

LPA Nos. 95 of 2019 (O & M) and other connected matters 1

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

LPA Nos. 95, 618 to 643 of 2019 (O & M)
LPA Nos. 93, 94, 316, 317, 326, 327, 665, 676, 677
Reserved on: 12.12.2022
Date of Decision: 23.12.2022

Punjab State Power Corporation Ltd. and othersAppellant(s)

Versus

Surinder Singh and othersRespondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Sehajbir Singh, Advocate,
for the appellants
(in LPA Nos. 93 to 95, 618 to 642 of 2019 and 665 of 2019).
Mr.Vikas Chatrath, Advocate
Mr.Bhanu Pratap Singh, Advocate
Ms.Niharika Mittal, Advocate
Mr.Nitin Kaushal, Advocate
Mr.Abhishek Singla, Advocate
for PSTCL in LPA-316, 317, 326, 327, 676 & 677-2019.

Mr.Rohit Ahuja, DAG, Punjab.

Mr.Pawan Kumar Mutneja, Sr.Advocate
with Ms.Suvarna Mutneja, Advocate
for the respondents in LPA-627-2019.
Mr.Virinder Shukla, Advocate,
for respondents in LPA Nos. 95, 632 and 327 of 2019.
Mr.Tarun Sharma, Advocate
for the respondents in LPA-634-2019.
Mr.Ashok Bhardwaj, Advocate
for the respondent(s) in LPA-206-2021.
Mr.Ritesh K.Sharma, Advocate, for
Mr.Bikramjit Singh Baath, Advocate
for the respondent(s) in LPA-628-2019.
Mr.Vipin Mahajan, Advocate
for the respondent(s) in LPA-631 & 640-2019.
Mr.Tushar Wadhwa, Advocate, for
Mr.Sanjiv Gupta, Advocate
for respondents No.3 to 6 in LPA-618-2019
and respondent Nos.3 to 5 in LPA-639-2019.

Mr. Mohit Jaggi, Advocate,
for respondents No.1 to 10 (in LPA No. 619 of 2019),
for respondents (in LPA No. 620 of 2019)
for respondents No.1 to 4 (in LPA No. 621 of 2019)

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for respondents No.1,3,4,6 and 7 (in LPA No. 623 of 2019)
for respondents No. 1,3 to 5 and 7 to 10 (in LPA 625-2019)
for respondents No.1 to 5 (in LPA No. 641 of 2019)
for respondents No. 25 to 27 (in LPA No. 643 of 2019)
for respondents No.1 to 5,7,9,11,12, 18 to 20, 24,25,30,
31,41 and 42 (in LPA No. 93 of 2019).

G.S.SANDHAWALIA, J.

The present set of 36 appeals is directed against the judgment of the learned Single Judge dated 27.07.2018 passed in CWP No. 2828 of 2016, Surinder Singh and others vs. Punjab State Power Corporation Ltd. (in short 'Powercom') and others wherein, while disposing of 31 cases, directions were issued for considering the cases of the writ petitioners for regularization of the services in view of the policy dated 04.03.1999 (Annexure P-2 therein). The necessary consequential benefits were to be given within a period of 3 months from the date of receipt of the certified copy. The memo dated 23.07.2015 (Annexure P-14 therein) wherein the work and activity of Sweepers and Malis was to be outsourced was quashed alongwith the memo dated 02.02.2018. The lead case was ***CWP No. 2828 of 2016, Surinder Singh and others vs. Punjab State Power Corporation and others*** out of which the present LPA No. 95 of 2019 arises.

The Punjab State Transmission Corporation Ltd. (in short 'Transco') and others also have filed separate LPA Nos.316, 317, 326, 327, 676 and 677 of 2019 as their cases were also clubbed together and decided. The reasoning given by the learned Single Judge was that the regularization policy dated 04.03.1999 provided for the regularization of the Class IV part time employees on completion of their 10 years of service or more against the 25% of said vacancies which were to become available hereinafter. The

condition as such of the presence on duty should have been minimum 80%

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and the initial appointment on part time basis and the fact that they had served for the said requisite period of 10 years was accepted. The objection raised that the appointments were not through employment exchange or through open advertisement in the press as per condition No.2(A)(iv) was noticed that it had been quashed on an earlier occasion by a Division Bench in ***CWP No. 16655 of 2003, Paramjit Singh and others vs. State of Punjab and others decided on 15.03.2004***, which led the learned Single Judge to rely upon the judgment of the Apex Court in ***State of Karnataka vs. M.L. Kesri, (2010) 9 SCC 247*** to hold that they were irregular appointments and, therefore, the benefit of regularization could not be denied while noticing the fact that the policy had been adopted on 07.05.2014 and ratified by the Board of Directors on 10.06.2014 itself. It was held that the Corporation being a model employer could not as such deny consideration for regularization.

