

Sr. No.353

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

CWP No.18782 of 1995 (O&M)

Reserved on : 05.11.2019

Pronounced on 03.12.2019

Subodh Kumar and others

... Petitioners

Versus

Punjab State Electricity Board, Patiala and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Gurnam Singh, Advocate,
for the petitioners.

Mr. Sanjeev Sharma, Advocate,
for the respondents.

ARUN MONGA, J.

1. Petitioners, who joined service under the erstwhile Punjab State Electricity Board 15-17 years prior to the filing (in 1995) of this petition, seek writ for quashing the impugned orders dated 22.08.1994 (Annexure P/10-P/19), whereby their claims for regularization in service were rejected and for a writ of mandamus directing the respondents to regularize their services in the light of Punjab Government instructions dated 07.05.1993 (Annexure P/2) adopted by the respondents and for grant of consequential benefits.

2 Facts necessary for adjudication of the lis are that the petitioners have been working as Linemen, A.F.M., A.J.S., Special

F.M. Their dates of appointment,designations and qualifications, as stated by the respondents in Annexure R/2 are as under:

Sr. no.	Name	Date of appointment	Qualifications	Whether regularized
1	Madan Lal	06.04.1978 CM	Under Matric ITI Mech.	Offer of TG-1 made vide memo dated 03.07.98 but not joined (near retirement)
2	Jit Ram	24.05.1971 WC AFM	Nil	Offer of regular AJS made vide endst. Dated 26.07.99 and joined on AJS FROM 04.09.99
3	Rajinder Singh	03.05.1973 WC Fitter 01.05.1975 CM 30.03.1978 AFM	9 th	Joined as AFN from 30.07.1999
4	Manjit Singh	17.12.1974 WC Fitter 01.04.1978 CM	Middle	Regularized as TS 2 joined on 04.03.90.
5	Subodh Kumar	02.05.72 W/C T/Mate 01.04.78 CM	Ninth	Regularised on the same post . Joined on 06.08.98.
6	Piara Singh	10.05.72 W/C Rigger 01.04.78 CM	Matric	Regularised on the same post . Joined on 06.08.99
7	T.S.Kapoor	01.03.74 W/C Foreman 01.04.75 SFM	Matric ITI	Regular as AJS joined on 02.06.98
8	Sardul Singh	26.06.73 W/C Fitter 20.11.74 CM 30.03.78 AFM	Nil	Offer made for regularization on same post vide endt. dated 30.07.99, but not joined. Near retirement case.

9	Kiran Mehta	02.01.74 W/C, AFM	Under Matric	Regularization on same post. Joined on 06.08.99.
10	Krishan Gopal	06.08.75 WC T/Mate 05.11.76 Adhoc L/M 23.11.77 Elec. 22.10.80 CM	Hr. Sec.-I ITI	Regularised as Elecrical Gr.I joined on 23.04.98.

3. Writ petition No.3453/1989 filed by about 164 employees including the petitioners herein was disposed of by a Division Bench of this Court in terms of the following order dated 22.10.1992 :

“We dispose of the writ petition with a directing to respondent No. 2 to consider the case of the petitioners for regularization in terms of the judgment of the Supreme Court in State of Haryana vs. Piara Singh 1992(5) SPJ 1. Services of the petitioners be not terminated till the matter regarding regularization of their services is decided.”

Punjab Government issued policy instructions vide letter dated 06.09.1991 followed by letter dated 22.04.1992 in the matter of regularization of its ad-hoc employees.

Vide the letter dated 07.05.1993 (Annexure P/2), it was also decided to regularize the services of work-charged employees subject to the following conditions:

“ v) For work-charged employees

xxx xxx

(iii) Workers of non-project work-charged establishment who have completed five years service as on 31st August, 1992 will be made regular if they were recruited before 3-9-1980. The services of such non-project work-charged employees will be regularized without any

further screening about justification of continuance of these posts.

v) For casual/daily wages.

Workers working on casual labour or work charged in project which have more or less fixed period of completion will be eligible for payment of benefits as indicted in the above paragraphs.

