

same would come to an end when it is discontinued.

(viii) A temporary employee could not claim to be made permanent on the expiry of his term of appointment.

(ix) Merely because a temporary employee or a casual wage worker is continued for a time being beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

(x) Regularisation is not a mode of appointment.

(xi) The Government or the instrumentality of the State cannot regularise the appointment made contrary to the course of selection as envisaged by the relevant rules

governing the posts.

(xii)The High Court acting under Article 226 of the Constitution of India should not issue directions for regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

(xiii)There should be no further by-passing of the constitutional requirement and regularisation or making permanent those not duly appointed as per the constitutional scheme.

4. In view of the principle laid down by the Supreme Court and this court in respect of contract appointee's status petitioner has not made out a case so as to interfere with the award passed by the labour court dated 04.08.2014 (Annexure P-1). Accordingly, CWP stands dismissed.

24.04.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes

Whether Reportable:

No