

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

148

CWP-33908-2019

Date of Decision: 21.11.2019

Meenu Rana and another

--Petitioners

Versus

State of Punjab and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present:- Dr. Rau P.S.Girwar, Advocate
for the petitioners.

TEJINDER SINGH DHINDSA.J.

Petitioners who were stated to be serving on the posts of Clerks on contractual basis under the Punjab Medical Council have filed the instant petition seeking a mandamus to regularise them in service as also to release in their favour the regular pay scale.

Counsel has been heard.

Prayer in the instant writ petition seeking regularisation has to be examined against the backdrop of the Punjab Ad hoc, Contractual, Daily Wages, Temporary, Work Charged and Outsourced Employees Welfare Act, 2016 (in short, 'the 2016 Act'). Section 3 of the Act reads in the following terms :-

“3. (1) Notwithstanding anything contrary contained in any law, judgment, decree or order of any court, tribunal or any other authority, services of such Group 'A', 'B' and 'C' employees, who are working on ad hoc, contractual, daily wage, temporary or work charged basis under the State

Government or its entities for a continuous period of not less than three years preceding the date of coming into force of this Act shall be regularised by the competent authority in such service of the State Government or its entities, subject to the following conditions, namely:-

- (a) fulfil the eligibility with regard to minimum and maximum age limit;*
- (b) possess requisite educational qualification and experience as specified for the post under the service rules at the time of initial appointment;*
- (c) initial appointment was made by following transparent process;*
- (d) satisfactory verification of antecedents;*
- (e) have good character and conduct; and*
- (f) have not been indicted or undergoing any civil, criminal or departmental proceedings;*

Provided that the entities of the State shall consider regularization only if such entity is in a financial position to take the burden of such regularization on its own without transferring any liability to the State exchequer.

(2) During the probation period, the person regularised under this section shall be entitled to draw salary at the minimum of the Pay Band applicable to the post against which his services have been regularised in Group 'A', 'B' or 'C' services, as the case may be, or actual remuneration being received at the time of regularization, whichever is more.”

Perusal of the afore-reproduced provision would make it clear that such group A, B and C employees working on ad hoc, contractual, daily wages, temporary or work charged basis under the State

Government or its entities for a continuous period of not less than three years preceding the date of coming into force of this Act are vested with a right to be regularized subject to fulfilment of certain conditions. One of the crucial conditions which the petitioners ought to fulfill so as to be vested with the right to be considered for regularisation is that their initial appointment was made by following a transparent process.

A pointed query was put to counsel as to whether the initial engagement of the petitioners on the post of Clerks was by following a recruitment process which could be tested on the touchstone of Articles 14 and 16 of the Constitution of India. Counsel has been candid enough to concede that no advertisement has been issued. He submits that applications were given by the petitioners to the Punjab Medical Council and which upon process had led to their contractual engagement.

Suffice it to observe that such mode and manner of recruitment and engagement of the petitioners be it on contractual basis would not satisfy the conditions of initial appointment by way of a transparent process as envisaged under Section 3 of the 2016 Act.

At this stage, counsel would plead discrimination by citing the instance of one Rupinder Kaur. It is contended that even Rupinder Kaur had been initially engaged and appointed on contractual basis in the same manner and without issuance of an advertisement and yet she has been given benefit of regularisation by the Punjab Medical Council.

Even such submission raised by counsel cannot be accepted. For a plea of discrimination to sustain, a right in law would be seen as a pre-requisite. Even if the respondent-Council has granted a benefit to another employee against all canons of fair play, a right would not vest in

the petitioners to insist upon issuance of a mandamus to direct the respondent-authorities to perpetuate such illegality. Article 14 of the Constitution of India postulates a positive concept.

In the considered view of this Court, the petitioners cannot insist upon parity with the other employee namely Rupinder Kaur as they concededly do not fulfil the eligibility condition as stipulated under Section 3 of 2016 Act.

No merit is found in the instant petition.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

21.11.2019
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- i) Whether speaking/reasoned? Yes/No
- ii) Whether reportable? Yes/No