

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

(1)

CWP No.6712 of 2014.

Date of Decision: 06.02.2018.

Gurmukh Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

(2)

CWP No.17842 of 2016.

Gurdeep Singh and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. J.S. Gill, Advocate,
for the petitioner (in CWP No.6712 of 2014.

Mr. Sunil Garg, Advocate,
for the petitioners (in CWP No.17842 of 2016).

Ms. Sudeepti Sharma, Addl. AG, Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned two writ petitions as common questions of law and facts are involved in the present petitions.

In CWP No. 6712 of 2014, challenge has been laid to the order dated 31.05.2013 (Annexure P-3) passed by respondent No.2 whereby the representation moved by the petitioner for regularization of his services, has been rejected and; to the instructions dated 18.03.2011 (Annexure P-2) issued by the Department of Personnel, Government of Punjab regarding regularization of services.

In CWP No.17842 of 2016 filed by Gurdeep Singh

and another, order dated 23.10.2015 (Annexure P-9) passed by respondent No.1 has been assailed vide which the claim of the petitioners for regularization of their services has been rejected.

The petitioners have sought further writ of mandamus directing the respondents to regularize their services as drivers.

The petitioners were appointed as drivers on daily wages by Director, Department of Rural Development and Panchayat Punjab/respondent No.2 in the year 2000 to the year 2002. The services of the petitioner Gurmukh Singh were terminated on 05.03.2002. He challenged the termination order before the learned Labour Court which quashed the same. He was ordered to be reinstated without back wages and continuity of service on 02.12.2008. Consequently, he was re-instated in service on 13.02.2009.

It is the common case of all the petitioners that on 04.03.1999 the Government of Punjab framed policy for regularization of services of part time employees who had completed 10 years of service. On 23.01.2001 another policy was issued by the government for regularizing the services of work charged/daily wagers who had completed three years of service. In this regard, Block Development and Panchayat Officer/respondent No.4 wrote to the Director Panchayats/respondent No.2 recommending for regularization of the services of petitioners Gurmukh Singh and Gurdeep Singh. All the petitioners made representation to the department. Thereafter the petitioners approached this Court in CWP No.3852 of 2013 and CWP

No.25852 of 2013 which were disposed of with a direction to the respondents to decide the representation within a period of three months. Thereafter, the claim of the petitioners was rejected on the ground that the instructions of 2001 were not applicable to the department of Rural Development and Panchayats and there was no sanctioned post of driver in the department.

As per the reply filed on behalf of the respondents, the instructions dated 18.03.2011 are not applicable upon the answering respondents. The instructions are applicable upon the specific departments mentioned therein. Petitioner Gurmukh Singh has not completed 10 years of continuous service as he did not work from 05.03.2002 to 18.02.2009 on account of his termination.

Learned counsel for the petitioners refers to letters dated 03.05.2010 and 26.10.2012 written by BDPO, Dera Baba Nanak and DDPO Gurdaspur respectively recommending the cases of the petitioners for regularizing their services.

Learned State counsel admits the aforesaid letters dated 03.05.2010 and 26.10.2012. However, it is contended that there is no sanctioned post to which the petitioners could be appointed.

I have the learned counsel for the parties and have gone through the case file.

It is to be noticed that petitioner No.1 and 2 in CWP No.17842 of 2016 have been working as driver on daily wages since 29.04.2000 and 26.10.2002 whereas, the petitioner in CWP No.6712 of

2014 is in service since 12.04.2001. The fact that the petitioners have been in continuous service for the last 16-18 years belies the claim of the respondents that there is no need of post of driver. It is not the case of the respondents that they do not require services of drivers. In this regard, it would be relevant to reproduce the recommendation made by DDPO, Gurdaspur to the Director, Rural Development and Panchayat Development, Punjab, Mohali:-

“In reference to the above mentioned subject and in continuation of the letters, it is again respectfully prayed that the jeep of the office which has been purchased from the funds of the Panchayat Samitis with the consent of the Govt., but since the office did not have a regular driver's post, vide letter from this office No.1411 dated 29.04.2000 Sh. Gurdip Singh s/o Jaswant Singh r/o Vill. Dauwal, Tehsil and District Gurdaspur is employed under Daily wages as per conditions prescribed by the Deputy Commissioner. In this manner, this employee has been working on this post continuously for a period of around 12 years. In the Blocks of Punjab State the regular post of Driver has been notified by the Govt. The employee is a matriculate and he also possesses a valid Driver's Licence. The employee is very hardworking and punctual. The employee is a family man and in these inflationary times, due to a meager salary he is facing a lot of difficulties as he has to send his children to school and also bring them up. Hence, it is respectfully prayed that considering the previous time service and the good services provided

by Sh. Gurdip Singh, he be considered for recruitment to the regular post of Driver.”

To the similar effect is the letter dated 03.05.2010 written by BDPO, Dera Baba Nanak recommending the name of petitioner Gurmukh Singh for being regularised. Faced with the position that the petitioners have been discharging their duties as Drivers for the last 16-18 years; their employers have recommended their names for regularization of their services, this Court is of the opinion that the stand taken by the State that there is no sanctioned post cannot be accepted at all. In fact, the need of the Drivers is duly established from the record maintained by the respondents but the respondents have devised a ploy to take the services of drivers by retaining them as daily wagers which is unfair labour practice and exploitation of workers. This conduct of the State is against the Constitutional goals cherished by its framers.

In view of above, both the writ petitions are allowed. The order dated 31.05.2013 (Annexure P-3) in CWP No.6712 of 2014 and order dated 23.10.2015 (Annexure P-9) in CWP No.17842 of 2016 are quashed. The respondents are directed to regularize the services of the petitioners.

A photocopy of this order be placed in the file of other connected case(s).

06.02.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No