However, there will be no system of automatic regularization in the case as their requirement has t be assessed after commissioning of projects.....

vi) Daily wage employees who have completed 10 years or more service as on 31st August, 1992 shall be considered by Screening Review Committee to be constituted by Head of the Department. For regularization with effect from the 1st September, 1992, on the availability of the post. Such employees will be entitled for minimum of pay scale with effect from the date of their regularization i.e. 1stSeptember, 1992. On regularization, these employees shall be liable for transfer anywhere in the State.

vii) In respect of all such daily wages employees, who have not yet completed 10years service, a special review should be carried out at the level of Heads of Department regarding the requirement of their continuance or retrenchment as the case may be.

viii) In case of those employees where services are no longer required, they may be relieved of their duties at the earliest possible”

4. Vide letter dated 07.05.1993 (Annexure P/2), the State Government had also directed that its instructions (dated 06.09.1991 followed by letter dated 22.04.199) shall also be followed by the Statutory/Public Corporations/Boards in the State.

Further, the Punjab Government vide the same letter dated 07.05.1993 (Annexure P/2) had directed that these decisions of the Government and the decisions contained in the instructions issued from time to time on the subject be kept in view while regularizing the services of the staff mentioned above.

5. The Secretary, Punjab State Electricity Board issued letter dated 02.11.2013 (Annexure P/3) framing the policy and laying down terms and conditions for regularization/adjustment of work charge/daily wage/casual workers.

6. The Punjab State Electricity Board then issued letter dated 18.08.1994 (Annexure P/4) ordering regularization of services of work charged workers having service or 10 years and above as on 31.03.94 and working on the project/posts where no normal channel of regularization of service was available.

7. The PSEB by resort to pick and choose, regularized the services of a number of other employee i.e. skilled and unskilled workers, T-mates/work-charged carpenters etc, who had joined along with the petitioner.

8. Still, the services of the petitioners were not regularized. Hence this writ petition.

9. In their written statement dated 09.03.2016, the stand taken by the respondents is that the writ petition has become infructuous, as the relief claimed has been granted to the petitioners and except for two, all of them have accepted regularization from various dates as contained in Annexure R/1.

Petitioners No. 4 and 8 did not opt for regularization as they were

on the verge of retirement. All the petitioners have since retired and their admissible dues have been paid. As is evident from Annexure P/10-P/19, the petitioners did not apply for any post in response to notice displayed vide letter dated 15.04.1993. The petitioners were advised to appear before the Selection Committee on 19.08.1994 in terms of letter dated 17.08.1994 but they did not appear before the Selection Committee. The case of petitioner Piara Singh for regularization was rejected (vide Annexure P/15) as he did not fulfill the minimum prescribed qualifications i.e. Matric + ITI with 8 years' experience for the post of AJS (Mechanical). The cases of the petitioners were again reviewed and they were regularized from respective dates as contained in Annexure R/1. The cases of the petitioners for regularization were rejected in 1994 and reasons for the same were duly conveyed to them. In subsequent, review, their services were regularized from the dates as shown in Annexure R/1. The instructions of the State Government are not automatically applicable to the Punjab State Electricity Board (now PSPCL). The Electricity Board had framed its own instructions (Annexure P/3 and Annexure P/4) for regularization of employees. As per clause (iii) of instructions Annexure P/4, while regularizing the services, qualifications possessed by the employees, selection criteria prescribed for the post shall be kept in view and the services would be regularized commensurate with their qualifications. In case of non-qualified work charged employees having requisite experience, the services shall be regularized as unskilled

