

Sr. No.229

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

CWP No.14600 of 2015 (O&M)

Date of Decision: 06.03.2019

Raj Kumar

... Petitioner

Versus

The Haryana State Cooperative Agriculture and Rural
Development Bank Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Mandeep Kumar Dhot, Advocate,
for the petitioner.

Mr. Arun Sharma, Advocate,
for respondents No.1 to 3.

ARUN MONGA, J.(ORAL)

Present petition has been filed for issuance of a writ in the nature of certiorari to quash an order dated 20.01.2015 (Annexure P-7), passed by respondent No.3/The Karnal District Primary Cooperative Agriculture and Rural Development Bank Limited, whereby, benefit of regularization of service has been declined to the petitioner, even though the services of the petitioner were originally hired 34 years ago, way back on 10.05.1985, as Sweeper-cum-Chokidar (Watchman). Ever since he was hired, petitioner has been working with the respondents and his salary has been increased from time to time at D.C.rates.

2. Facts of the case succinctly are that the Petitioner, as already stated, was initially appointed on daily wage basis as

Sweeper-cum-Chowkidar on 10.05.1985 at the consolidated salary of Rs.500/- per month. From time to time his salary was increased i.e. in July, 1991 his salary was increased to Rs.800/- per month and in October, 1994 his salary was again increased to Rs.1200/- per month. Now the petitioner is posted in Anaj Mandi Branch at Nilokheri and he is working from 9.a.m. to 5 p.m. in the bank and is getting Rs. 4,350/- per month. In addition to his duties, the petitioner is also helping the employees of the bank for taking the files from one place to another. The work and conduct of the petitioner has been satisfactory and there is no complaint against him.

3. The petitioner submitted a representation for regularization of his services on the post of Sweeper-cum-Chowkidar w.e.f. 27.05.1993, on the basis of regularization policy dated 27.05.1993 (Annexure P-1), framed by State of Haryana. Petitioner states that services of similarly situated persons and even his juniors were regularized w.e.f. 27.05.1993, whereas, he has been denied this benefit, though he has been working as Sweeper-cum-Chowkidar in the Bank for 34 years. Petitioner states that respondent Nos.4 and 5, who were junior to him, were regularized in the year 1989.

4. Vide regularization policy dated 27.05.1993, it was decided that all casual/daily wage employees who have completed 5 years of service would be given the benefit of regularization. The petitioner continued to follow up his case for regularization. In the meanwhile, another Policy dated 07.03.1996

(Annexure P-2), was notified by the State of Haryana envisaging that all those who were employed on casual/daily rates and had completed 5 years shall be regularized provided they had worked for a minimum period of 240 days in each year with two permissible breaks in service in any year, not exceeding more than one month at a time, the Policy dated 07.03.1996 was later on modified by subsequent Policy dated 18.03.1996 (Annexure P-3), wherein, it was envisaged that all work charged/casual/daily wage employees who had put in 3 years (instead of 5 years as per earlier policy) as on 31.01.1996 shall also be eligible for regularization.

5. The petitioner having failed to get any relief in compliance of the Policies, *ibid*, submitted a representation dated 06.05.1999 (Annexure P-4) followed by a legal notice dated 31.08.1999 (Annexure P-5), but the same were not adverted to by the respondents.

6. Compelled by the circumstances, the petitioner was forced to file a writ petition bearing CWP No.16896 of 1999 before this Court, for redressal of his grievances. The said writ petition was disposed of vide order dated 03.11.2014 (Annexure P-6), with a direction to the respondents to pass an appropriate speaking order. It was also observed that if the petitioner is found entitled for the relief of regularization, the same would be granted to him. Pursuant to the directions of this Court, vide impugned order dated 20.01.2015 (Annexure P-7), the claim of the petitioner was declined on the ground that there is no sanctioned post of a

Sweeper in the bank-respondent No.3 and the work is being taken from the petitioner on hourly basis at the D.C. rates from time to time i.e.@ Rs.70 per hour for 2 ½ hours per day.

7. The present petition has been filed impugning the order dated 20.01.2015 contending that the same is in violation of the Policies of the Government of Haryana (*supra*) and being discriminatory, inasmuch as similarly situated persons junior to the petitioner have been regularized by the respondents giving the benefit of the said Policies whereas his claim has been rejected.

8. In the written statement filed on behalf of respondents No.1 to 3, similar stand has been taken as in the impugned order that there is no sanctioned post of Sweeper with the respondent-Bank and, therefore, his services cannot be regularized.

9. It is stated by respondents that the petitioner was originally engaged as Sweeper, on part time basis, in 1985 on a consolidated salary of Rs.500/- per month and, not on any regular/sanctioned post. It is though admitted by the respondents that he has been working continuously ever since.

10. I have gone through the respective pleadings and heard the rival contentions of both the counsels.

11. As regards the ground of discrimination, learned counsel for the petitioner contends that he has given specific instances of persons junior to the petitioner as reflected from appointment letter dated 18.12.1995 (Annexure P-10) as also letter dated 24.07.1985 (Annexure P-11). Even otherwise, he contends that the petitioner is entitled to seek regularization as per the

Policies notified by the State of Haryana, from time to time, as noted above.

