

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 14956 of 2016(O&M)
DATE OF DECISION : 22.11.2019

Harish Chand & Ors.

... Petitioners

versus

Secretary, Ministry of Health and Family Welfare & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Shiv Kumar Sharma, Advocate,
for the petitioners.

Mr. Sunil Kumar Sharma, Advocate
for Union of India-respondents.

ARUN MONGA, J. (ORAL)

1. *Inter alia* issuance of a writ in the nature of *certiorari* has been sought to seek quashing of letter dated 17.12.2015(Annexure P-47 collectively) to the extent that the date of regularization has been assigned to the petitioners as 04.11.2015 instead of their initial date of appointment. Further prayer of *mandamus* has been sought by the petitioners directing the respondents to regularize their services with effect from the dates of their respective appointments as contained in impugned letter itself.

2. Before advertng to the claim of the petitioners sought to be enforced herein, it would be pertinent to note that the petitioners had earlier instituted a civil writ petition bearing CWP No. 4196 of 2014 in this Court seeking regularization of their services, which resulted in rendering of judgment dated 10.03.2015(Annexure P-44). My learned Senior Brother

Ajay Tewari, J. speaking for this Court in the judgment *ibid* observed as

below:-

“In my opinion, the argument raised by the respondents cannot succeed. Once it is not disputed that the petitioners were appointed against sanctioned regular posts and were not back door entrants but were appointed after full advertisement and selection process, it is for the respondents to justify why they have taken this expedient recourse to fill regular posts by way of contractual employees. There is also no reason shown why the petitioners were allowed to continue for more than 10 years. In the circumstances, it is hard to resist the conclusion that the exercise of appointing the petitioners on contractual basis is a colourable exercise of power in the facts and circumstances of the case.”

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In the circumstances, the writ petition is allowed and the respondents are directed to consider the case of the petitioners for regularization in accordance with law. Let the necessary exercise of considering their case be done within a period of 4 months from the date of receipt of a certified copy of this order.”

3. Pursuant to the said judgment, the services of the petitioners have been regularized but not with effect from the date, as contended by them.

4. The controversy, therefore, that requires adjudication by this Court is, whether the date of regularization assigned to the petitioners is in tune with the letter and spirit of the judgment rendered by this Court read with letter dated 04.11.2015 contained at Annexure R-1, that has been strongly relied upon by learned counsel for the respondents.

5. Learned counsel for respondents submits that said letter is perfectly in tune with impugned letter dated 17.12.2015 and both the documents have to be read harmoniously and the same have been issued

keeping in view the earlier judgment rendered by this Court in CWP No. 4196 of 2014.

6. Having heard Dr. Anmol Rattan Sidhu, learned Senior counsel assisted by Mr. Shiv Kumar Sharma, Advocate for the petitioner and Mr. Sunil Kumar Sharma, Advocate representing Union of India, I am of the view that distinction created by respondents in regularizing the services of the petitioner with effect from 04.11.2015 i.e. when the posts were transferred to other CGHS Centre is a colourable exercise of power and goes against the basic letter and spirit of judgment rendered by this Court.

7. The case shows creation of artificial and an unreasonable classification amongst the similarly placed employees in as much as those who have been appointed at CGHS Chandigarh have been accorded the benefit of regularization with effect from their initial dates of appointments and for no fault those who were appointed at other CGHS Centres, they have been denied the regularization with effect from their initial dates of appointment, even though the employer is same.

8. In fact a careful perusal of the impugned letter itself, photocopy whereof has been placed on record and not denied by the respondents, would also reveal that respondents were conscious of the same and initially in the impugned letter it was though typed out that the petitioners are entitled to regularization with effect from the initial dates of their appointments, but as an after-thought while signing the same, it seems that there has been over-writing by the Signing Authority/ Competent Authority and the words “with effect from initial appointments” were changed to “with effect from 04.11.2015”.

9. Union of India is expected to be a role model and this type of

colourable exercise of power cannot stand the scrutiny of law.

10. In view of the above, the writ petition is allowed. Respondents are directed to grant the benefit of regularization of service to the petitioners from the dates of their initial appointments, with all consequential benefits, including continuity of service.

11. No orders as to costs.

(ARUN MONGA)
JUDGE

November 22, 2019
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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |