

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

102+208

**CM-13019-CWP-2019 &
CM-9733-CWP-2017 &
CWP-14857-2014**

Date of decision: 14.01.2020

SURJIT

...PETITIONER

V/S

STATE OF PUNJAB & ORS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.L.Chander Shekhar, Advocate,
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J.

CM-13019-CWP-2019

C.M. is allowed subject to just exceptions. Judgment dated 06.07.1994 passed by this Court, which has been adopted as a policy matter for regularization by the Punjab Government, is taken on record as Annexure P-18 and filing of certified copy of the same is dispensed with.

CM-9733-CWP-2017

C.M. is allowed subject to just exceptions. The representation made by the petitioner to the Chief Minister, Punjab is taken on record as Annexure P-17 and filing of certified copy of the same is dispensed with.

CWP-14857-2014

Challenge in this writ petition is to the order dated 26.08.2011 (Annexure P-15) passed by The Executive Engineer, Jadiaala Division, UBDC Circle, Amritsar, District Amritsar-respondent No. 4, vide which the representation submitted by the petitioner claiming regularization of his services as Beldar stands rejected.

Briefly the facts are that the petitioner was appointed as Beldar on 89 days basis on 01.07.1993. Petitioner continued in service as Beldar with the respondents. Last extension granted to the petitioner expired on 25.05.1996. Assertion has been made that the break in service on completion of each 89 days period was intentional so that he could not claim regularization of his services. Petitioner filed a writ petition in this Court being CWP No. 7364 of 1996 titled as Surjit Singh vs. The State of Punjab and others, which was disposed of by this Court vide order dated 22.05.1996 (Annexure P-12) by observing that in case the petitioner makes a representation within 16 days from the date of the order, the same shall be decided by the respondents within six months from that date. In pursuance to the said order passed by this Court, petitioner submitted a representation for regularization to The Chief Engineer/K.A.D., Irrigation Department, Chandigarh and The Superintending Engineer, U.B.D.C. Circle, Amritsar dated 27.05.1996 (Annexure P-13). No decision was taken on the representation of the petitioner and the same was kept pending. The said representation ultimately was decided by the Executive Engineer vide order dated 26.08.2011 (Annexure P-15) on the ground that he was appointed for 89 days by the Executive Engineer, Jadiaala Division, UBDC Circle, Amritsar, District Amritsar on 27.02.1996 (Annexure P-9) and on expiry of

the 89 days, the services of the petitioner stood automatically ceased. The termination of the services was as per the terms of his appointment and, therefore, he was not entitled to regularization of his services. Petitioner has challenged this order through the present writ petition.

Upon notice having been issued by this Court, reply has been filed by the Executive Engineer, Jadiaala Division, UBDC Circle, Amritsar, District Amritsar-respondent No. 4. The stand of the respondents is that the petitioner was engaged purely on temporary basis for 89 days as Beldar vide order dated 27.02.1996 (Annexure P-9). On expiry of the said period, he filed CWP No. 7364 of 1996 titled as Surjit Singh vs. The State of Punjab and others, which was disposed of by this court vide order dated 22.05.1996 (Annexure P-12). The representation of the petitioner was duly considered and the same was rejected. With effect from 13.06.1996, complete ban was imposed by Punjab Government on ad-hoc/89 days appointments. In pursuance to the same, no extension was granted to the petitioner after October, 1996 and his services stood dispensed with in October, 1996. Thereafter, a legal notice was also served by the petitioner claiming regularization of his services on 09.10.1999 (Annexure R-4/2) which was duly considered and reply was submitted on 14.09.2000 (Annexure R-4/3). Despite these decisions having been duly conveyed to his counsel as well as the petitioner on 14.09.2000 and 21.11.2006 (Annexure R-4/3 and R-4/1) respectively, another notice through counsel dated 24.03.2011 was served by the petitioner claiming regularization of his services and asserting that the termination of the services of the petitioner in the year 1996 is illegal. This legal notice was also decided by passing a detailed speaking order on 26.08.2011 (Annexure P-15) by The Executive Engineer, Jadiaala Division,

UBDC Circle, Amritsar, District Amritsar-respondent No. 4, wherein it was concluded that the claim of the petitioner for regularization of his services as Beldar has no merit and accordingly, it was rejected.

