

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

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Civil Writ Petition No.34666 of 2019
Date of Decision: February 11th, 2020

Uma Shankar Parshad

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K. Arora, Advocate
with Mr. Uday Jain, Advocate
for the petitioner.

Ms. Anju Sharma Kaushik, Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for setting aside the order dated 09.02.2015 (Annexure P-8) to the extent it regularizes the services of the petitioner from the date of passing of the said order instead of the year 2001 when the regular post of Chowkidar-cum-Water Carrier was lying vacant/available with the respondents. This claim has been made on the basis of the information supplied to him by the respondents vide letter dated 26.09.2019 (Annexure P-10) under the Right to Information Act. Prayer has also been made for treating the period of the petitioner as *dies non* during which he remained out of service because of illegal termination of his services with a prayer for grant of consequential benefits including the benefit of old pension scheme instead of new defined contributory pension scheme as the petitioner had been working with the respondents since 04.10.1985.

2. It is the contention of learned counsel for the petitioner that the petitioner was appointed as a part-time Chowkidar-cum-Water Carrier on 04.10.1985 and was posted in the office of the District Treasury Officer,

Faridkot. On completion of ten years of service, petitioner claimed regularization of his services as per the Punjab Government policy dated 04.03.1999 (Annexure P-2). When his services were not regularized despite a demand being made by the petitioner, he filed Civil Suit No.433 dated 04.10.1997, which was partly decreed in favour of the petitioner on 12.05.2000. Direction was issued to consider the claim of the petitioner for regularization of his services in accordance with the policy instructions dated 04.03.1999. The claim of the petitioner was considered and rejected vide order dated 21.04.2003 (Annexure P-3) on the ground that at the initial stage of his appointment, the same was not through the Employment Exchange or open advertisement.

3. The order dated 21.04.2003 (Annexure P-3) was challenged by the petitioner by filing CWP No.8749 of 2003 with a further prayer for regularization of his services as Chowkidar-cum-Water Carrier. The said writ petition was admitted but prior to the decision thereof, orders dated 22.12.2004 and 29.12.2004 were passed terminating the services of the petitioner without serving any show cause notice or affording an opportunity of being heard. The said orders were challenged by the petitioner by filing CWP No.454 of 2005. In the meanwhile, CWP No.8749 of 2003 came up for final disposal, wherein the impugned order dated 21.04.2003 rejecting the claim of regularization, was set aside vide order dated 29.02.2012, directing the respondents to reconsider the case of the petitioner for regularization of his services as per the policy dated 04.03.1999. This Court categorically held that the reason assigned for non-regularization of services of the petitioner i.e. his appointment being

without any recommendation from the Employment Exchange was not sustainable as the said condition has been set aside by this Court in *CWP No.12199 of 2000* titled as *Sukhdev Kaur Versus State of Punjab and others*, decided on 23.09.2002. CWP No.454 of 2005 came to be decided by this Court vide order dated 07.07.2014, in pursuance whereof the termination orders of the petitioner were quashed and a direction was issued for consideration of the claim of the petitioner for regularization as per the order dated 29.02.2012 passed in Surjit Kaur's case (*supra*). It was also observed that the period for which the petitioner has been out of service be decided by the appropriate authority.

4. In pursuance to these orders, services of the petitioner have been considered and regularized vide order dated 09.02.2015 (Annexure P-8) with effect from the said date. This the petitioner assails through the present writ petition as it is contended by the petitioner that the petitioner was entitled to regularization of his services in the year 2001 as per the policy dated 04.03.1999 (Annexure P-2), especially in the light of the judgment passed by this Court, wherein the condition of the non-recommendation of the case of the petitioner through the Employment Exchange has been quashed. Counsel, thus, contends that the petitioner is entitled to all consequential benefits as prayed in the writ petition.