12. Per contra, learned counsel for respondents No.1 to 3 resists the argument of the learned counsel for the petitioner and contends that he has not been discriminated. He argues that the instances of other employees, given by him, pertain to the banks at Panipat and Sonapat. He submits that each district has Cooperative Agriculture and Rural Development Bank and each one of these banks are independent entities. Therefore, the benefit of regularization given in the Banks at Panipat and Sonapat shall not entitle the petitioner to seek relief on the ground that his juniors have been given benefit. He further contends that no person junior to the petitioner has been given the benefit of regularization in Karnal District Primary Cooperative Agriculture and Rural Development Bank-respondent No.3.

13. Learned counsel for the respondents also relies on a judgment rendered by the Supreme Court in a case titled as ***Secretary to Government Commercial Taxes and Registration Department, Secretariat and another Vs. A. Singamuthu, 2017 (3) SCALE 365***. The relevant part thereof is extracted hereinbelow:-

“18. The Division Bench also failed to take note that G.O.Ms. No.22 P and AR Dept. dated 28.02.2006 is applicable only to full-time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part-time employees. As per G.O. (Rt.) No.84 dated 18.06.2012, the respondent is entitled

to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012.”

A perusal of the above reflects that in the regularization Policy under consideration therein, the Supreme Court found that the same was applicable only to full time daily wage employees who had completed 10 years of service. The said Policy was not meant for part time employees.

14. As against the above, the Policy dated 18.03.1996 (Annexure P-13), notified by the State of Haryana, relied upon by learned counsel for the petitioner clearly states as below:-

“Accordingly, Government instructions issued vide letter of even number 7th Mach, 1996 should be considered as modified to the extent that the work charged/casual/daily rated employees with 3 years services on 31st Jan.1996 instead of 5 years service on 31st Jan.1996 shall be eligible for regularization.”

15. As per the above Policy of State of Haryana, the petitioner was eligible for the benefit of regularization as he had put in more than 3 years of service. It is conceded case of the respondents in the written statement that he had been engaged in the year 1985 on part time/casual basis, as per the D.C.rates on a consolidated salary of Rs.500/- per month which was enhanced from time to time over the years.

16. Still further, in the year 2011, Government of Haryana framed a new Policy, pursuant to which, services of all the Group C and Group D employees/workers appointed/engaged on ad

hoc/contract/work charge/daily wages and part time basis were regularized. Case of the petitioner is squarely covered by this policy. I am of the opinion that the petitioner cannot be put to disadvantage for the delay on the part of the official respondents to implement regularization policy. Relevant part of 2011 Policy, *ibid* (Annexure P-8), is extracted as below:-

“The services of such Group C and Group D employees/workers appointed/engaged on adhoc/contract/work charged/daily wages and part time basis shall be regularized if they fulfill the following conditions, namely:-

i) That the employees/workers should have continued to work for not less than 10 years as on 10.04.2006 and is still in service but not under cover of the orders of the Court or Tribunals, against duly sanctioned vacant posts. The period of continuous break in such service should not be more than one month in a calendar year.

X----X----X----X-----X-----X

v) That the employee should be regularized against a sanctioned vacant post of relevant category.

vi) A medical fitness certificate and documentary proof of date of birth as per the instructions shall be obtained from the employee concerned.

vii) His antecedents should be got verified by the Police as per the Government Instructions if it was not done earlier.

viii) No relaxation of the criteria as laid down above shall be allowed.

2. A part time employee fulfilling conditions mentioned above shall be regularized against a sanctioned vacant full time post of the same category.”

17. The argument of the learned counsel for the respondents that there is no sanctioned post of Sweeper available with respondent No.3 is of no significance as long as the Policies issued by the State of Haryana are applicable to the respondents. It is the bounden duty of the respondents to create/sanction the post for granting benefit of the said Policies to the petitioner. It is conceded that the other District Level Cooperative Banks had granted regularization benefit to their casual/daily wage/part time employees by creating the post of Sweeper-cum-Peon as reflected from letter dated 18.12.1995 (Annexure P-10). The delay or non-grant of benefit as per 1996 Policy, until the subsequent Policy dated 29.07.2011 was notified, cannot be adversarially applied to the petitioner, for no fault of his.

18. In view of my discussion above and reasons assigned therein, the present writ petition is allowed with a direction to the respondents to create a post of Sweeper-cum-Peon or Sweeper-cum-Chowkidar, as has been done in the case of other District Level Cooperative Banks, so as to grant the benefit of regularization to the petitioner in terms of Policy dated 18.03.1996 read with subsequent policy of 2011, duly notified by the State of Haryana.

19. It is, however, made clear that petitioner shall not be entitled to any pecuniary benefits for the past service rendered by him but shall be entitled to continuity of service for the purpose of seniority and all future benefits.

20. Let the needful be done within a period of 03 months

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

21. Petition is allowed in the aforesaid terms.

06.03.2019

vandana

(ARUN MONGA)
JUDGE

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