workers. None of the petitioners fulfilled the conditions/qualifications framed by the Board vide Annexure P/4 for regularization or the posts on which they were working in 1994. However, the Board later issued instructions dated 05.09.1997 and 23.06.1999 for regularization of work charged workers working on the projects who had completed 10 years service but did not fulfill the prescribed qualifications criteria for the posts on which they were working. On the basis of those subsequent instructions, it was decided that all 309 work charged workers as per detail given in Annexure A thereto may be regularized on 'as is where is' basis, but their designation will remain unchanged. It was in the light of these later guidelines that cases for regularization of services of the petitioners were reviewed and they were regularized as per detail in Annexure R/1. Board's circulars dated 02.11.21993 Annexure P/3 and dated 18.08.1994 Annexure P/4 were in the form of guidelines for regularization of services of work charged employees. The Board had regularized the services of such employees who fulfilled the prescribed qualifications for their respective posts. The petitioners, who were working as work charged employees, did not fulfill the required qualifications prescribed for regular employees for regularization on their respective posts. As per clause (iii) of the said letter Annexure P/4, the workers having less qualifications were to be regularized keeping in view their qualifications and non-qualified workers having required experience were to be regularized as unskilled workers. The

petitioners having less than the prescribed qualifications for regular post (sic appointment) could not be regularized on their respective posts. After adjudging their suitability and qualifications, the petitioners were regularized as per details mentioned in Annexure R/1.

10. I have gone through the record of the case and heard the learned counsel for the parties. It has been contended by the learned counsel for the petitioners that the petitioners were working on work charged and their cases for regularization are fully covered by the State Government's instructions dated 07.05.1993; the same are applicable to and binding on the respondents and that the stand of the respondents is self contradictory.

11. Per contra, learned counsel for the respondents has argued that the State Government's instructions dated 07.05.1993 are not automatically applicable to or binding on the respondents and that there is no contradiction in the stand of the respondents. He contends that the cases of the petitioners for regularization have been rightly considered and decided in accordance with the applicable instructions of the Board.

12. Section 5 of the Electricity (Supply) Act, 1948 vests in the State Government the powers to constitute State Electricity Board while Section 78 A (1) thereof empowers the State Government to give directions to the Board on matters of policy.

For ready reference, the same are reproduced below:

“5. Constitution and composition of State Electricity

Boards.-

(1) The State Government shall, as soon as may be after the issue of the notification under sub-section (4) of Sec. 1, constitute by notification in the Official Gazette, a State Electricity Board under such name as shall be specified in the notification.

(2) The Board shall consist of not less than three and not more than seven members appointed by the State Government.

*2 [****]*

3 [(4) Of the members, -

(a) One shall be a person who has experience of, and has shown capacity in, commercial matters and administration;

(b) One shall be an electrical engineer with wide experience; and

(c) One shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably electricity supply undertaking.]

(5) One of the members possessing any of the qualifications specified in sub-section (4) shall be appointed by the State Government to be the Chairman of the Board.

*(6) A person shall be disqualified from being appointed or being a member of the Board if he is 4 [***] a Member of 5[Parliament] or of any State Legislature or any local authority.*

(7) No act done by the Board shall be called in question on the ground only of the existence of any vacancy in, or any defect in the constitution of, the Board.

Section 78 A (1) Directions by the State

Government.- *In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government."*

13. As noted above, vide letter dated 07.05.1993 (Annexure P/2) of the State Government, it was also decided to regularize the services of work-charged employees subject to the conditions mentioned therein. Further, the State Government had directed therein that those instructions shall also be followed by the Statutory/Public Corporations/Boards in the State (including the Punjab State Electricity Board). In view of this, I find merit in the contention of the learned counsel for the petitioners that the said instructions are applicable to and binding on the respondents.

14. Para 6, clause (iii) of the circular dated 07.05.1993 (Annexure P/2) directs that workers of non-project work charged establishment, who have completed five years service as on 31st August, 1992 will be made regular, if they were recruited before 03.09.1980 and their services will be regularized without any further screening about justification of continuance of these posts. It is not disputed that the petitioners had been recruited before 03.09.1980 and all of them had completed five years service as on 31st August, 1992. This being the situation, it follows that they were entitled to regularization of services without any further screening.

15. Now coming to the Board's own circular dated

08.08.1994 Annexure P4. Through this, the Board had ordered regularization of services of worked charged employees having service of 10 years and above as on 31.03.1994 and working on the projects/posts where no normal channel of regularization of service as available, on 'as is, where is' basis. The language of the clause (i) of this letter is plain and simple. It mandated regularization of services of such work charged employees on the posts held on 31.03.1994.

