

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.9139 of 2018 (O&M)

Reserved on:07.12.2022

Date of Decision.22.12.2022

Satinder Singh

...Petitioner

Vs

State of Punjab and another

...Respondents.

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. R.S. Kalra, Advocate
for respondent No.2.

-.-

JAISHREE THAKUR J.

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for quashing order dated 27.03.2018 with endorsement dated 05.04.2018 (Annexure P-17) whereby service of the petitioner has been terminated by the respondents, with a further prayer to direct respondent No.2 to reinstate the petitioner with all consequential benefits and consider the case of the petitioner for regularization as he has rendered 19 years' service on contractual basis.

2 Brief facts, as culled out from the writ petition are, that on 11.01.1999, the petitioner was appointed as Fireman in respondent No.2- Punjab School Education Board, through Employment Exchange after going through a proper selection process, initially for a period of six months. Thereafter, the petitioner had been working as Fireman as he was being given extensions after every six months. On 15.12.2006, the State

Government came out with a policy of regularization of employees and in view of the said policy/instructions, on 18.03.2011 a circular was issued providing that contractual employees, having 3 years of service and the requisite qualifications, be regularized w.e.f. 01.04.2011 or as and when they complete 3 years of service. On 17.11.2011, Department of Finance, Directorate of Disinvestment, issued a notification directing all departments to regularize services of daily wage/contractual employees in terms of policy/instructions dated 18.03.2011. As on 17.11.2011, the petitioner had already rendered 12 years of service and therefore, he was squarely covered by the aforesaid policy/instructions. The respondent-Board in a meeting held on 15.02.2012/16.03.2012 downgraded the post of Sub Fire Officer to the post of Fireman. Thereafter, on 27.06.2013, the respondent Board in its meeting held on 27.06.2013 passed a resolution that those employees who have rendered three years of contractual service ought to be regularized, in terms of instructions dated 17.11.2011 issued by the State Government. A list of 91 persons working on contract basis was prepared by the respondent-Board for considering their cases for regularization wherein name of the petitioner figured at Sr. No.1. However, the petitioner was not regularized, despite the fact that he completed three years of contractual service as far back as 15.01.2002. The petitioner submitted various representations to the respondent Board to consider his case for regularization in the light of notification dated 17.11.2011 but no positive response was received thereon. Thereafter, on 08.12.2017, petitioner served a legal notice upon the respondent-Board to regularize his service. In response to the aforesaid legal notice, respondent-Board vide letter dated 05.02.2018 informed the petitioner that his case was sent to the State Government for permission to

regularize his service and since, permission has not been granted by the State, his case cannot be considered for regularization. Thereafter, on 27.03.2018, the respondent-Board terminated service of the petitioner without assigning any reason. Aggrieved against the aforesaid order, petitioner approached this Court by way of instant writ petition.

3. The aforesaid sum and substance of the petitioner's case has been reiterated by learned counsel appearing for the petitioner during the course of his arguments. It was further argued that the petitioner served the respondent-Board for 18 years before his service was terminated arbitrarily. The petitioner herein duly fulfilled the conditions envisaged in notification dated 17.11.2011 and therefore, was entitled for regularization, apart from submitting that posts of Fireman are lying vacant in the respondent-Board. However, instead of considering his case for regularization, the petitioner has been terminated from service vide impugned order dated 27.03.2018.

4. Per contra, learned counsel appearing for respondent No.2 would argue that the petitioner herein was engaged as Fireman on contract basis, however, he was not appointed against the sanctioned post. The appointment of the petitioner was need based and therefore, he performed various tasks such as Security Guard etc. The engagement of the petitioner came to an end on 31.12.2017, as his contract was not extended on account of non-availability of work. It is argued that the petitioner is not entitled for regularization, as in view of letter dated 18.03.2011 issued by Government of Punjab, Department of Personnel, only those employees who were working on contract basis against sanctioned posts, were entitled for regularization w.e.f. 01.04.2011 or after completion of three years of their service, whichever is later, but subject to the condition that no new post shall

be created for them. Since the petitioner was not working against the sanctioned post, therefore, his case could not be considered for regularization. Moreover, his case had been forwarded to the State Government for consideration under the regularization policy but the same was rejected on the ground that case of the petitioner was not covered under the notification. The said decision of the State Government was communicated to him vide letter dated 05.02.2018, which has not been challenged by the petitioner herein. It was further argued that the writ petition filed by the petitioner itself is not maintainable, as the appropriate remedy for the petitioner would be before the Labour Court/Industrial Tribunal under the Industrial Disputes Act. In support of his contention, learned counsel appearing for respondent No.2 would rely upon a judgment rendered by a Coordinate Bench of this Court where a writ petition bearing No.7521 of 2018 filed by similarly situated persons stood dismissed vide order dated 09.08.2018 by granting them liberty to approach the Labour Court against the order of their termination/retrenchment. Order dated 09.08.2018 passed by the Single Bench was challenged in Intra Court Appeals, LPA No.1839 of 2018 being the lead case, however, the Division Bench also dismissed the said appeals by upholding the order passed by the Coordinate Bench. He further relied upon a judgment passed by the Hon'ble Supreme Court in *Yogesh Mahajan Vs. Prof. R.C. Deka, Director, All India Institute of Medical Sciences (2018) 3 SCC 218* to contend that where appointment of employee on contract basis was not made in accordance with any regular procedure by following necessary rules, no right accrues to such employee for regularization of services and there is no statutory right of a contract employee seeking renewal of contract from time to time, unless

there is arbitrariness proved on behalf of concerned authority in declining extension of contract.

5. I have heard learned counsel for the parties and have perused the paper book.

6. A perusal of appointment letter dated 11.01.1999 would reveal that the petitioner was appointed as Fireman on contract basis for a period of six months from the date of his joining. A further perusal of appointment letter would reveal that pay of the petitioner was charged against the vacant post of one Iqbal Singh, Security Guard who had died. Extension letter dated 16.07.1999 issued to the petitioner thereafter also would reveal that service of the petitioner was extended from 16.07.1999 to 30.09.1999 or till the regular appointment of Security Guard, whichever was earlier and to the similar effect, letters dated 30.07.2001 and 01.07.2003 were issued extending the contract period of petitioner from 01.04.2001 to 30.09.200 and from 01.07.2003 to 31.12.2003 respectively. However, subsequent extension letters dated 08.03.2010, 20.03.2013 and 07.10.2017 would show that his contract period was extended as Fireman, Maintenance Wing. