

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-496-2021(O&M)

Date of decision: 17.02.2021

Harmel Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Pawan Kumar Mutneja, Advocate for the petitioners

Mr. Nikhil Chopra, Addl. AG, Punjab
for respondent no.1, 2 and 4

Mr. Saurabh Kapoor, Advocate for respondent no.3

ANIL KSHETARPAL, J.

This writ petition has been filed by six petitioners seeking
the following substantive reliefs:-

“(i) issue of a writ in the nature of
mandamus directing the respondents to regularize the
services of the petitioners working with the
respondent No.3 Society.

(ii) issue of a writ in the nature of
mandamus directing the respondents to fix the service
conditions of the petitioners by amending the bye-
laws of the respondent society and make the service
conditions equivalent to the employees working with

the Department of Defence Services Welfare, Punjab as both are similarly situated persons with same duties and responsibilities.”

It is the pleaded case of the petitioners that the respondents-State formed a Society namely Maharaja Ranjit Singh War Museum Society (hereinafter referred to as 'the Society') in the year 1997-98, which was registered on 14.01.1998. The Society was constituted for managing a War Museum of International Standards at Ludhiana, established as a gesture to pay tribute to the gallant soldiers. The petitioners have also pleaded that the governing body of the Society includes Government officials and therefore, it is an instrumentality of the State. The petitioners were appointed on various dates and posts. The particulars given by the petitioners in para 9 are extracted as under:-

Sr. No	Name	Father's Name	DOB	Appointment date	Post
1.	Sh. Harmel Singh	Sh.Malkit Singh	04.10.1983	23.05.2006	Computer Operator
2.	Sh. Ashok Kumar	Sh. Sukhbir Kumar	13.3.1979	Dec. 1998	Safai/Sewak
3.	Sh.Balwinder Singh	Sh. Ajit Singh	17.7.1976	23.1.2017	Security Guard
4.	Sh. Raju Khan	Sh. Zalil Khan	12.1.1981	June, 1999	Mali
5.	Sh. Jagga Singh	Sh.Teja Singh	02.02.1962	1998	Security Guard
6.	Sh. Om Parkash	Harbans Tiwari	Year 1961	1999	Mali

It is the pleaded case of the petitioners that there are no rules and regulations governing the service conditions of the writ petitioners.

First relief sought by the petitioners is to issue a direction to

the respondents to regularize the services of the petitioners. Learned counsel for the petitioners relies upon the judgments passed by the Hon'ble Supreme Court in '**Narayan Kumar Tiwari vs. State of Jharkhand**' (2018) 8 SCC 238, '**Union of India vs. Central Administrative Tribunal**' (2019) 4 SCC 290 and '**State of Karnataka vs. M.C Kesari and others**' (2010) 9 SCC 247 and submits that a necessary direction is required to be issued in view of the fact that the petitioners are working for more than 10 years.

This Court has considered the submissions of the learned counsel for the petitioners. It may be noted here that a Five Judges Bench of the Hon'ble Supreme Court in '**Secretary, State of Karnataka and others vs. Uma Devi and others**' (2006) 4 SCC 1 directed that the Court should not issue directions to regularize the services of employees. The Hon'ble Supreme Court, however, carved out an exception in para 53 of the report. It was observed as under:-

“53. One aspect needs to be clarified.

There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work

for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

In M.C.Kesari (supra), the writ petitioners were appointed between 1985 to 1987. They filed a writ petition in 2002 seeking

regularization which was allowed. The direction was issued to consider the representation of the petitioners for regularization. A writ appeal against the judgment of the Single Bench was dismissed. The dismissal was ordered before the judgment was passed by the Supreme Court in Uma Devi's (supra). In those circumstances, the Court held that para 53 of the judgment is to be given effective meaning. Thus, the Supreme Court directed the respondents to consider the case of the petitioners before the High Court.

Next judgment relied upon by the learned counsel for the petitioners is in Narayan Kumar Tiwari (supra). In the aforesaid case, certain rules were framed for carrying out the directions of the Supreme Court in Uma Devi's case (supra). The Court found that such rules framed were impractical. In those circumstances, the Court issued directions.

In Union of India (supra), the Supreme Court found that certain persons, who were juniors to the employees before it, have been regularized excluding them from consideration. In those facts, the Court issued directions.

It may be noted here that the petitioners have themselves pleaded that there are no rules and regulations governing the service conditions of the petitioners. None of the petitioners had completed 10 years of service on the date when judgment (10.04.2006) in Uma Devi's case (supra) was delivered. As noticed above, petitioner no.1 and 3 came to be appointed after the judgment in Uma Devi's case whereas petitioner no.2, 4, 5, 6 were appointed before the judgment in Uma

Devi's case. Still further, the respondent is only a Society. In such circumstances, in the absence of a policy or any rules or regulations, the Court does not find it appropriate to issue directions, particularly, in view of the judgment passed by Five Judges in Uma Devi's case (supra). It may be noted here that the petitioners have not pleaded that there are any sanctioned posts against which the petitioners are working. The petitioners have not pleaded as to how and in what manner they came to be appointed.

Next relief sought by the petitioners is with respect to payment of salary equivalent to the employees working with the Department of Defence Services Welfare, Punjab. It may be noted here that the aforesaid Department is a Department of the State and its employees are public servants. Whereas the petitioners are only temporary employees of the Society. The petitioners cannot claim to be public servants merely because the Society is an instrumentality of the State. In any case, the employees of a Department constitute a different category. Learned counsel for the petitioners relies upon the judgment passed in **State of Punjab vs. Jagjit Singh** (2017) 1 SCC 148 to contend that on the basis of the principle of equal pay for equal work, the petitioners are entitled to be paid an equal pay. This Court has carefully read the judgment in the case of Jagjit Singh's case (supra). It may be noted here that the aforesaid judgment is not related to the employees of different employers. The principle of equal pay for equal work has not been ordered amongst the employees of different organizations. Still further, the Supreme Court in a subsequent judgment

in **State of Bihar and others vs. Bihar Secondary Teachers Struggle Committee, Munger and others** (2019) 18 SCC 301 has considered the judgment in Jagjit Singh's case (supra) and laid down as under:-

“**96.** Analysis of the decisions referred to above shows that this Court has accepted the following limitations or qualifications to the applicability of the doctrine of “equal pay for equal work”:

96.1. The doctrine of “equal pay for equal work” is not an abstract doctrine.

96.2. The principle of “equal pay for equal work” has no mechanical application in every case.

96.3. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference.

96.4. The application of the principle of “equal pay for equal work” requires consideration of various dimensions of a given job.

96.5. Thus, normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.

96.6. Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.

96.7. Equation of posts and salary is a complex matter which should be left to an expert body.

96.8. Granting of pay parity by the court

may result in a cascading effect and reaction which can have adverse consequences.

96.9. Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.

96.10. In a given case, mode of selection may be considered as one of the factors which may make a difference.”

In view of the aforesaid recent pronouncement of the Hon'ble Supreme Court, it is apparent that the writ Court is not expected to equate the posts for the purpose of salary.

In view of the aforesaid, no ground to issue the directions as prayed for is made out.

Hence, the writ petition is dismissed.

17.02.2021

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes /No

Yes / No