Counsel for PSPCL has argued that since the Board of Directors of the Corporation ratified the decision dated 07.05.2014 of the Committee of whole time Directors, the adoption of the said policy should be prospectively from 07.05.2014 and not from 04.03.1999, which the learned Single Judge has not clarified and rather directed regularization in view of the policy dated 04.03.1999. Accordingly, reliance is placed upon the judgment in ***State of Jammu and Kashmir and others vs. District Bar Association, 2017 (3) SCC 410*** to contend that in similar circumstances the matter was remanded to the High Court wherein, the benefit of regularization had been granted. It was accordingly submitted that outsourcing was a policy decision and, therefore, the learned Single Judge was not justified in quashing the same.

Mr. Vikas Chatrath, Advocate, on the other hand, while

appearing for the Punjab State Transmission Corporation Ltd. (in short

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'TRANSO') has submitted that with the unbundling of the Punjab State Electricity Board (PSEB) under the provisions of the Electricity Act, 2003, the two Corporations, Punjab State Power Corporation (Powercom) and Transo were incorporated on 16.04.2010 in pursuance to the Punjab Power Sector Reforms Transfer Scheme, 2010. It was further argued that all the personnel on the effective date of transfer stood transferred to Powercom who, in consultation with Transco, placed any of such personnel on deputation or secondment to Transco on the same terms of employment including of remuneration for undertaking functions of Transco with the later having power to exercise all administrative and disciplinary control over such personnel deputed or seconded to its services. It was accordingly submitted that directions for regularization as such to Transco were uncalled for.

The following questions arise for consideration:-

(i) Whether the regularization was to be done from the date of adoption of the policy on 07.05.2014 or from 10.04.2006 in view of the judgment of the Apex Court in *Uma Devi's case (supra)*.

(ii) Whether a writ of mandamus would lie to enforce the earlier policy dated 04.03.1999 of the State against the Corporation in view of the law governing the principles of mandamus.

The cases have a checkered history and, therefore, one will necessarily have to trace the origin as the record would go on to show that the appellant-Powercom is apparently trying to deny the benefits to its employees from whom services have been taken for over 20 years and also in apparent violation of the directions of the Constitution Bench itself in ***Secretary, State of Karnataka and others vs. Uma Devi and others, 2006 (4) SCC 1.***

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i.e. CWP No. 2828 of 2016, which would go on to show that the petitioners were working for various periods ranging from 1978 to 2002 from their date of appointment as part time Class-IV employees, details of which have been annexed as Annexure P-1 are reproduced below:-

<i>Sr. No. & Name and DOB</i>	<i>Date of Appointment</i>
<i>1. Surinder Singh 22.02.1975</i>	<i>03.06.1998</i>
<i>2. Shashi Kapoor 04.03.1978</i>	<i>16.07.2002</i>
<i>3. Santosh Kumari 20.07.1977</i>	<i>11.03.1993</i>
<i>4. Nirmala Devi 14.05.1961</i>	<i>01.12.1978</i>
<i>5. Bimla Devi 15.10.1960</i>	<i>Year 1983</i>

Way back on 10.02.1998, a Division Bench noticed that part time employees who were working on Class IV posts were being exploited and the issue arose regarding regularization of services in the State of Punjab. Resultantly, in ***Gurdev Kaur vs. Secretary to Government (Punjab) Department of Education, 1998 (2) PLR 207***, directions were issued that a policy should be drawn up on parity with the employees of the police department for regularization keeping in view that they had been working for 15 to 20 years. The relevant part reads thus:-

“9. Keeping in view the fact that the number of part-time employees in various departments is fairly significant as also the fact that pay scales etc. for these

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posts have not been fixed or sanctioned, it appears to be appropriate to direct that the State Government shall draw up a policy on the same lines as it has in case of the part-time employees in the Police Department within three months from the date of receipt of a certified copy of this order. It will also fix reasonable scale of pay for employees after taking into consideration the nature of duties and the level of responsibility etc. Thereafter, the claims of the part-time employees shall be considered in accordance with the policy. The exercise should be completed within six months from the date of receipt of a copy of this order.

