

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

CWP No.17501 of 2018
Date of Decision : 04.03.2020

Sanjay ...Petitioner

Versus

State of Haryana and othersRespondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. K.S. Derabassi, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Ms. Nupur Choudhary, Advocate for respondent No.3.

B.S.Walia, J. (Oral).,

1. Prayer in the petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing order Annexure P/8 dated 29.05.2018, passed by respondent No.3, declining the claim of the petitioner for regularization as also payment of full salary on the ground that he was not engaged after adopting due process in terms of letter Annexure P/9.
2. At the very outset, learned counsel for the petitioner states that he does not press the claim for regularization at this stage and may be granted liberty to avail remedy in accordance with law subsequent to the decision of the Supreme Court in the SLP filed against the decision of the Division Bench of this Court in CWP No.17206 of 2014, titled Yogesh Tyagi and another vs. State of Haryana and others, decided on 31.05.2018 or in terms of new policy if any framed by the Government of Haryana.

3. As regards claim for equal pay for equal work, learned counsel contends that the petitioner is entitled to the minimum of the pay scale plus allowances, in the light of decision of the Supreme Court in **State of Punjab versus Jagjit Singh 2016 (4) SCT 641**.

4. Learned counsel for respondent No.3 by referring to paragraph Nos.5 and 58 of the decision in Jagjit Singh's case (supra) contends that the petitioner is only entitled to the minimum of the pay scale and not allowances. Relevant extract of the decision in Jagjit Singh's case (supra) is reproduced as under:-

"5. The issue which arises for our consideration is, whether temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay-scale, along with dearness allowance (as revised from time to time) on account of their performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts. The full bench of the High Court, while adjudicating upon the above controversy had concluded, that such like temporary employees were not entitled to the minimum of the regular pay-scale, merely for reason, that the activities carried on by daily wagers and the regular employees were similar. However, it carved out two exceptions, and extended the minimum of the regular pay to such employees. The exceptions recorded by the full bench of the High Court in the impugned judgment are extracted hereunder:-

"(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection

process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months."

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (-at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post."

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly the petitioner was engaged as sweeper under BDPO, Kalayat District Kaithal in the year 2000 on monthly salary of Rs. 4500/-. Thereafter the petitioners services were transferred to Municipal Committee, Kalayat District Kaithal in November 2001. In January 2002, services of the petitioner were terminated by Municipal Committee, Kalayat. Labour Tribunal, Ambala reinstated the petitioner in service with continuity and full back wages vide Award Annexure P/1 dated 20.08.2007. On 09,12,2017 the petitioner submitted representation Annexure P/4 for regularization and equal pay for equal work but to no avail. Thereafter, CWP No. 4008/2018 filed by the petitioner was disposed of by directing the respondents to decide the claim of the petitioner. Pursuant thereto, order Annexure P/8 dated 29.05.2018 was passed declining the claim for regularization. As per paragraph Nos.5 and 58 of the decision in Jagjit Singh's case (supra) the petitioner having been treated to be in service w.e.f. the year 2002 is entitled to the minimum of the pay scale without allowances for a period of three years and two months. Accordingly, in the light of the position as noted above, the writ petition is disposed of by directing the respondents to release the minimum of the pay scale to the petitioner in view of the decision of the Supreme Court in Jagjit Singh's case (supra) as also policy of the State of Haryana Annexure P/3 dated 03.11.2017. Arrears be paid as per entitlement for a period of 3 years 2 months prior to the filing of the writ petition within three months from the date of submission of certified copy of this order, failing which, the same shall be paid along with interest @ 7.5% per annum w.e.f. the date of entitlement till date of payment.

Liberty is granted to the petitioner to file claim for regularization in

accordance with law pursuant to decision of Supreme Court in SLP against Yogesh Tyagi’s case or in the eventuality of framing of fresh policy by Government of Haryana.

(B.S.WALIA)
JUDGE

04.03.2020
rajesh.k.khurana
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No