

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

**CWP No.34403 of 2019**

**Date of Decision: 26.11.2019**

Bikramjit Singh and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

**CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Anish Jain, Advocate,  
for the petitioners

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**RAJIV NARAIN RAINA, J.**

1. Few of the salient facts found necessary for determining the questions falling for consideration in this case are narrated in the succeeding paragraphs to answer as to whether the petitioners have a legally enforceable right to grant of the threefold prayers made in the petition asking for the issuance of consecutive writs of certiorari and mandamus to bring them the following reliefs:-

- (i) to quash the public/employment notice dated 31.8.2017 and notice No.6 of 2019 and all subsequent proceedings initiated by the respondents for recruitment to the posts of Clerks in the Subordinate Courts of Punjab;
- (ii) to reappoint the petitioners as Clerks and regularize them as per Punjab Government policy dated 18.3.2011 as their services have been dispensed with unlawfully, illegally and arbitrary;
- (iii) while making recruitment for the posts of Clerks respondents ignored the provisions of law laid down under the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006.

2. The petitioners were appointed as Clerks/Ahlmed on ad hoc basis in the year 2012 and served the Subordinate Courts of Punjab till their

services were dispensed with in the year 2019. In the year 2017, respondent No.2 issued an employment notice dated 31.8.2017 inviting applications for filling up 350 vacant posts of Clerks through Centralized Recruitment by the Society administered by this Court on its administrative side. It was made conditional in the Public Notice that the number of vacancies may be increased or decreased without any notice, depending upon the number of vacancies as on the date of preparation of merit list and posting. It was further mentioned that the reservation for different categories will be regulated as per the provisions of the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 as amended from time to time.

3. Learned counsel for the petitioners contends that the writ petitioners were working for a considerable length of time without any break in service. The appointment of the petitioners was made after following proper procedure. The petitioners were working in the department to the satisfaction of courts. There was no complaint or adverse remark against the name of the petitioners regarding their work and conduct. Learned counsel further argues that a continuous period of 7 years in service is a sufficient ground to re-appoint them and regularize their services on the posts they were earlier working.

4. Learned counsel further argues that the State Government took a policy decision in the year 2011 and issued notification dated 18.3.2011 (P-13), wherein a direction was issued to regularize the services of the ad hoc/contract employees working in the departments of the State Government.

5. On perusal of the instructions dated 18.3.2011 as relied upon by the learned counsel, it comes out that the same have been issued to be treated as a 'one time measure', since the petitioners were appointed in the year 2012 and were not in service at the time of issuance of policy instructions dated 18.0.2011, therefore, the benefit of the instructions is not admissible to the petitioners. The relevant parts of the said instructions read as under:-

*“i) Those employees, who are working on contractual basis against permanent posts and whose appointments has been made on the basis of requisite qualifications/ fulfillment of eligibility, by adopting proper procedure in transparent manner, their services be regularized w.e.f. 1.4.2011 or after the completion of three years contractual service, whichever is later, but no new posts will be created for them.”*

*“4. Because these regular appointments have been made keeping in view the above conditions as per legal opinion, administrative need and in the interest of public, if any employee could not be regularized because of non-fulfilling of above conditions, then he will not be allowed to raise plea for his regular appointment as this measure is a one time measure and these instructions are to be implemented in only those departments mentioned in the Schedule and this process of regularization be completed within six months from the date of issuance of this letter. No relaxation in these instructions will be given in any situation.”* (underscored for emphasis)

6. It is pertinent to mention here that the petitioners were appointed in the month of May, 2012. The benefit of the instructions dated

18.3.2011 could not be extended to the petitioners during the relevant point of time, despite the fact that they had completed the minimum period of requirement of service. It was mentioned in the instructions that the process of regularization be completed within six months from the date of issuance of the letter dated 18.3.2011.

7. Earlier, the petitioners had filed CWP No.7118 of 2016 for regularization of their services. However, during the pendency of that writ petition, services of the petitioners had been dispensed with. Learned counsel submits that this creates a new cause of action, therefore, the present writ petition has been filed on 4.11.2019 with the prayers reproduced above. Ultimately, CWP No.7118 of 2016 was disposed of on 22.11.2019 with the following orders:-

*“On the statement of learned counsel for the petitioner, writ petition is disposed of as having been rendered infructuous owing to the subsequent developments after filing of the writ petition.”*

8. It is well settled that regularization or permanent absorption cannot be granted in violation of the service rules in force and all appointments are to be made strictly in accordance with the Recruitment Rules and only by following the procedures contemplated for selection. Equal opportunity in public employment is the constitutional mandate and the equality clause enunciated in the Constitution must be followed by the competent authorities lest Article 16 is breached. While undertaking the process of selection, a large number of eligible candidates are aspiring to secure public employment by participating in the open competitive process. This being the prevailing situation, this Court is of opinion that the persons who secured appointment

through stop gap arrangements or the notorious back-door cannot claim regular appointment on the ground that they are in service for a considerable length of time either as casual employee or as daily wage employee or as a consolidated pay employee. Undoubtedly, the writ petitioners had served in the Department as ad hoc employees for a considerable length of time. Mere length of service would not confer any right on them to claim regularization or permanent absorption in violation of the rules in force. This view was reiterated in 'Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad', (2006) 7 SCC 684, wherein it was held:

*“38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment. (emphasis supplied)*

9. Further, it is also well recognized as a settled law in law that termination brought about in accordance with the terms and conditions of the appointment letter is proper exercise of power to make way for regular recruitment. Relevant part of the appointment letters issued to all the petitioners reads as under:-

*“You are hereby appointed as Clerk on ad hoc basis, for a period of six months or till regular appointment is made, whichever is earlier, on consolidated salary of Basic Pay +DA as on 1.1.2012 on the following terms and conditions:*

*1. That your selection is purely on temporary basis and is liable to be terminated without any notice and without assigning any reason. In case you intend to leave the job, you will be required to deposit one month's emoluments or to give month notice in lieu thereof."*

10. In my view, such appointments having been made in total disregard of the rules of service and the statutory schemes and for specified purpose is exclusively governed by the terms of the appointment letter, as per which, services could be terminated at any time for any reason. Thus, the impugned termination orders do not contain any imputation of stigma on the character, credentials or ability of the petitioners; rather, they only refer to the attendant circumstances of service, which clearly provided that appointments were for a period of six months or till regular appointments are made. It is not denied that the petitioners were appointed on ad hoc basis. They were not appointed pursuant to any regular selection procedure consistent with the requirements of Articles 14 and 16 of the Constitution. Thus, the dispensing with the services of the petitioners appears to be in accordance with the terms and conditions of the letter of appointment and no fault can be found therewith.

11. It is settled principle that a writ of mandamus is to be issued against a legal right and it is the case of the petitioners for regularization on the basis of a policy which is not applicable and merely on the strength of long employment the petitioners have no vested right as

such to be regularized on the strength of the fact that they had been appointed on ad hoc basis, which has been extended till regular appointment have been made. Thus, in view of the law enunciated by the Supreme Court in Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, 2006 (4) SCC 1 which was followed by the judgment in Official Liquidator Vs. Dayanand and others, 2008 (10) SCC 1, directions for regularization could not be issued. Similarly, there is the judgment of the Supreme Court in State of Rajasthan and others Vs. Daya Lal and others, 2011 (2) SCC 429 reaffirming the law holding that any attempt at bringing relief to this class of employment would be contrary to the constitutional scheme which could not be legalized by a misguided mandamus.

12. The Constitution Bench in Uma Devi (3) (*supra*) has gone on to hold that that the employment was accepted knowing full well the nature of same and the consequences flowing from it, but it would not give the person as such a right to be continued permanently, as it would create another mode of public employment which is not permissible. Accordingly, it was held that in the name of individualizing justice, the Court should not issue a mandamus to compel authorities to do something which is contrary to law. In the absence of any legal duty on the authority a writ of mandamus is not liable to be issued, since there is no rule to enforce the same and in the absence of any enforceable legal right, the position could not be justified or that the State had any legal

duty to make such employees permanent. Reference can be made to the relevant observations which read as under:-

*"It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not 13 of 20 being paid. Those who are working on daily wages formed a class by themselves; they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The argu-*

*ments based on Articles 14 and 16 of the Constitution are therefore overruled.*

*40. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to 14 of 20 perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."*

13. In the case of Daya Lal (supra), it was held as under:-

*"8. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:*

*(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts.*

*The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee 17 of 20 which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.*

*(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.*

*(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.”*

14. The learned counsel for the petitioners cited and placed reliance on a judgment of the Supreme Court in ‘H.S.Rajashekara vs. State of Mysore and another’ SLP © No.10845 of 2009 decided on 24.11.2011 and a judgment of this Court in ‘Sukhjad Singh and others vs. State of Punjab and another’, CWP No.11427 of 2015 decided on

19.12.2018 to contend that the petitioners are entitled for regularization of services. Perusal of both the judgments shows that they are not applicable to the present case on facts and law and are distinguishable.

15. In *Rajashekara* the SCI was not confronted to opine on the issue of regularization of ad hoc employees inducted post policy letter dated 18.3.2011 in the Sessions Division curtailed by two conditions precedent to the award of the concession marked in the policy; which were (i) that it was a one-time measure, and (ii) the policy would apply to only those departments mentioned in the Schedule. If it was one time, it is obvious it would apply to those appointed before the circular letter and mentioned in the Schedule. Nothing has been shown to convince the employment in the subordinate courts fell in the Schedule. In *Sukh-jad Singh* case the ad hoc/temporary appointments were made prior to the instructions dated 18.3.2011. And that is how they succeeded on the ground of discrimination and on parity of treatment on the completion of the requisite incubation period required for the right to mature, even when others, who were more fortunate than the petitioners in the same department, were regularized in 2013 and, hence, the lack of service of one year of the petitioners would have spilled out beyond 2011 and till 2013 much before the policy was put in place to bring them the same relief. I find nothing of the kind has happened in this case to give the petitioners the benefit of the letter dated 18.3.2011 and to direct the respondents to act in the manner the prayers are pleaded. A reading of the ratio

of both the judgments relied upon by the counsel for the petitioners show quite apparently that they are not even remotely applicable to the facts of the present case and are thus plainly distinguishable.

16. In view of the discussion on the three prayers as considered above and the questions whether they can secure a permanent job for the petitioners in the subordinate courts by an intervention, this Court having examined the issues involved, is of the opinion that the writ petitioners are not legally entitled to the relief of re-appointment to service and consequentially a decree of regularization as sought in this writ petition as a matter of fundamental or civil right.

17. To summarize the answers to the prayers reproduced in paragraph 1 [supra] it is ordered that: (i) The Court declines to interfere with the Public Notice dated 31.8.2017 and the Notice No.6 of 2019 as no reasonable cause is made out; (ii) reinstatement is ruled out as legally untenable; (iii) If the rights under prayers (i) and (ii) fail, the prayer at (iii) must fall as a natural consequence of the rejection of the first two prayers.

18. In the result, the present writ petition fails and is dismissed in limine as not worth admission for regular hearing or passing of any interim order.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**26.11.2019**

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*Whether speaking/reasoned* : *Yes*  
*Whether reportable* : *Yes/No*