10. The writ petition is accordingly disposed of. No costs.”

On the basis of the said directions, policy dated 04.03.1999 (Annexure P-2) was issued by the State which provided as under:-

“2. After thorough consideration, Government have decided to formulate a policy for the regularization of the services of Part time workers as follows:-

(A) The part time workers who have worked for ten years or more will be considered for regular appointment in the concerned department and in the concerned District against 25% Class IV vacancies which will become available hereafter subject to the following:-

(i) that during the tenure of their employment on part time basis for 10 years or more, their presence on duty should have been minimum 80%.

(ii) That they fulfill the qualifications for the new job as prescribed under the rules at the time of their consideration for regularization;

(iii) That they will be entitled to relaxation in

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upper age limit upto the extent of years they have served as part time workers;

(iv) That they had been appointed initially on part time basis through Employment Exchange or through open advertisement in the Press and

(v) That they are otherwise found suitable for the job.

(A) Each department will constitute a Screening Committee for completing the exercise for regularization of the services of such part time workers who are eligible for regularization against the Class IV vacancies available in the department.

(B) In the case where there is a recruitment for creation of a full time regular post but work is now being done by a part time worker, the case will be preferred to Finance Department for creation of a regular post. For this, the initial recommendation will be made by the Screening Committee to the Secretary of the Department who in turn will seek the approval of Finance Department/Council of Ministers, as the requirement may be.

(C) To ensure that part time workers working in the different departments in the State are paid wages at uniform rates, Labour Commissioner shall fix the rates for such part time workers keeping in view the quantum and quality of work done by such employees with the approval of the Finance Department from year to year.

3. These policy instructions are being issued with the concurrence of Department of Finance conveyed vide their I.D. No. 5/27/98-FP 1/3021 dated 04.02.1999.

4. These instructions may be brought to the notice of all concerned for strict compliance.”

On account of the onerous condition put in clause 2A(iv) that the

appointment had to be on part time basis through employment exchange or

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through open advertisement, a Division Bench in CWP No. 12199 of 2000, Sukhdev Kaur vs. State of Punjab and others, decided on 23.09.2002, while setting aside the order of denial of regularization on the ground that the appointment was not through the employment exchange, directed consideration of the claims of the petitioners for regularization of their services and for placing them in a regular time scale of pay. In CWP No. 16655 of 2003, Paramjit Singh (supra), the said condition in para No.2(A)(iv) was struck down by a Division Bench and declared illegal and reconsideration was directed. The relevant part reads thus:-

“For the reasons mentioned above, the writ petitions are allowed. Paragraph 2 (A) (iv) of Annexure P.8 is quashed. Letter Annexure R.1 annexed with the written statement filed in C.W.P. No.16084 of 2003 is also declared illegal and quashed. The respondents are directed to consider/ re-consider the cases of the petitioners for regularisation of their services without taking into consideration paragraph 2(a)(iv) of letter Annexure P.8 and pass appropriate orders within 3 months from the submission of certified copy of this order. If the competent authority comes to the conclusion that the petitioners or some of them are not entitled to be regularised in service, then the orders passed in such cases should be communicated to the concerned petitioner(s).

SLP No. 3714 of 2005, State of Punjab and others vs. Paramjit Singh and others against the said judgment was dismissed on 08.04.2005.

The judgment in *Uma Devi's case (supra)* was pronounced on 10.04.2006 wherein, the issue of regularization was dealt with by the Constitutional Bench. In ***CWP No. 24394 of 2011, Harbans Singh and***

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others vs. State of Punjab and others, directions were issued on 09.05.2012 (Annexure P-6) by the learned Single Judge that the State was not giving effect to its own policy by creating adequate posts as required under *Uma Devi* and directions were given to the State Authority to take a fresh look to regularize the services of the part time employees. The erstwhile PSEB was arrayed as respondent Nos.2 to 6 and duly represented by counsel. The relevant portion of *Harbans Singh's case (supra)* reads thus:-

“4. Having heard learned counsel for the parties, I am of the considered view that regularisation policy of the State, if any, has to be in consonance with the view taken by the Hon’ble Supreme Court in State of Karnataka vs. Umadevi, 2006 (3) SLR 1. Within the parameters of such a policy, ad hoc/ work charge employees deserve to be considered for regularisation subject to the availability of post(s) and as per the order of seniority. This does not mean that the State would keep the matter under carpet perpetually without any effective relief to the aggrieved employees, on the pretext that no sanctioned posts are available. In other words, it is equally imperative on the State Government to give effect to its own policy by creating adequate posts depending upon the factors like work-load, allocation of budget to the Education Department and the priority for amenities/ infrastructure to the educational institutions.

5. The Department would be well within its right to create/ sanction limited posts only as per the budgetary allocations. It may also be true that the creation or sanction of posts is Executive’s domain with restricted justiciability but does it mean that no post shall be created or sanctioned even if the petitioners retire on attaining the age of superannuation without

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having been regularised?

6. *The matter, thus, essentially requires a fresh look by the State authorities who shall consider the same appropriately within six months and in case it is decided to create some posts, to regularise services of part-time employees strictly in order of their seniority and suitability. If there are already vacant posts, the respondents shall be required to fill up the same by regularising services of eligible and suitable part-time workers as per their seniority within a period of six months.*

7. *Disposed of*

Powercom filed ***LPA No. 689 of 2013, Punjab State Power Corporation Ltd. vs. Harbans Singh and others*** against the said order, which was dismissed on 12.04.2013 (Annexure P-7) by the co-ordinate Bench by noting that employees who were working for the last more than 10 years, to deny them the benefits, financial constraints were being cited whereas consumers were being given free electricity or on subsidized basis. The relevant portion reads thus:-

“It is not in dispute that the work does exist with the appellants. Not only as above, the very fact that the employees are working on ad hoc basis for the last more than ten years, clearly establishes that the necessity to keep them exists with the appellants. The order has been challenged by stating financial constraints. It is not denied at the time of arguments that the appellants are supplying electricity to the farmers on subsidised basis and electricity bills of the Corporation/government departments worth rupees crores and crores are pending for realization. An objection has been raised to the order passed by placing on record some new documents which cannot be looked into at this stage. In

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view of facts of this case, no case is made out to condone the delay as well. Accordingly, the appeal and also the application for condonation of delay in filing the same both are dismissed.”

SLP No. 486 of 2014, The Chairman, Punjab State Power Corporation and others vs. Harbans Singh and others was dismissed on merits on 31.01.2014 (Annexure P-8).

Thereafter, the policy dated 04.03.1999 was adopted on 07.05.2014 by the Corporation (Annexure P-3), the decision which reads thus:-

“Office Order No. 9/Personnel

Dated: 7.5.2014

In compliance with the decision of the Hon'ble Punjab & Haryana High Court in the CWP No. 24394 of 2011, RA No. 453 of 2012 and LPA 689 of 2013 and the decision of Hon'ble Supreme Court of India in SLP/CC No. 486 of 2014 in the case titled Harbans Singh & others V/s PSPCL, Punjab State Power Corporation Ltd. is pleased to adopt the policy of Punjab Govt. circulated vide Memo No. 11/15/98-4PP/2803 dated 4.3.1999 (Annexure-1) for regularization of the services of Part Time Workers in toto in PSPCL with prospective effect.

A Screening Committee consisting of Dy. CE/Personnel, Dy. Secretary/Eng-1 and Dy. Secretary/Legal is constituted as per above policy for consideration of regularization of Part Time Workers based upon their seniority, fulfillment of conditions and vacancies after inviting the service particulars and recommendations from respective HODs. Dy. Secretary/ENG-1 who is looking after the establishment of Class-IV employees will issue appointment letters for

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employees to be appointed in Head Office and for those to be appointed in the field by the competent authorities in respect of Part time Workers approved for regularization by the Screening Committee.

In future PSPCL may appoint Part Time Workers only through Employment Exchange or through wide publicity by open advertisement in Press and through proper selection process, if required as otherwise the activities of Mali and Sweepers at Grid Sub Stations under PSPCL have already have outsources vide this Office Order No. 233/Cadre-I, dated 7.1.2013.

The above decision of WTDs is subject to ratification by the Board of Directors.”

The decision was ratified on 10.06.2014 (Annexure P-4), which reads thus:-

*“PUNJAB STATE POWER CORPORATION LTD
(Personal Section)*

Office Order No. 12/Personnel Dated: 10.6.2014

In continuation to this officer order no. 9/Personnel dated 7.05.2014, PSPCL is further pleased to inform that the Board of Directors of Punjab State Power Corporation Ltd. Has ratified the decision of the Committee of Whole Time Directors circulated vide this office Endst No. 538/1237/2P64/Vol.5 dated 7.5.2014, regarding adoption of Policy for regularization of services of Part Time Workers.”