16. Learned counsel for the respondents points out to clause (iii) of the same letter, which says that while regularizing the services, the qualifications/selection criteria prescribed for the post and those possessed by the workers shall be kept in view and his/her services regularized commensurate with the qualifications possessed by the worker. In case of non-qualified WPC workers, but having requisite experience, the services shall be regularized as unskilled workers. He contends that the petitioners having less than the prescribed qualifications for appointment to the posts held by them, could not be regularized on those posts.

17. For invoking clause (iii) *ibid*, it was incumbent upon the respondents to show what were the qualifications prescribed for appointment to the posts held by the petitioners and how it is claimed that they did not fulfill those qualifications. However, no such rules/regulations/orders have been produced or otherwise brought to the notice of the Court. It is, therefore, difficult to accept and act on the bald assertion in the written

statement of the respondents that the petitioners were not qualified or had less than the prescribed qualifications for appointment to the posts held by them.

18. Even otherwise, the respondents themselves had appointed the petitioners to the respective posts held by them on work charged basis. Their eligibility and qualifications for appointment to those posts were to be gone into at the time of appointment. It is highly unfair and unethical on the part of the respondents, while considering their claim for regularization, to rake up the plea that the petitioners had less than the prescribed qualifications for appointment to the posts held by them.

19. For the foregoing reasons, the cases of the petitioners for regularization were required to be considered in accordance with the para 6, clause (iii) of the circular dated 07.05.1993 (Annexure P/2), which directed that workers of non-project work charged establishment who have completed five years service as on 31st August, 1992 will be made regular. It follows that there was no justification at all for the respondents to invoke the Board's own circular dated 8.08.1994 Annexure P4, particularly the conditions prejudicial to the petitioners, to the extent of their conflict with the Punjab Government letter dated 07.05.1993 (Annexure P/2) and being detrimental to the petitioners.

20. Respondents have asserted that the PSEB had also issued letters dated 05.09.1997 and 23.06.1999 regarding regularization of services of work charged employees and that in

the light of those latter guidelines, the petitioners' cases for regularization were reviewed and they were regularized as per details given in Annexure R/1. However, the aforesaid letters of the PSEB letters dated 05.09.1997 and 23.06.1999 have not been produced on record. In their absence, nothing can be said whether or not they had any applicability to the petitioners' cases. In any case, the same would not negate and deprive the petitioners of their pre-existing entitlement to be considered for regularization as per circular dated 07.05.1993 (Annexure P/2).

21. The petitioners' claim is for regularization on the posts held by them, on their from due dates as per circular dated 07.05.1993 (Annexure P/2). Admittedly, that has not been done. Merely because the claims of 8 out of 10 petitioners for regularization were considered by the respondents under some different instructions, their services were regularized as shown in Annexure R/1 from dates later than the due dates and the petitioners had accepted the same, that did not/would not take away the petitioners vested right and entitlement regularization of services from due dates as per circular dated 07.05.1993 (Annexure P/2). The respondents have not referred to or produced any document to show that the remaining two petitioners (No. 4 and 8) had given up their claim for regularization of services. In view of this, the petitioners right and entitlement to consideration for regularization of services from the due dates as per circular dated 07.05.1993 (Annexure P/2) cannot be resisted by the respondents on the basis of this plea/contention.

22. As an upshot of the above discussion, the petition is allowed and the respondents are directed to regularize the services of the petitioners on their respective posts on which they had completed five years' service as on 31.08.1992 from the dates of appointment thereto, with all consequential benefits. The pecuniary benefits shall, however, be restricted from 38 months prior to the filing of the writ petition and shall carry interest @ 6% per annum from the date of accrual till payment.

23. Needful be done within a period of four months from the date of receipt of a certified copy of this order.

03.12.2019

vandana

Whether speaking/reasoned

Whether Reportable

(ARUN MONGA)
JUDGE

Yes/No

Yes/No