

Sr. No.352

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

CWP No.17937 of 1995 (O&M)

Reserved on : 15.07.2019

Pronounced on 06.08.2019

Amar Singh

... Petitioner

Versus

Punjab Recorders Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. S.K.S.Bedi, Advocate,
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

None for the contesting respondents.

ARUN MONGA, J.

1. The grievance of the petitioner is that the respondents are not regularizing his service merely on the ground that since his appointment was made on daily wages on compassionate grounds therefore, he is dis-entitled to seek parity with the other ahoc co-employees who were later on regularized.

2. Facts of the case are in narrow compass, as reflected from the conjoint reading of the pleadings. Petitioner's father died in harness on 09.08.1993 leaving behind his widow, a handicapped son and the petitioner who at that time was studying in ITI.

3. As per the return of respondent No.1-Punjab Recorders Limited, it was engaged in manufacturing of mechanical and

electronic parts used in the defence machinery including tanks. The entire share holding of the respondent No.1-Punjab Recorders Limited was/is with the Government of Punjab. The petitioner states that, therefore, respondent No.1 is governed by the Policies and administrative Circulars issued by Government of Punjab from time to time.

4. On merits, respondent No.1 states that it is correct that when Banta Singh died his natural death he was still in service. No promise was ever made by anybody on behalf of the respondent company to give a regular job to the petitioner but seeing the family of late Sh. Banta Singh in crisis and purely out of humanitarian concerns employment was given to the petitioner who is a son of late Sh. Banta Singh. Since the petitioner was not qualified enough to be given an office job, nor was he skilled in any trade so as to be employed in some technical job, he was employed as a helper on daily wages.

5. Petitioner in his replication has reiterated his claim. He further relies on an order dated 05.02.2004 (Annexure P-8) passed by a Division Bench of this Court in CWP No.11689 of 2003. Petitioner submits that the State Government released a sum of Rs.2,25,52,918/- vide its communication dated 01.10.2003 for disbursal to the employees of the company, who were to be retrenched or even given voluntary retirement.

6. The petitioner further pleads that on the one hand, the State Government alleges that it is facing financial stringency, but on the other, the officers of the company and that of the State

Government were enjoying luxury of travelling in the helicopter hired by respondent company. This Court, therefore, passed the order to the effect that the State Government shall not release any funds towards hire or other charges for the helicopter that was hired and being used. After the above order was passed, the ex-employees of the respondent company were submitting their claims with the successor company of the respondent No.1 viz. the Punjab information and communication technology Corporation, the respondent No.3 herein. The claims of the workers were being honoured by respondent No.3. Resultantly, a large number of writ petitions filed by the workers of the respondent company had been allowed/disposed of vide order dated 13.01.2012 (CWP No.831 of 2012 titled as Jaskaran Singh and others Vs. State of Punjab and others) (Annexure P-9) for disbursement of the dues of the petitioner workers. The petitioner also made a representation dated 16.11.2012 (Annexure P-10).

7. Petitioner states that he has continuously worked for 5 years, ever since he was appointed as a helper on 01.10.1993 after the death of his father Sh. Banta Singh, who was a permanent employee of the company and died in harness. The petitioner is a matriculate and has pursued vocational trade of repair and maintenance of electrical gadgets in Government Senior Secondary School, Mohali after passing the examination of matriculation. The last drawn salary of the petitioner was Rs.2,454/- after statutory deduction of Rs.309/- every month towards the Employees Provident Fund. The petitioner worked

with respondent No.1, till 2003 when it was closed.

8. It would be apposite to mention here that, during pendency of the writ petition, respondent No.1-Punjab Recorders Limited was wound up and vide order dated 29.01.2016, this Court impleaded Punjab Information and Communication Technology Corporation as respondent No.3 being successor-in-interest.

9. In the return filed by the respondent No.3, claim of the petitioner has been resisted on the ground that petitioner was given the job purely out of humanitarian concerns and he was appointed as 'Helper' on daily wages. After the death of petitioner's father Banta Singh, he was not given compassionate appointment under any policy or rules. Rather, he was engaged in Punjab Recorders Ltd as a back door entry. The competing claims of all those who were eligible were never considered. The petitioner was not given compassionate appointment. There was no sanctioned post against which the petitioner was considered. He was merely adjusted in the post of a helper so as to provide him a means of adequate compensation to look after his family. Being a daily wager, petitioner is not entitled to seek regularization on the basis of Circular dated 24.04.1986 (Annexure P-7) relied by the petitioner.

10. It is stated by the respondents that the said Circular is not applicable in the present case. Same is meant for employees of the State Government. It is stated that even otherwise, Circular dated 24.04.1986 (Annexure P-7) merely envisages that respondents have to maintain a priority list of such eligible people

who may in turn be given jobs on compassionate grounds subject to fulfilment of parameters contained therein.

11. I have heard Mr. S.K.S.Bedi, learned counsel for the petitioner as also Ms. Ambika Bedi, Learned Assistant Advocate General, Punjab and have perused the rival pleadings on record.