The writ petitions were then filed seeking regularization in view of the said facts and challenging the decision dated 23.07.2015 (Annexure P-14) wherein, the decision was taken to outsource the said posts and to abolish all the vacant posts of Malis and Sweepers while directing that they would be

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allowed to continue till their superannuation. It is pertinent to notice that in view of the directions issued in *Harbans Singh's case (supra)* on 09.05.2012 which had been upheld in appeal, ***COCP No. 2615 of 2014, Harbans Singh vs. K.D. Chaudhary and others*** had been filed. Resultantly, the appellant-Corporation had resolved on 24.02.2015 that the services of the part time workers would be allowed to be continued by extending their contract on temporary basis till the pendency of the said COCP. The same reads as under:-

“Subject: Agenda No.228/2P-62/Jilad-6 dated 4.6.2014 Chief Engineer/HRD regarding Regarding regularizing the services of part time workers – COCP No.2615 of 2014 Shri Harbans Singh Versus CMD, PSPCL, and others.

In connection with the above, Board of Directors in its 37th meeting held at Mohali on 18.3.2015 has taken the following decision at Agenda No.212 dated 24.2.2015:

“REOLVED THAT the part time works be and are hereby allowed to continue in services by extending their contract on temporary basis as per the present practice till COCP is pending in the Hon’ble High Court in view of the advice of our legal section.”

Thereafter, to comply with the said direction, an order dated 05.11.2014 was passed whereby, the claim of 851 part time workers was rejected by the Chief Engineer while noting that certain employees are part of Powercom and others are of Transco and by holding that the adoption was with prospective effect. The relevant part of the order, which can be termed as a non-speaking order, is as under:-

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“Where as in compliance to the above decisions of the Hon'ble Courts Punjab State Power Corporation Limited adopted the policy of Punjab Govt. as circulated vide Memo No. 11/15/98-4/PP/2803 dated 04.03.1999 in toto vide office order No.9 dated 07.05.2014 (Annexure-4) with prospective effect. The Screening Committee constituted vide ibid office order for consideration of regularization of services of Part Time Workers comprised of the following Officers:-

(i) Dy. Chief Engineer/Personnel, PSPCL, Patiala

(ii) Dy. Secretary/Legal, PSPCL, Patiala

(iii) Dy. Secretary/ENG-1, PSPCL, Patiala

Whereas the service particulars of the Part Time Workers working in PSPCL was scrutinized by the above said Committee and a personal hearing was also given to 31 No. petitioners against CWP No. 24394 of 2011 on 31.10.2014. Out of which 29 No. petitioners availed the opportunity of personal hearing. The Committee in its report submitted that these 31 No. petitioners were not appointed in PSEB now PSPCL, through employment exchange or open advertisement. The Petitioner at Sr. No.8 Sh. Rajinder Kumar S/o Sh. Baja Ram has failed to appear before the Committee and another at Sr. No.31 Sh. Sushil Kumar S/o Sadhu Ram left the job of PSPCL and Sh. Raj Kumar S/o Sh. Elam Chand, petitioner at Sr. No.18 has a service to his credit of less than 10 years. As such all the 31 No. petitioners do not fulfil the requisite conditions as laid down in the ibid policy i.e. Condition No. (i) & (iv) (they have not been appointed initially on part time basis through employment exchange or open advertisement in press and service being less than 10 years) and are thus not eligible for regularization as per the policy. The

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report of the Committee is enclosed as Annexure-B.

PSTCL has also adopted the policy of Punjab Government circulated vide Memo No.11/15/98-4PP/2803 dated 4.3.1999 in toto vide Endst. No.11297/347 dated 8.8.2014 and the cases of all the Part Time workers working in PSTCL including 9 No. Petitioners have already been considered by screening committee of PSTCL(Annexure-C).

In view of the above the Committee has recommended that since the 851 Part Time Workers including Petitioners do not fulfill the requisite conditions as laid down in the ibid policy (Annexure-A), therefore their claims for regularization of services cannot be accepted.

Resultantly, COCP filed by Harbans Singh was disposed of on 21.04.2015 with liberty to challenge the order dated 05.11.2014. The same reads thus:-

“Counsel for the respondents states that the claim of the petitioner as per the policy formulated has been considered and vide order dated 05.11.2014 (Annexure A-1) passed by the Chief Engineer/HRD, PSPCL, Patiala, the claim of the petitioner for regularization of the services has not been accepted.

Having considered the reply, which has been filed by the respondents and also taking into considerations the directions, which were issued by this Court vide order dated 12.10.2012 in CWP No.24394 of 2011 contempt of which is alleged, I do not find it to be contemptuous.

Counsel for the petitioner, at this stage, prays for liberty to challenge the order dated 05.11.2014 (Annexure A-2).

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In view of the above, the present contempt petition is disposed of with liberty as prayed for.