5. On the other hand, learned counsel for the State submits that the respondents have proceeded to consider the claim of the petitioner in the light of the directions issued by this Court on 07.07.2014 (Annexure R-1) in CWP No.454 of 2005, which was preferred by the petitioner and it is in

pursuance thereto that the petitioner has been considered and granted the relief of regularization of the services. She further contends that the petitioner having been regularized in service with effect from 09.02.2015 (Annexure P-8) would be entitled to the said benefit from the said date and not which he is claiming in the writ petition, especially when the condition which was provided for in the instructions dated 04.03.1999 (Annexure P-2) for regularization had to be taken into consideration for deciding the claim of the petitioner which required the recommendation of the name of the petitioner through the Employment Exchange, the same having not done, the regularization could not have been granted to the petitioner. It has further been asserted that the claim of the petitioner as made in the writ petition is not made out and prays for dismissal of the writ petition.

6. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case as also the various orders which have been passed by this Court.

7. Facts as narrated above are not in dispute. The Civil Court vide its decree dated 12.05.2000 passed by the Additional Civil Judge (Senior Division), Moga, which is in favour of the petitioner, held the petitioner entitled for consideration of his claim for regularization as per the policy dated 04.03.1999 (Annexure P-2). The claim of the petitioner was, therefore, required to be considered under that policy, which the respondents did consider and rejected vide order dated 21.04.2003. The said order was challenged by the petitioner through a writ petition i.e. CWP No.8749 of 2003, which was finally decided vide order dated 29.02.2012 (Annexure P-6), whereby the reason for rejection of the

claim of the petitioner for regularization i.e. non-recommendation and routing of the name of the petitioner through the Employment Exchange was held to be bad as the said condition had already been struck down by this Court in *CWP No.12199 of 2000* titled as *Sukhdev Kaur Versus State of Punjab and others*, decided on 23.09.2002.

8. If that be so, rejection of the claim of the petitioner for regularization at the very first instance vide order dated 21.04.2003 was unsustainable as it was in violation of the law which has been laid down by this Court on 23.09.2002 in Sukhdev Kaur's case (*supra*). This Court, therefore, having set aside the order impugned, directed the consideration of the claim of the petitioner for regularization as per the policy dated 04.03.1999. The respondents at that very stage should have granted the benefit of regularization of services of the petitioner, as the only reason why his claim has been found to be unsustainable, instead the respondents proceeded to delay the matter further and passed an order for regularization only after the decision was rendered by this Court in CWP No.454 of 2005 on 07.07.2014. The action of the respondents, therefore, allowing the claim of the petitioner for regularization at the belated stage vide order dated 09.02.2015 (Annexure P-8) and thereafter restricting it from the said date cannot be sustained. Once the respondents have accepted the claim of the petitioner keeping in view the judgments which have been passed by this Court, the petitioner should have been granted the benefit of regularization from the date he would be entitled to the said benefit. The benefit of regularization would relate back to the year 2003 when the claim of the petitioner was duly considered by the respondents in pursuance to the

decree passed by the Civil Court and rejected i.e. 21.04.2003. The action of the respondents, therefore, cannot sustain. The reasoning which has been now assigned in the written statement for justifying the order which has been passed on 21.04.2003 is the same i.e. the name was not routed through the Employment Exchange, which aspect could not have been taken by the respondents in the light of the judgment passed by this Court referred to above.

9. In view of the above, this writ petition is allowed. The impugned order dated 09.02.2015 (Annexure P-8) is hereby set aside to the extent it grants the benefit of regularization of the services of the petitioner with effect from the said date. The claim of the petitioner for regularization shall be treated from 21.04.2003. Petitioner shall be entitled to all consequential benefits in pursuance thereto except for the actual financial benefits.

10. It goes without saying that the petitioner would be entitled to the benefit of old pension scheme as his date of regularization now would fall prior to 01.01.2004, the date with effect from which the new pension scheme had come into force. The period for which the petitioner had been out of service because of the wrong action taken by the respondents, which has been set aside by this Court, would be treated as duty period for all intents and purposes except for the actual financial benefits.

February 11th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No