

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

**CWP NO. 16266 OF 2011
DATE OF DECISION : 13.08.2019**

Gurdial Singh

...Petitioner

versus

State of Punjab and others

...Respondents

AND

CWP NO. 16291 OF 2011

Ramesh Lal

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : None.

ARUN MONGA, J.

1. This order of mine shall dispose of two writ petitions bearing CWP Nos. 16266 of 2011 and 16291 of 2011 as common law and facts are involved therein. For brevity, the facts are being taken from CWP No. 16266 of 2011.

2. Petitioner seeks quashing of the order dated 28.06.2011 (Annexure P/6) rejecting his claim for regularization of service and also a writ of mandamus directing respondents No.1 and 2 to allow him to join duty as Tractor Trolley Driver and

to regularize his services.

3. While disposing of the petitioner's earlier writ petition No. 2768/2011, order dated 15.02.2011 was passed by this Court, as under :

" Sh. Gurdial Singh s/o Sh. Puran Cahnd R/o Village Allar, Post Office Ambala Jattan, Tehsil Dasuya, Distt. Hoshiarpur filed a CWP No.6318 of 2011 before Hon'ble Punjab and Haryana High Court, Chandigarh. In this writ petition, Sh. Gurdial Singh prayed for issuing the directions to the respondents for regularizing his service as Driver in Forest corporation. In this writ petition, the Hon'ble Punjab and Haryana High Court, Chandigarh vide its order dated 08.04.2011, has directed to respondent No.2, Managing Director, Punjab State Forest Development Corporation to pass a speaking order within three months after receiving the certified copy of the order.

The Government of Punjab introduced a policy vide its letter No.11/34/2000-4.P.P.III/1301 dated 23.01.2001 and according to this policy the instructions were that if a work charged/daily waged workers completes three years in service then a seniority list of this employee should be prepared and the services of these employees should be regularized against the post lying vacant in the Department. For implementing this policy, the Administrative Director, Forest Corporation constituted a committee for regularizing the services of daily wages workers working under different categories and sought reports from the all Divisional Managers for considering the regularization of different daily wages workers, working under different categories. On the basis of

information, sent by the Divisional Managers, the committee according to the policy prepared a seniority list of daily wages drivers. Name of Sh. Gurdial Singh is mentioned at Sr. No.8 in this list. As per the policy of the Government, service of Sh. Sukhdev Singh at Sr.No.1 in the seniority list were regularized against the vacant post of driver in the Forest Corporation. It is worth while to mention here that name of Sh.Gurdial Singh is Sr. No.8 in the seniority list, but as there are no regular posts of drivers vacant in the Forest Corporation, so the services of Sh. Gurdial Singh and six other senior daily wages drivers were not regularized. So the claim of Sh. Gurdial Singh is rejected."

4. Pursuant thereto, the impugned order has been passed by respondent No. 2.

5. Facts relevant for the disposal of the writ petition are that the petitioner had joined as Daily wages driver on 01.08.1997. Punjab Government issued instructions dated 23.01.2001 Annexure P/2 directing that each Department should prepare a list of work charged, daily wage and other categories of workers who had completed 3 years of service. Out of the list thus prepared, workers should be absorbed/regularized only against regular posts existing in each department. Only when all eligible persons of this category have been accommodated, cases of daily wages and other categories of workers who have completed three years of service in the department may be taken up. The letter further states that the idea was that workers

belonging to a particular department should be considered for regularization only against the available regular vacancies in that department and that the claims of work charged/daily wage/other categories of workers for regularization will extend only against available vacancies in the department to which these workers belong. These instructions applied to respondent No. 2-Corporation. Respondent No. 3 and 4 had joined the Corporation (respondent No. 2) as daily wagers/drivers on 18.08.1998 and 05.06.1997, respectively. Their services were later regularized. However, this benefit was not given to the petitioner and he was ultimately relieved from duty in July, 2009.

6. The petitioner claims that he had completed three years' service as daily wage worker on 22.05.2001, was senior to respondents No.3 and 4 and was wrongly denied the benefit of regularization of service.

7. In the short reply of respondents No.1 and 2, it has been pleaded that respondent No.4 had joined the Corporation on 05.06.1997 and was senior to the petitioner and that respondent No.3 had joined on 18.08.1998. It is not denied that the petitioner was senior to respondent No. 3. It is admitted that the services of respondents No.3 and 4 were regularized from 10.11.2001 and 12.11.2001, respectively.

8. I have gone through the pleadings and the accompanying documents and applied my mind to the facts and circumstances of the case.

9. Admittedly, the petitioner had completed the requisite three years' service and was eligible to be considered for regularization of service as per the instructions Annexure P-2. It is not denied that he was senior to respondent No. 3 and that the latter had been given the benefit of regularization of service. Absolutely no explanation, what to say of plausible one, is available on record as to why the petitioner, though senior to respondent No. 3, was not considered for and was denied the benefit of regularization of service, while this benefit was given to his junior namely respondent No. 3. Ex facie, this action of respondent No.2 was not fair and, in my opinion, the same is not justifiable and sustainable in law. Impugned order dated 28.06.2011 Annexure P/6 is, therefore, liable to be struck down.

10. Petitioner has asserted that he had submitted letters/representations dated 26.06.2006 and 13.11.2006 (Annexures P-4 and P-5) and had approached the official respondents many times for regularization of his services, but his grievance was not redressed. He then filed an earlier writ petition bearing CWP No.2768 of 2011, which was disposed of vide order dated 15.02.2011. This factual position is not denied in the counter filed by the official respondents.

11. As noted above, the petitioner had completed the required three years' service and was eligible to be considered for regularization of service as per the instructions (Annexure P-2) He was senior to respondent No. 3. Petitioner's suitability for

regularization is not in question.

12. The petitioner had acquired eligibility and had a rested right to be considered for regularization of service under the applicable policy instructions dated 23.01.2001 (Annexure P-2). The injustice done to the petitioner cannot be allowed to be perpetuated, because of the subsequent change of policy vide letter dated 18.03.2011 (Annexure R-2) relied upon by the respondents, laying down new parameters for regularization of service.

13. Petitioner was relieved of his duty in July, 2009. Since then, lot of new developments might have taken place, giving rise to new rights and interest of a good number of other persons. It would, therefore, be unfair to pass any order at this stage adversely affecting them.

14. In the totality of facts and circumstances and taking a pragmatic view of the matter, in my opinion, it would be just and fair if the impugned order is set aside and respondents No.1 and 2 are directed to offer to the petitioner employment against any available or next available vacancy of Tractor Trolley driver or an equivalent post, whether regular or work charged or on daily wage basis and, thereafter, upon any such regular vacancy becoming available, to consider the petitioner for regularization against the first available regular vacancy, by applying the parameters laid down in policy instructions dated 23.01.2001 Annexure P/2. The petitioner will

not be entitled to any pecuniary benefits for the period he remained out of service and he will be placed at the bottom of the seniority list of the relevant category as on the date of such re-employment. In the premise impugned order dated 28.06.2011 (Annexure P-6) is hereby quashed.

15. Both the writ petitions are disposed of in above said terms.

(ARUN MONGA)
JUDGE

AUGUST 13, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No