Assertions has also been made by the petitioner that the persons, who were appointed subsequent to the petitioner have been retained in service whereas the services of the petitioner have been dispensed with, to which it has been replied by the respondents that the said persons were appointed against regular posts whereas the petitioner was appointed purely on temporary basis for 89 days and that too, for different periods and, therefore, there is no comparison with regard to the petitioner as well as the persons who have been retained in service and have been regularized. It has further been stated that the petitioner has worked with the respondents up to October, 1996 and thereafter, he never worked with the department.

It is the contention of the learned counsel for the petitioner that the claim of the petitioner, which was directed to be considered and decided by this Court for regularization vide order dated 22.05.1996 (Annexure P-12) in CWP No. 7364 of 1996, was not decided by the respondents till order dated 26.08.2011 (Annexure P-15) was passed by The Executive Engineer, Jadiaala Division, UBDC Circle, Amritsar, District Amritsar. He contends that the respondents have slept over the representation of the petitioner despite a direction issued by this Court and, therefore, the petitioner cannot be penalized for the delayed action on the part of the respondents. He asserts that the respondents have violated the order passed by this Court which required the respondents to consider the representation of the petitioner and pass a speaking order within a period of six months. That

apart, he asserts that the persons junior to the petitioner have been regularized and they have been retained in service whereas the services of the petitioner have been dispensed with. He, thus, contends that Articles 14 and 16 of the Constitution stood violated as the principle of last come first go has not been followed by the respondents denying him the benefit of regularization of his services.

On a categoric question put by this Court as to under what instructions the petitioner is entitled to regularization of his services, the counsel is unable to refer to any such policy/instructions issued by the respondents. That apart, no replication has been filed to the written statement which has been filed by the respondents wherein it has categorically been stated that the petitioner has continued with the respondents up to October, 1996 whereafter because of the complete ban imposed by the Government of Punjab on ad-hoc/89 days appointments w.e.f. 13.06.1996, no extension was granted to the petitioner. That apart, the representation, which was submitted by the petitioner in pursuance to the order passed by this Court dated 27.05.1996 was duly considered and decided and conveyed to the petitioner on 21.11.2006 (Annexure R-4/1T). Prior thereto, the petitioner had served a contempt notice dated 09.10.1999 (Annexure R-4/2) which has been duly responded to on 14.09.2000 (Annexure R-4/3), wherein it has categorically been stated that the claim of the petitioner for regularization has no merit. Another notice, which has been served by the petitioner for termination of the services of the petitioner dated 24.03.2011 which is after a delay of 15 years has also been rejected by passing a speaking order dated 26.08.2011 (Annexure P-15). These orders, which have been duly conveyed to the petitioner, have not been challenged

or rebutted by the petitioner as no replication has been filed. The petitioner has not approached this Court with clean hands and has not put forth the correct facts before this Court.

An argument has been raised by the counsel for the petitioner that in the impugned order dated 26.08.2011(Annexure P-15), it transpires that the claim of the petitioner for regularization of his services was pending with the higher authorities and, therefore, no decision was taken for regularizing his services. This position has been duly explained by the respondents in the reply which has been filed and in the additional affidavit dated 04.11.2016 submitted by the Superintending Engineer, UBDC Circle, Amritsar, wherein the decisions have been referred which have been taken by the competent authorities and duly conveyed to the petitioner. It has been stated that it was inadvertently and wrongly mentioned that the matter of regularization of the services of the petitioner is pending before the senior officers, as a matter of fact and as per the rules governing the appointment of Beldars, it has been asserted that the Executive Engineer is the competent authority to appoint the Beldars and, therefore, is competent to take action with regard to the claim of the petitioner for regularization. This communication was duly sent by the Superintending Engineer, UBDC, Amritsar vide order dated 31.08.2006 (Annexure R-3/1T) and accordingly, the Executive Engineer had taken a decision with regard to the claim of the petitioner for regularization of his services and conveyed to him vide letter dated 21.11.2006 (Annexure R-3/2T).

In view of the above explanation submitted by the respondents, the assertions, as raised by the counsel for the petitioner, cannot be accepted.

In the light of the above facts and circumstances of the case,
there being no merit in the case of the petitioner, the same stands dismissed.

January 14, 2020

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No