

CWP-19831-2018

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-19831-2018

Date of Decision: 13th March, 2020

Baljinder Singh & another

...Petitioners

Versus

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Vikas Chatrath, Advocate,
for the petitioner.

Ms. Ambika Bedi, Asstt. A.G., Punjab.

AUGUSTINE GEORGE MASI, J. (ORAL)

Petitioners have approached this Court praying for the grant of regularization of their services in the light of the fact that similarly placed employees, who were selected and appointed in pursuance to the same advertisement dated 30.08.2010 (Annexure P-1) stand regularized, whereas, the claim of the petitioners has not been considered and decided. Violation of Article 14 of the Constitution of India is, therefore, pressed into service by the petitioners relying upon the judgment of this Court as well as the Hon'ble Supreme Court in the process.

2. The undisputed facts are that by way of advertisement dated 30.08.2010 (Annexure P-1), certain posts were advertised. Petitioners, in pursuance to the said advertisement, applied for the post of Sewadar (Peon).

In pursuance to the selection process which ensued, petitioners were selected and appointed to the post of Sewadar (Peon) on contractual basis initially for a period of three years. Appointment letter of petitioner No.1, dated 22.03.2011 is appended along with writ petition as Annexure P-2. As per Clause 10 of the said appointment letter, the job was transferable and in public interest, petitioners could be transferred by the Punjab Government/Competent Authority in any of the technical colleges of Punjab Government. Petitioners, in pursuance to their respective appointment letters, joined at Government Polytechnic College, District Moga. While they were serving in the said college, their services were transferred and they were posted at Government Polytechnic College, Bareta, District Mansa, vide order dated 15.07.2014 (Annexure P-3) passed by the Director, Technical Education and Industrial Training Department, Punjab. In pursuance to the said transfer order, petitioners joined at the place of transfer and are continuing there as such.

3. It so happened that a decision was taken by the Government of Punjab to regularize the services of the employees and in pursuance thereto, services of nine employees other than these two petitioners, who had applied in pursuance to the advertisement dated dated 30.08.2010 (Annexure P-1) and were similarly appointed on contract basis for three years were regularized. However, when the claim of the petitioner was being considered, Model Code of Conduct came into force and in pursuance thereto, process for regularization of the services of the petitioners was stalled. After the Code of Conduct had come to an end, petitioners again put

forth their claim for regularization but the same has till date not been decided although the recommendation was made by the Principal of the Government Polytechnic College, Moga, on 04.01.2017 (Annexure R-3). The said recommendation was further reiterated on 11.02.2019 (Annexure R-5) but still the services of the petitioners were not regularized.

4. The stand which has been taken by the respondents for denying regularization of the services of the petitioners is that the petitioners had initially joined at Government Polytechnic College, Moga but since they have been transferred to Government Polytechnic College, Bareta, District Mansa, their services could not be regularized as they had not completed the term of contract, which was required for consideration for regularization at the place of posting. The other plea which has been taken is that due to the enforcement of the Model Code of Conduct followed by the challenge to the notification dated 24.12.2016 (Annexure P-7) issued by the Government of Punjab, which is still pending before this Court in CWP no.4187 of 2017, the services of the petitioners could not be regularized. The factum that nine other similarly placed employees, who were selected and appointed in pursuance to the advertisement dated 30.08.2010 (Annexure P-1) have been regularized is not disputed.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings and the records of the case.

6. The facts as have been narrated above are not in dispute and therefore, are not being referred to again herein except for the stand, which

is taken by the respondents, where the first plea which has been pressed into service is the transfer of the petitioners from their initial place of appointment, which cannot be taken against the petitioners for the simple reason that as per Clause 10 of the appointment letter, their job was transferable. For ready reference, Clause 10 of the appointment letter of petitioner No.1, dated 22.03.2011 (Annexure P-2) is reproduced herein below:-

“10. Your job is transferable and in public interest your transfer could be done by Punjab Government/Competent Authority in any of the Polytechnic College of Punjab Government.”

7. In view of the above condition of the appointment and the fact that the transfer of the petitioners was on the basis of the order dated 15.07.2014 (Annexure P-3) passed by the Director, Technical Education and Industrial Training Department, Punjab, the reason of they being transferred cannot be held against the petitioners in any manner. The ground, therefore, is bereft of any merit and is hereby rejected.

8. The second plea, which has been taken is that the Model Code of Conduct had come into force, because of which the claim of the petitioners for regularization could not be considered. That phase was a temporary phase and therefore, after the Model Code of Conduct having come to an end, respondents were required to pass an order for regularization of services of the petitioners as passed in the case of similarly placed employees, who were selected along with the petitioners in

pursuance to the same advertisement. The said stand, therefore, as of now, would not be of any use to the respondents as it was merely for a specified period, which would have postponed the order of regularization of the petitioners at the most.

9. The plea with regard to the pendency of the challenge of the notification dated 24.12.2016 (Annexure P-7) issued by the Government of Punjab in a case before this Court again would not be of any help to the respondents especially in the light of the fact that the benefit of the said notification already stands granted to similarly placed employees by regularizing their services.

10. It is not the case of the respondents that the petitioners are not eligible for consideration for regularization as per the said notification nor is it the stand of the respondents that there is any other impediment except for the pendency of the challenge to the notification. The factum that similarly placed employees have been granted the benefit of the said notification has also not been disputed. Therefore, denial of the benefit of regularization of the services of the petitioners by the respondents cannot be said to be in accordance with law as it is violative of Article 14 of the Constitution of India.

11. In the light of the above, the present writ petition is allowed. The grounds which have been taken by the respondents for non-regularization of the services of the petitioners cannot be accepted. Direction is, thus, issued to the respondents to consider the claim of the petitioners for regularization of their services as in the case of the similarly

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placed nine other employees whose services have been regularized as referred to above and appropriate orders be passed within a period of four weeks.

12. It goes without saying that the petitioners will also be entitled to the all consequential benefits as have been granted to the other similarly appointed employees referred to above who have been appointed in pursuance to the same advertisement.

13th March, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No