Rule discharged.”

Emboldened by the said fact, the Board revoked its earlier decision dated 24.02.2015 and abolished all the vacant posts of Malis and Sweepers and took a decision to outsource the employees. The relevant part of the decision reads thus:-

“Dated: 23.07.2015

Now, on the subject cited above, Board of Directors through its agenda in its 43rd meeting held at Mohali on 2.7.2015 has taken the following decision by revoking its above said earlier decision :

RESOLVED that the decision taken by the Board of Directors against agenda No.212 dated 24.2.2015 be and is hereby revoked in view of the changed circumstances due to the disposal of COCP No.2615 of 2014.

FURTHER RESOLVED THAT the Personnel working as regular Mails and Sweepers be and are hereby allowed to continue in service till their superannuation where after these posts will be abolished. The vacant posts of malis and Sweepers, be and are abolished immediately and detailed information will be supplied to HODs to Cadre section for updating their records.

FURTHER RESOLVED THAT In supersession to all the earlier instructions regarding the employment and services of part time workers viz sweeper, Mali etc. the work and activity of Sweepers/Malis be and is outsourced and in future no Sweeper/Mali will be

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employed on part time basis and the concerned HODs shall ensure that this process of getting the work done through outsourcing is completed within six months.

All the head of the departments/offices under the PSPCL are hereby written to take action as per the decision taken above.”

A perusal of the pleadings in CWP No. 3541 of 2018, out of which LPA No. 618 of 2019 arises, would go on to show that thereafter the Corporation started issuing notices to their employees that their services would be outsourced from the status of the part time service, which notices dated 02.02.2018 have been quashed. The said notice has been appended as Annexure P-9 in the said writ petition, which reads thus:-

“Memo NO.411, dated 2.2.2018

Sub: Notice of change under Industrial Disputes Act, 1947, Section 9(A)

Ref: In compliance to the letter No. 1020/28 G-72 dated 1.2.2018 of Superintendent Engineer, (P&M Division), Bathinda

In compliance to the letter in reference it is hereby intimated to you that presently your services are being taken by Punjab State Power Corporation Limited as PTS. On 1.9.2017, Power Com has taken the decision to outsource these services. Thus from 1.3.2018, your services will be outsourced. This notice be considered as issued under section 9(A) of Industrial Disputes Act, 1947. Apart from this, no separate notice will be issued to you. This notice is being issued to you by yconsidering the fact that as per the record you have not

filed any court case for regularisation.

Sd/-

*Senior Executive Engineer
(P&M Division), PSPCL, Bathinda.”*

The above sequence of events would go on to show that the Powercom failed to comply with the directions passed in *Uma Devi's case (supra)* wherein, it was held that the State Government and the instrumentalities, as a one time measure, have to take steps to regularize persons who had worked for 10 years or more on duly sanctioned posts and who had not worked under the cover of orders of the Courts. The process was to be set in motion within 6 months from the date of pronouncement which was 10.04.2006 and, therefore, the needful was to be done by 10.10.2006. The relevant portion in *Uma Devi's case (supra)* reads as under:-

“52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right

under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 regularize 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 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 regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of

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the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

As noticed, the appellants took no steps for making any such policy or acting on the same and persons whose rights had fructified as such were not considered. The steps were thereafter only taken on 07.05.2014 by adopting the policy and getting it ratified from the Board of Directors on 10.06.2014 and then rejecting the cases by passing a non-speaking order on 05.11.2014 by relying upon Clause 2(a)(iv) which already stood quashed. The employees who had completed 10 years thus on 10.04.2006 necessarily had a right of consideration at that point of time. The misuse as such by the State and its agencies of not complying with the order of the Apex Court and denying the benefits was noticed in *M.L. Kesri's case (supra)* wherein, it was noticed that the object as such was two fold. Firstly, that persons who had put in more than 10 years of services were to be considered for regularization in view of the long service. Secondly, it was to ensure that departments do not perpetuate the practice of employing persons on daily wage, *ad hoc* or casual basis. Resultantly, it was held that persons who had worked for more than 10 years on 10.04.2006 were entitled for consideration of regularization and necessary directions were issued in the said case and those not entitled because of lack of educational qualifications were to be regularized on a lower post. The relevant portion in *M.L. Kesri's case (supra)* reads thus:-

“7. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled :

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(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. *Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).*

9. *The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for*

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more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

10. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/adhoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

11. The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.

xxx

xxx

xxx

9. These appeals have been pending for more than four years after the decision in Umadevi. The Appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularization within six months of the decision in Umadevi or thereafter.

