

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.10285 of 2021(O&M)

Date of decision:07.06.2021

Shinu Gupta and others

...Petitioners

Versus

Union Territory and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.S.Patwalia, Sr. Advocate, with
Mr. Aditya Chadha, Advocate
for the petitioners.

ANIL KSHETARPAL, J. (ORAL)

Through this writ petition, 20 writ petitioners have invoked extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India for issuance of the following directions:-

“(a) to issue an appropriate writ, order or direction, including a writ in the nature of Mandamus directing the respondents to frame a policy for regularization of the contractual employees working in various establishments/ department/ branches which fall under the purview of the respondent No.1.

(b) It is further prayed that this Hon'ble Court may be pleased to issue an appropriate writ , order or direction including a writ in the nature of certiorari quashing Advertisement/Recruitment notice dated 26.03.2021(P-9) to the extent where by 41 posts of Clerks,5 posts of Steno Typists, 2 posts of Date Entry Operator and 2 posts of

Accountant i.e. the posts on which the petitioners herein are working have been advertised.

(c) It is further prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents to regularize the services of the petitioners on their respective posts considering the fact that they have been serving on their posts for a period of more than 13-15 years to the utmost satisfaction of respondent no.2."

From the reading of this writ petition, it is not clear that 'whether the petitioners were ever appointed after inviting the applications and consequently, after giving opportunity to the others to apply and compete or not' ? It is also not clear as to whether the petitioners were appointed after some sort of selection amongst the other applicants or not?

The information compiled by the petitioners in paragraph 3 of the writ petition is extracted as under:-

<i>Name</i>	<i>Designation</i>	<i>Date of Joining</i>
Sumiti Devi	Clerk	07/01/08
Shinu Gupta	Steno Typist	03/01/08
Ritu Sharma	Clerk-cum-Computer Typist	20.11.2007
Diksha Malik	Clerk-cum-Computer Typist	14.05.2008
Suman Balal	Clerk-cum-Computer Typist	14.11.2007
Poonam Sharma	Clerk	10.04.2008
Kavita Devi	Clerk	29.09.2009
Sittal Yadav	Clerk-cum-Computer Typist	15.05.2008
Rupesh Kumar	Clerk-cum-Computer Typist	27.06.2008
Rakesh Chand	Clerk-cum-Computer Typist	16.05.2008
Kiram Kumari	Clerk-cum-Computer Typist	15.05.2008
Rashmi Saini	Clerk	13.11.2007
Rakesh Dua	Accountant	19.11.2007
Ashu Goel	Accountant	01.10.2009
Malti Sharma	Data Entry Operator	12/05/05
Rajan Sharma	Data Entry Operator	25.09.2009
Kapil Thakur	Clerk	09/04/08
Parminder Singh	Clerk	30.09.2009
Gagan Deep	Clerk	22.03.2006
Sangeeta Rani	Clerk-cum-Computer Typist	19.10.2007

Learned counsel representing the petitioners while relying upon the judgment passed by the 5 Judges Bench of the Hon'ble Supreme Court in **Secretary, State of Karnataka and others vs. Umadevi and others, (2006) 4 SCC 1**, contends that a direction is required to be issued to the respondents to frame a policy to regularise contractual employees who are working against sanctioned posts for a period of more than 10 years. He further relies upon a subsequent judgment in **Sheo Narain Nagar and others vs. State of Uttar Pradesh and others, (2018) 13 SCC 432**. It is further contended that at one stage a Committee of the Municipal Corporation, Chandigarh, in its meeting held on 28.07.2014 had framed a draft policy by laying down certain conditions for regularization. He, hence contends that the writ petition deserves to be allowed.

This Bench has carefully considered the arguments and now, proceed to examine the same.

A 5 Judges Bench of the Hon'ble Supreme Court in **Secretary, State of Karnataka and others** (supra) vide judgment dated 10.04.2006 after noting that the courts have been issuing directions under Article 226 of the Constitution of India for regularization of the services of temporary/daily wagers opined that such directions should not be ordinarily issued. The Court noticed that the temporary/daily wagers cannot claim any legitimate expectations. In paragraph 53, the Courts after noticing that certain employees may have continued for more than 10 years, carved out an exception as one time measure. It was held that the Central or the State Governments may consider framing policy as one time measure to regularize the services of the employees who were working against the sanctioned posts which are required to be filled up for more than 10 years.

In the present case, only one petitioner was appointed on 22.03.2006. All the remaining petitioners have been appointed after the judgment in **Secretary, State of Karnataka and others** (supra). Gagandeep has also not completed 10 years of service on the date of judgment. In fact, he had not even completed one month of contractual service on the date of judgment. Hence, the exception carved out by the Hon'ble Supreme Court in paragraph 53 is not applicable to the petitioners.

Still further, on careful reading of the judgment passed in **Sheo Narain Nagar and others** (supra), it is apparent that in the aforesaid case the petitioner was engaged in the year 1993 on daily wage basis. In the year 1998, he was appointed on contractual basis. In the year 1999, the High Court had issued directions to regularize his services. In these circumstances, the Supreme Court after noticing that the concerned employee fulfills the requirement as laid down in paragraph 53 of the Judgment in **Secretary, State of Karnataka and others** (supra), issued necessary directions. In the present case, the facts are entirely different. Hence, the aforesaid judgment does not help the petitioners.

Learned counsel further relies upon the minutes of general house meeting of the Municipal Corporation on 14.11.2019. It is admitted position that the aforesaid policy has neither been adopted nor approved. Infact, the Chandigarh Administration did not grant permission to the Municipal Corporation, Chandigarh, to notify the regularisation policy as proposed in the meeting.

Learned senior counsel has further submitted that the petitioners are now being sought to be replaced by another set of temporary employees which cannot be permitted. It may be noted here that the

Municipal Corporation, Chandigarh, issued a recruitment notice on 26.03.2021, inviting applications from eligible candidates for filling up the posts on temporary basis which are likely to be regularized. Thus, there is enough indication in the recruitment notice that the posts are likely to be regularized. Thus, the eligible candidates will have the opportunity to apply and compete which is in accordance with the requirement of the Constitution of India.

Keeping in view the aforesaid facts, this Bench does not find it appropriate to issue the directions, as prayed for, in the writ petition.

Hence, the writ petition is dismissed in limine.

June 07, 2021
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(ANIL KSHETARPAL)
JUDGE

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