

**Sr. No. 224
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.20072 of 2015 (O&M)

Date of Decision: 26.02.2019

Krishan Kumar

... Petitioner

Versus

District Red Cross Society and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Sangita Dhanda, Advocate,
for the petitioner.

Mr. Dinesh Arora, Advocate,
for respondent No.2.

ARUN MONGA, J.(ORAL)

The present petition has been filed, inter alia, for issuance of a writ in the nature of certiorari to quash the impugned order dated 07.04.2015 (Annexure P-11). Whereby, services of the petitioner, who was working as 'Peon' for a continuous period of 24 years, were terminated. Further quashing the order dated 17.03.2015 (Annexure P-10) has been prayed, vide which petitioner was declared employee of Family Counseling Centre.

2. Succinctly, the factual background of the case is that vide Annexure R-1/1 dated 30.04.1991, services of the petitioner were hired by the respondent-Red Cross Society. As reflected from the office note/its approval by the Office of District Red Cross Society, Rohtak was accorded, whereby, he was deputed on D.C. Rates @ 815/- per month. In the said office note/approval, it was mentioned that services of the petitioner can be utilized at a

Stationery Stall that has been started in the Court Complex, Rohtak. Accordingly, the petitioner joined the services of respondent-Red Cross Society and since then had continuous unblemished record of 24 years. During the said service period, his services were deputed to Family Counseling Centre, Rohtak while he continued to be in service of Red Cross Society. It is the case of the petitioner that he has been pursuing his case persistently for regularization/regular pay scale on parity with the similarly situated persons, who had been granted the said benefit, as specifically stated in para 3 of the petition. But instead of regularization, his services have been dispensed with.

3. The stand taken in the written statement is that the petitioner was never an employee of Red Cross Society. It is stated that the petitioner was initially engaged as 'Peon' specifically for a Stationery Stall and later on was adjusted as 'Peon' in a project (running on the grant by Haryana State Social Welfare Board w.e.f. 01.04.1992), namely, Family Counseling Centre (FCC). It is stated that the engagement of the petitioner at Stationery Stall was on temporary basis and subsequent adjustment in FCC was also on temporary basis depending upon the grant received from Haryana State Social Welfare Board. Accordingly, after the petitioner had served for 24 years, vide impugned order dated 07.04.2015 (Annexure P-11), services of the petitioner were dispensed with on the ground that the performance of the FCC was found very poor and in view thereof, the same had to be closed. The services of the petitioner who was

deputed in the FCC being run by the respondent-Red Cross Society were thus dispensed with w.e.f. 07.04.2015.

4. I have gone through the pleadings as also the records appended thereto and having heard the rival contentions of both the learned counsels, I am of the view that the stand taken by the respondent-Red Cross Society, that the petitioner was not its employee, flies in the face of positive averments made by it in written statement filed in a previous lis i.e. Civil Suit No.15 of 2010. The said civil suit was instituted at the instance of the petitioner along with his co-employees, wherein, they sought benefit of regularization/regular pay scale. The relevant extract whereof, as contained in para 5 of the written statement, is reproduced hereinbelow:-

“Para No.5 of the plaint is wrong and denied. It is wrong and denied that the orders passed by defendants regarding grant of regular pay scale are still in existence. When the agenda was not confirmed in the meeting, the orders stood cancelled and no notice was required to be given to the plaintiffs. The defendants have not committed any illegality. When the agenda was not confirmed, the plaintiffs are not entitled to regular pay scale. It is wrong and denied that the plaintiffs are regular employees of the defendants. The services of plaintiffs were never regularized and they are getting fixed salary.”

5. It is another matter that the said suit was dismissed and the plaintiffs along with petitioner were not granted regular pay scale. All the five plaintiffs including the petitioners therein were not regularized. But what matters is, the stand taken by the

respondent-Red Cross Society that qua its candidate was that the petitioner was its employee, though not a regular one. Further more, the said stand has also been taken in the written statement filed in the present proceedings, though in a very cavalier manner, as would be reflected from relevant extract of para 10, which is reproduced hereinbelow:

“Rather it was specifically denied that services of the petitioner were regularized or that he was regular employee of the society.”

6. A perusal of the above clearly shows that what is denied is that the fact that the petitioner was not a regular employee, but not the fact that he was not an employee, or at all. Accordingly, the stand of the respondents-Red Cross Society that the petitioner was not its employee taken as complete bolt from the blue, for the first time by way of pleadings in the written statement filed in the present proceedings, is not tenable and has to be rejected outrightly.

7. Coming to the claim of the petitioner seeking regular pay scale/ regularization, learned counsel for the petitioner on the broader principles of Article 14 of the Constitution of India, contends that it is an irrefragable position where the co-employees of the petitioner have been granted the benefit but the petitioner has been discriminated against.

8. Learned counsel for the petitioner contends that others similarly situated persons, who were co-plaintiffs in the suit for regularization, were later granted regularization/regular pay scale by the respondents, despite dismissal of the civil suit. And,

therefore, the petitioner is entitled to the same on grounds of parity.

9. Learned counsel for the petitioner states that apart from the vice of discrimination, respondent-Red Cross Society has also indulged in pick and choose. Notwithstanding, that the Red Cross Society is governed by the Haryana Government Rules and Regulations as borne out from RTI information dated 01.08.2016. She contends that all regularization policies notified by Haryana Government are applicable to the Red Cross Society. The petitioner is entitled to benefit of regularization in compliance of the policies, *ibid*.

10. I find that the said stand of the learned counsel for the petitioner is fair and reasonable and I am in agreement with the same. Learned counsel for the petitioner also relies on the judgment rendered by Supreme Court of India in a case titled as ***Jivanlal Vs. Pravin Krishna, Principal Secretary and others, 2018 (1) SCC (L&S) 522***. Relevant extract whereof is reproduced hereinbelow:-

“In that view of the matter, we do not find any justification in discriminating the *appellants herein*. *The policy had been violated in many cases. There cannot be any pick and choose policy; it would certainly lead to corruption. Hence, the appeals are allowed with a direction to the respondents to grant similar treatment to the appellants herein as well and grant regularization to them with effect from the date of completion of 10 years of service.*”

11. Complying with the principles enunciated in the

judgment rendered by Supreme Court of India, *ibid*, I allow the present writ petition and consequently set aside the impugned order dated 07.04.2015 (Annexure P-11), whereby the services of the petitioner were dispensed with after he had put in 24 years of continuous service.

12. Respondent-Red Cross Society is directed to regularize the services of the petitioner/grant regular pay scale w.e.f. the date of his co-plaintiffs in civil suit No.15 of 2010 have been granted the same benefit. However, the petitioner shall be entitled to 50% of the back-wages for the period he remained out of service with effect from the date of termination order dated 07.04.2015 (Annexure P-11).

13. Let the needful be done within a period of two months from the date of receipt of a certified copy of this order.

14. Petition is allowed in the aforesaid terms.

26.02.2019

vandana

Whether speaking/reasoned

Whether Reportable

(ARUN MONGA)
JUDGE

Yes/No

Yes/No