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10. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs be given, in view of Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one- time regularization exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi. If they fulfill them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 of Umadevi, their services need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts. This appeal is disposed of accordingly.

Appeal disposed of.”

Similarly, in ***Narendra Kumar Tiwari vs. State of Jharkhand***

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regularization and it was held that the State of Jharkhand has continued with irregular appointments for almost a decade after decision in *Uma Devi's case (supra)* and it was nothing but exploitation of the employees by not giving them their benefits. Resultantly, it was held that if they had completed 10 years of service, they were to be regularized unless there is valid objection to their regularization. Resultantly, the order of the High Court was set aside which had itself placed reliance upon *Uma Devi's case (supra)*. The relevant portion of *Narendra Kumar Tiwari's case (supra)* reads thus:-

“7. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10 th April, 2006. In other

words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.

11. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants. The appeals are accordingly disposed of.

12. We may add that that it would be worthwhile for the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.”

Reliance can also be placed upon the judgment in ***Malathi Das***

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(Retd.) now P.B. Mahishy & others Vs. Suresh and others, (2014) 3 SCC 24

wherein, the contempt appeals were disposed of by the Apex Court binding the appellants to regularize the services of 74 employees within a period of 4 months keeping in view the fact that similarly situated persons had been regularised. Similarly, in ***State of Jharkhand and others Vs. Kamal Prasad and others, (2014) 7 SCC 223***, the appeals of the State were dismissed and the judgment of the High Court was upheld regarding regularization orders passed in favour of Junior Engineers who had worked for 29 years and it was held that they were covered under the exceptions made in *Uma Devi's case (supra)* and that the action of the State was shocking that such persons who had been discharging permanent nature of duties were to be denied the benefit of regularization.

In the present case, as also noticed, the appointment chart would go on to show that the appointments ranged from the period 1978 till 2002 and if the benefit of the cut off date is to be seen on 10.04.2006, the appellants had to take a considered decision as such keeping in view the said facts, which has not been done, which would be clear from the perusal of the alleged speaking order. The said order passed by an official of a designation of Chief Engineer decided the fate of 855 employees would go on to show total non-application of mind and the lack of reasons or the applicability of the facts which would have to be seen pertaining to each individual. With one stroke of pen, he has castigated all the said 855 employees who had served the Corporation for the last over 20 years. The act and conduct of the Corporation and also in the manner in which they kept the part time employees hanging subject to the decision of the contempt also does not

behave of a model employer. The resolution as such dated 23.07.2015 would

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go on to show that the moment the contempt petition was disposed of in view of the non-speaking order passed, the appellants chose to rescind the earlier decision and deny all the benefits of consideration for regularization by abolishing the vacant posts of Malis and Sweepers though as per the judgment in *Uma Devi's case (supra)*, they were to take necessary steps as such to regularize them. In such circumstances, it is apparent that employees who had completed 10 years on 10.04.2006 were to be considered for the purpose of regularization, which the Corporation has not done while relying upon Clause 2(a)(iv) which already stood quashed. The decision as such to adopt on 07.05.2014, as argued by the counsel, cannot be held to be prospective as the appellant was under an obligation to comply with the decision of the Apex Court. Once the policy of the State dated 04.03.1999 was adopted, the employees who had completed 10 years on 10.04.2006 were given a fresh lease of life in view of the directions of the Apex Court as there was to be a one time measure and the same could not be pushed 8 years later to the year 2014. Resultantly, the right of the writ petitioners arose to seek a mandamus upon the strength of the policy adopted by the Corporation and the law laid down by the Constitutional Bench.

The principle of issuance of a writ in the nature of mandamus is a right which can be enforced on account of the authorities not doing their duty which they are required to do as per Statute or enforceable policy as such and would include the law laid down by the Apex Court under Article 141 of the Constitution of India. Reliance can be placed upon the said principle laid down by the Apex Court in *Anandi Mukta Sadguru Shree Mukta Jeevandasswasi Suvarna Jaya vs. V.R. Rudani and others*, AIR

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purposes for enforcing the policy, thus, cannot be accepted as even the Apex Court in para no.52, noticed this fact in *Uma Devi's case (supra)* that if there is a legal duty, the aggrieved party has a legal right under the Statute or a rule to enforce it. The Apex Court in ***Sanjana M. Wig vs. Hindustan Petroleum Corporation Ltd., (2005) 8 SCC 242*** has held that a High Court could enforce fundamental or statutory rights including giving consequential relief by ordering payment of money if realized by the Government without authority of law if it involves the question arising out of public law functions on the part of the State or its authority.