12. Without going into the controversy of the applicability of the Circular dated 24.04.1986 (Annexure P-7), I am of the opinion that the respondent No.1 having once given the petitioner a job on compassionate grounds cannot take advantage of the fact that they had offered him appointment on daily wages as against his entitlement of being appointed on regular basis. As far as respondent No.3 denying petitioner's claim it does not lie in its mouth to challenge appointment made by its predecessor-in-interest, once respondent No.1 has admitted that petitioner was offered appointment by it.

13. Prima facie, I am convinced that on this very ground alone that the petitioner ought to have been conferred the benefit of regularization at the very first opportunity as and when regularization of job became available. In any case, specific illustrations have been given by the petitioner in para 6 (c) of the writ petition that other persons vis Krishan Chand, Kulwant Singh, Raghvir Singh and Tara Devi who were also appointed on daily wages after the petitioner and Tara Devi was regularized with effect from 01.05.1995. But the same benefit has been denied to the petitioner saying that they were appointed prior to the appointment of the petitioner as daily wager. It is stated that only

one of them i.e. Tara Devi was regularized and others were working on adhoc basis.

14. On a query posed by the Court with regard to the current status of the other daily wagers, learned State counsel submits that she is unable to respond to the same as the same pertains to contesting respondent No.3. Despite opportunity none has appeared on behalf of respondent No.3 and I am left with no other choice but to draw an adverse inference therefrom.

15. An additional affidavit dated 06.05.2019 was filed by the petitioner deposing that he remained in service of the respondent with effect from 01.10.1993 till the winding up of the Punjab Recorders Limited under the orders of the State Government and the petitioner continued to be in service from daily wager to adhoc employee vide letter dated 19.12.1997 (Annexure P-11) and vide letter dated 18.09.1999 (Annexure P-12), the services of the petitioner were extended up to 31.03.2000.

16. Respondent No.3-Corporation is also stated to have been wound up by respondent No.1-State of Punjab and, therefore, at this stage, if any relief is to be granted to the petitioner, the monetary consequences of the same shall have to be borne by the State as both i.e. respondents No.1 and 3 were 100% owned entities of the State Government.

17. In this connection, reference may be had to Division Bench Judgment rendered by this Court in CWP No.11689 of 2003 wherein similarly situated ex employees of Punjab Information and Communication Technology Corporation Limited (respondent

No.3) had approached to seek payment of their dues on account of their salaries. Mr. H.S.Bedi, J. (as his Lordship then was) speaking for the Division Bench of this Court observed as below:-

“Admittedly the Company has been ordered to be closed down under the direct orders of the State Government on the proposal made by the Disinvestment Commission. It is also clear that a sum of over Rs.2.25 crores has already been paid towards the VRS, leave encashment and other dues to the employees of the Company from the funds provided by the State Government. It is thus not open to the State Government to disown its liability to make the balance payment. We find the observations of the Hon'ble Supreme Court in Kapila Hingorani (supra) to be very relevant as these were made with reference to the Bihar Government's disinclination to pay the dues of government owned companies which were under liquidation. The Hon'ble Supreme Court repelled the argument that as the Companies were independent entities, the State Government was under no obligation to under write the payment of salaries to such employees. The Court observed that as the State Government exercised total control over the Companies and their assets had been misused and frittered away by their mismanagement, the denial of the salary etc. amounted to an infringement of the fundamental rights of the employees under Article 21 of the Constitution of India. The Hon'ble Supreme Court then, as an interim arrangement, ordered the State Government to deposit a sum of Rs. 50 crores towards disbursement of the salaries which was to be proportionately paid out. We are of the opinion that the observations of the Hon'ble Supreme Court clearly apply to the present matter as well.

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It has been pleaded before us that there is a financial stringency and the State Government is not in a position to meet its commitment. We are, however, clearly of the opinion that the provision of two square meals, a basic necessity, must take precedence over those who seek to travel in luxury and comfort. We also observe that the petitioners are middle level employees of awkward age which makes suitable re-employment difficult whereas their commitment to their families, which would include the adjustment of their children, would be ever increasing. In such a situation every penny that would fall into their hands would help. We accordingly, direct that till such time the full payment upto the date of voluntary retirement is made to the petitioners, the State Government shall not release any funds as hire or other charges for the helicopter that has been hired and is being used by it.”

I respectfully share the above sentiments expressed by the Learned Division Bench of this Court.

18. In the aforesaid premises, it is held that the petitioner is entitled to salary to be calculated at par with the salary of his regular co-employee with effect from 01.05.1995 i.e. the date when Tara Devi was given benefit of regularization until the date petitioner left his job in year 2003 when the company was wound up. The petitioner shall also be entitled to interest @ 6% per annum on the amount found due and payable to him after carrying out the necessary calculations.

19. Let the needful be done and payment be disbursed by respondent No.2-State of Punjab within a period of two months

from the date of receipt of a certified copy of this order.

20. Petition is allowed in the aforesaid terms.

06.08.2019
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No