

213 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 4197 of 2018 (O&M)

Date of Decision: 19.10.2019

Rajinder Parshad and others

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

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

Mr. P.S.Bajwa, Additional A.G., Punjab.

ARUN MONGA, J.(ORAL)

1. In an earlier round of litigation by petitioners who have been originally appointed between the years 1989 to 1997 as Peons but have been working as drivers, following order was passed by this Court on 18.03.2017:

“ XXX XXXX

17. *The petitioners admittedly have been working as drivers for more than 15/20 years and, therefore, would also be entitled to be considered for regularization against the post of drivers, especially in view of the fact that a decision had been taken by the DPC to promote the petitioners on the post of driver, which could not have been done in view of the fact that there was no such avenue of promotion from the post of peon to driver.*

18. *Therefore in view of the above, the State herein is directed to consider the case of the petitioners under the aforesaid act within a period of three months on receipt of a certified copy of this order as well as to release the Salary/Special Pay in terms of para 15 above limited to 38 months salary from the period prior to the filing of the writ petition.*

2. In view of the above order, the petitioners were hoping that favourable order would be passed for regularization of their services. However, vide order dated 04/06.07.2017, impugned herein not only their request for regularization as drivers has been declined but on the other hand, direction has been given for the recovery of arrears of salary ostensibly on the ground that they were overpaid for the said 38 months.

3. Ostensible reasons for denial of the benefit of regularization to the petitioners as stated in the impugned order is that since the petitioners were recruited as regular peons, therefore, they are not entitled to be regularized as drivers and therefore, they are not covered under the ***Punjab Adhoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced Employees Welfare Act, 2016***. No other reasons have been assigned for not granting benefit of regularization on the petitioners.

4. Having perused the impugned order, I am of the opinion that the same is not in compliance with the judgment rendered by this Court in CWP No. 25798 of 2014 dated 18.03.2017 (Annexure P-16). It is too late in the day, on the part of the respondents, to say that since petitioners were regular Peons and neither on contract nor adhoc employees, therefore they cannot be regularized. Particularly, in view of their case having been recommended wayback in the year 2007 (Annexure P-7) by the Departmental Promotion Committee that since the petitioners had already been working right from the inception as drivers they deserved to be regularized as drivers. It was on the basis of the said recommendation that the petitioners have been claiming regularization from time to time and eventually filed a writ petition which was disposed of vide judgment dated 18.03.2017 (Annexure P-16).

5. A perusal of the ratio in this judgment leaves no manner of doubt after considering the contentions, this Court had directed the competent authority to pass appropriate orders to regularize the petitioners as drivers.

6. Accordingly, impugned order is held not sustainable in law and the same is set aside.

7. Respondents are directed to regularize the services of the petitioners as drivers w.e.f. 05.04.2007, the date when Departmental Promotion Committee recommended their case (Annexure P-7) along with all consequential benefits to the petitioners. The petitioners shall also be entitled to salary as driver on the principal of '*equal pay for equal work*' but the arrears are confined to 38 months prior to the filing of the first writ petition by them before this Court i.e. CWP No. 12910 of 2008 titled as *Sukhwinder Singh and others vs. State of Punjab and others*.

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

9. Disposed of in above terms.

19.10.2019
Janki

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No