As noticed, the abolition of posts was done whereas, rather the posts had to be created as a one time measure and their defence that there could be no sanctioned posts has also been examined by the Apex Court in ***Nihal Singh & others vs. State of Punjab & others, (2013) 14 SCC 65*** while keeping in view the limitations imposed by the Constitutional Bench in *Uma Devi's case (supra)*, wherein it was held that while issuing directions for regularization of Special Police Officers that the State could not take their defence that there were no sanctioned posts. Resultantly, the judgment passed by this Court was set aside and necessary directions were issued by holding that the person had to be appointed by a competent authority. The relevant portion in *Nihal Singh 's case (supra)* of the judgment reads thus:-

“19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is

no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under [section 17](#) of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants.

20. No doubt that the powers under [section 17](#) are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

“4. ... The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into

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service. A class of employment which can only be called “litigious employment”, has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over.”

The unbundling of the Punjab State Electricity Board has already been noticed above and the fact that the principal employer is Powercom. Rather, it is to be noticed that it got itself impleaded in CWP No. 3262 of 2018 as respondent No.5 on this ground since the writ petition was filed against Transco on the oral request of Mr. Vikas Chatrath, counsel appearing for Powercom. Accordingly, the necessary amendment was made in the Memo of Parties on 09.07.2018. An affidavit dated 17.08.2016 of Parminder Kaur, Deputy Secretary of Powercom was also being filed in CWP No. 2828 of 2016 accepting the fact that seniority and promotion of all the personnel transferred from PSEB vested with it. It has been further averred that the staff transferred from Powercom to Transco is on deputation/secondment basis and that all the relief sought would lie against Powercom in view of the notification dated 16.04.2010.

The judgment in *District Bar Association's case (supra)*, relied upon by counsel for the appellant, would be of no help as it was a case of appointment of daily rated workers of 209 Court officials and the High Court

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had directed regularization in mass. Consideration as such, thus, has been directed by the learned Single Judge for regularization in view of the policy which is the correct approach in law and, therefore, it cannot be faulted, as it has been held in the said judgment that re-consideration is to be done as it had proceeded on erroneous basis that the issue of regularization has attained finality.

A perusal of the chart, which has been reproduced above, would go on to show that if we go backwards from 2006 for a period of 10 years, the persons mentioned at Sr. Nos.1, 3, 4 and 5 would naturally become eligible for consideration as the requisite period of 10 years as such is complete. We see no plausible reason as such why the Corporation could not consider their cases for regularization as they are working on the Class-IV posts like Beldar/Mali for which there is no educational qualification as such required which is to be kept in mind and, therefore, they are only irregular appointments. Once the policy itself was there that the part time employees were also to be regularized is already in vogue on 04.03.1999 prior to the judgment in *Uma Devi's case (supra)* also, it was the bounden duty of the Corporation to enforce it in view of the judgment of the Constitution Bench. By delaying the said decision for a period of 8 years in spite of the fact that directions were being issued time and again against them only would go on to show defiant nature of the Corporation against the settled principles, which cannot be appreciated in any manner.

Thus, once Powercom itself accepted its liability, it is for it to comply with the directions issued by the learned Single Judge. Accordingly, the present appeals are dismissed with the following directions:-

- (i) That the Powercom shall firstly consider all employees including

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those of the erstwhile PSEB for regularization of employees who were working with it for a period of 10 years as on 10.04.2006 in view of the judgment in *Uma Devi's case (supra)* without any bar whether they were employed through employment exchange or through open advertisement in the press as they can be considered as irregular appointments on account of the length of the service.

(ii) Secondly, on account of the adoption of the policy on 07.05.2014, the employees are entitled for a writ of mandamus for similar consideration as per the policy dated 04.03.1999 and, therefore, the employees who had completed 10 years and had the requisite 80% attendance on 10.04.2006, would be necessarily considered and the stand that it would only be prospective from the date of adoption on 07.05.2014 is rejected.

(iii) Resultantly, the notice dated 02.02.2018 whereby the decision was taken to outsource the part time employees without adjusting them and regularizing their services in pursuance of the directions of the Apex Court in *Uma Devi's case (supra)* is also held to be bad and illegal.

The needful be done within a period of 2 months by reconsidering them for regularization from the date of receipt of certified copy of the judgment.

All the pending civil miscellaneous applications, if any, also stand disposed of (including delay applications).

(G.S. SANDHAWALIA)
JUDGE

23.12.2022
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes