

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

CWP No. 4460 of 2015.

Date of Decision: 04.02.2019.

Rumal Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN.J.

The petitioner has sought quashing of the impugned order dated 10.02.2015 (Annexure P-1) vide which claim for regularization of his services was declined. The petitioner also seeks direction to the respondents to regularize his services as per Government Instructions and keeping in view his continuous service with effect from 03.07.1997.

The petitioner is an Ex-Serviceman, who was discharged from the Indian Army on 31.07.1991. After discharge, he got his name registered with Employment Exchange for re-employment in Civil Services. As per the requisition given by the Department of Social Security and Women and Child Development, Punjab, his name was sponsored by the Employment Exchange, Gurdaspur for appointment to the post of Chowkidar on full-time

basis. After considering his candidature along with other candidates, the petitioner was selected and offered an appointment vide order dated 09.09.1997 (Annexure P-6) on temporary basis. The proper selection process was adopted. The petitioner continuously performed his duties till 31.07.2015 when he completed age of superannuation during pendency of present petition without granting regularization. Due to this he has not been given pension and retirement benefits in spite of his total without break service of about 18 years.

The petitioner earlier filed CWP No.24131 of 2014 for claiming minimum of regular pay scale of Class IV post of Chowkidar and regularization of his services. This Court vide order dated 26.11.2014 disposed of said petition with directions to the respondents to consider his claim as contained in the legal notice served by him by passing speaking a order within two months. In response to the directions issued in CWP No.24131 of 2014, respondent No.2 has passed the impugned order dated 10.02.2015 (Annexure P-1), whereby the prayer of the petitioner to regularize his services has been declined on the ground that as per Instructions dated 23.01.2001, the regularization can be considered only against regular sanctioned posts and services of the petitioner could not be regularized due to non-availability of regular post of watchman in the Department and even a number of Watchmen, who are senior to the petitioner, could not be regularized due to non availability of regular sanctioned posts. It is further submitted that as per subsequent Instructions dated

15.12.2006 and 18.03.2011, the requirement was to complete 10 years of service upto December, 2006 and therefore, he could not be considered for regularization under the Instructions dated 15.12.2006 and 18.03.2011.

The respondents have filed their written statement, wherein the same stand has been reiterated as in the impugned order.

It has been contended by the learned counsel for the petitioner that the petitioner has rendered about 18 years of service on account of his selection and appointment through proper selection process and the action of the respondents in denying the benefit of regularization to the petitioner is totally unjust. Non regularization has also deprived the petitioner benefits of his service after the age of superannuation. It is a case of utter exploitation of the poor employee and is a travesty of justice. Learned counsel for the petitioner refers to the appointment letter (Annexure P-6) to contend that at the time of the appointment of the petitioner, the post was created in the Office of the Project Officer, District Gurdaspur and the petitioner was appointed against the said sanctioned post and continuously worked against the said post without any break. Hence, the stand of the Department that there is no regular sanctioned post is incorrect.

Further reliance has been placed upon instructions dated 18.03.2011 (Annexure P-3), wherein it was decided by the State of Punjab to regularize the services of the employees, who had been

working against sanctioned posts and were appointed on the basis of qualifications/eligibility, after three years of service subject to certain conditions. The petitioner, it is asserted, is eligible for regularization in terms of the said instructions because he was appointed through proper selection process against a sanctioned/newly created post and has completed more than three years of service as on 01.04.2011.

Learned counsel relies upon *Nihal Singh Vs. State of Punjab, 2013 (14) SCC 65* to contend that after permitting the utilization of services of the petitioner for decades, the respondent-State being Welfare State is not justified to contend that there is no regular sanctioned post to regularize the services of the petitioner. He also relies upon a judgment passed by a Coordinate Bench in *CWP No. 1824 of 2014 decided on 16.01.2015 titled as "Surjit Kaur Vs. State of Punjab & Ors."*, which has been upheld in *LPA No.771 of 2015 decided on 29.04.2016 titled State of Punjab & Ors. Vs. Surjit Kaur*. In the said case, regularization was denied on account of non availability of posts and the petitioner had attained age of superannuation during the pendency of petition. This court accepted the said petition and directed the respondents to grant the petitioner the deemed date of regularization in terms of Policy Instructions and thereafter, determine her consequential benefits.

Admittedly, the petitioner was appointed vide order (Annexure P-6) on creation of the post. He had continuously worked in the respondent-Department and attained the age of superannuation on

31.07.2015. His initial appointment was on the recommendations of Employment Exchange. The Court feels that the claim of the petitioner has been wrongly rejected on account of non availability of regular sanctioned post. When the petitioner had been continuously working against newly created post of Chowkidar in the Office of respondent No.4 till his retirement, the action of the respondents in denying benefit of regularization to the petitioner on the ground that regular sanctioned post was not available is totally unjust. Even otherwise, when the services of an employee were utilized for about two decades then such a plea of the respondents can hardly be accepted. It is a classic example of exploitation.

Hon'ble the Supreme Court in Nihal Singh's case (supra) has observed as under:-

“21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.”

The Coordinate Bench in CWP No.1824 of 2014 decided on 16.01.2015 has also considered this issue in the following manner:-

“On due consideration of the matter, I am of the considered opinion that the action of the respondents in denying the benefit of regularization to the petitioner is totally unjust. Some of the instructions

of the State Government warrant that case of regularization has to be decided within a period of three years. Such a benefit obviously did not flow to the petitioner on account of the indecisiveness.

The plea of the respondents is that posts were not available can only be taken with a pinch of salt. If an employee's services are utilized for more than 3 decades then such a plea of the respondents can hardly be accepted. Evidently it is a case of utter exploitation of human resource by the State of Punjab and at best be termed to be a unfair practice.”

The said judgment has been upheld in **LPA No.771 of 2015 titled State of Punjab Vs. Surjit Kaur & Ors. decided on 29.04.2016.** Hon’ble the Division Bench has observed a sunder:-

“Having held that, it may be further seen that the policy decision dated 4th March, 1999 is undeniably a welfare scheme launched by the State of Punjab in deference to its Constitutional obligations. The policy has been issued to achieve a laudable object to confer the status of regular employees on those Class IV part-employees who are in service for 10 years or more. It may be true that the policy contemplates adjustment of part-time Class IV employees against 25% vacancies which were to become available after the policy has come into force. However, if the authorities find that due to non-availability of requisite vacancies, they were unable to achieve the object and purpose of the policy, even in those case where part-time employee

has reached the age of superannuation, it was imperative upon them to re-visit and re-modulate the same so that it does not turn out to be a false promise or a mirage.

Should such a policy remain on papers or its object must percolate to net-end beneficiaries, at least to those who, after long span of 30 years of service, have attained the age of retirement, is a question which the authorities themselves ought to have addressed instead of awaiting for the court directions.

We are sure that the State of Punjab will look into this aspect of the matter and re-structure the policy in such a manner that services of Class IV part-time employees are regularized at least before one attains the age of retirement and in case, regular vacancy does not become available, in that case, such employee shall be taken to have been made regular immediate before his retirement. Such a liberal and pragmatic interpretation is the only effective modicum to achieve its object. Suffice to observe that recourse to such a policy decision is permissible under the mandate of Constitution Bench decision in Secretary, State Of Karnataka And others vs Umadevi And Others, 2006(4) SCC 1.

In the light of the above discussion, the respondent is held entitled to the benefits of liberal construction of the policy as have been granted by the learned Single Judge.

For the reasons afore-stated, we do not find any merit in this appeal. Accordingly, the same is dismissed.”

For the aforesaid reasons, the instant petition is accepted and the respondents are directed to grant the petitioner deemed date of regularization in terms of Policy Instructions, (Annexure P-3) and thereafter, determine the consequential benefits in favour of the petitioner. The needful be done within a period of two months from the date of receipt of certified copy of this judgment.

04.02.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No