

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

**CWP NO. 11226 OF 2014
DATE OF DECISION : 01.10.2019**

Sunil Kumar and another

...Petitioners

versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. G. S. Dhillon, Advocate,
for the petitioners.

Mr. P. S. Bajwa, Addl. AG, Punjab.

ARUN MONGA, J. (ORAL)

Inter-alia, issuance of a writ in the nature of certiorari has been sought herein to quash the order/judgment dated 12.02.2014 (Annexure P-10) passed by Educational Tribunal, Punjab, whereby orders annexed at Annexures P-7 and P-8 both dated 29.09.2012 and order/letter dated 31.05.2012 (Annexure P-11) passed by respondent No.3/College rejecting the claim of the petitioner to grant them minimum of the regular pay-scale on their respective posts.

2. Succinctly factual narrative first. The petitioners were appointed as Clerk and Mali respectively on consolidated salary of ₹5400/- and ₹3940/- per month with effect from their respective dates of appointment i.e 13.09.1999 and 03.07.2000.

3. Both the petitioners are working uninterruptedly ever since their initial appointment and have been discharging their respective duties as Clerk and Mali. They are working on full time basis at par with other employees on the aided posts in the College. Respondent No.3 is an aided college and accordingly 95% of the grant-in-aid is being granted by Government of Punjab to the College for running its affairs. Both the petitioners are otherwise stated to be qualified to hold regular posts of Clerk and Mali, respectively. Yet, they are being paid consolidated salary notwithstanding that they are working at par with the other regular employees for the past 20 and 19 years, respectively.

4. Common grievance of the petitioners is that not only their case for regularization is not being considered favourably, but on the other hand, in violation of principles of 'equal pay equal work' , they are merely being paid consolidated salary as compared to the regular employees. Despite the fact, that they are working at par with the regular employees.

5. In the return filed on behalf of respondents No.1 and 2, no response has been given on the merits of the case other than seeking dismissal of the petition on the ground that no order has been passed either by the State or respondent No.2 i.e Director, Public Instructions (Colleges).

6. As regards the claim of petitioners, respondents No.1 and 2 submit that since respondent No.3-College is their

appointing authority and as such, their services are to be regularized by the Managing Committee of the College and to that extent they are merely perform a party to the writ petition.

7. On the other hand, per written statement filed on behalf of respondent No.3/College, dismissal of writ petition has been sought on the ground that the petitioners cannot seek parity with their counter parts working against the aided posts as they are working on unaided posts. It is further stated that their appointment is purely temporary and contractual and in view of an imposition of ban by the Government for filling up aided posts, their services cannot be regularized.

8. I have heard rival contentions of learned counsel for the respective parties and have perused the pleadings along with the relevant recorded appended therewith.

9. I am of the view that case of the petitioners to the extent of seeking minimum of the regular pay-scale on the respective posts is squarely covered by a Full Bench judgment rendered by this Court in case titled as "*Avtar Singh v. State of Punjab*" 2012 (3) RCR (Criminal) 15.

10. For ready reference, the relevant part of the Full Bench judgment, *ibid*, is reproduced herein below :

"2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their service are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficiently long period i.e 10 years, such daily wagers, ad hoc or

contractual employees shall be entitled to minimum of regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible schemes."

11. In view of the aforesaid, the impugned order/judgment dated 12.02.2014 (Annexure P-10) passed by the Educational Tribunal, Punjab, Mohali is modified to the extent that the petitioners shall be entitled to be paid salary as per minimum of the regular pay-scale of their respective posts, without any allowances, on completion of 10 years of service.

12. As regards claim of the petitioners qua regularization of their services is concerned, the very fact that they have been put in uninterrupted services for as long as 20 and 19 years respectively, is reflective of a conceded position that work being taken from them is of perennial nature. Since they have already been working for past two decades, the same would, therefore, confer an equitable right in their favour to claim regularization.

13. The writ petition is accordingly disposed of with a direction to the respondents to consider the claim of the petitioners for regularization as per applicable regularization policy and in particular the one contained at Annexure P-4.

While parting, I may hasten to add here that regardless of equitable rights having been accrued in favour of the petitioners,

they are also entitled to seek regularization on the ground of having been subjected to hostile discrimination inasmuch as similarly situated employees who are appointed later than the petitioners have been regularized as more particularly stated in para 15 of the writ petition. Such a hostile discrimination and arbitrariness is not permissible on the part of State, being in contravention of fundamental rights enshrined under Articles 14 and 16 of the constitution of India.

14. As far as the defence of respondent No.3/College that no discrimination has been indulged, the same does not inspire any confidence. A bald assertion has been made that services of the petitioners are of temporary nature, therefore, they are not entitled to seek regularization. There has been no denial in the written statement that persons appointed later than the petitioners have not been accorded the benefit of regularization.

15. In the premise, the respondents would do well in case they consider the case of the petitioners for regularization in accordance with applicable policies, regardless of the fact whether they are working on aided posts or not. The aforesaid defence of the respondents is moonshine and is of no significance since petitioners have already rendered two decades of service and therefore, on that very ground alone they are entitled to seek regularization as their job is of perennial nature. The petitioners shall also be entitled to interest @ 6% per annum on the arrears of salary to be calculated with effect from completion

of 10 years of their service and shall be payable by the respondents No.1 and 2 and respondent No.3 in the ratio of 95:5.

13. Let the decision with regard to regularization be taken within three months from the date of receipt of certified copy of this order and arrears of the salary of petitioners be paid to them within two months from date of certified copy of this order, failing which the petitioners shall be entitled to compensatory interest @ 12 % per annum on the delayed payment.

14. The writ petition is disposed of in the above terms.

(ARUN MONGA)
JUDGE

OCTOBER 01, 2019
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Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No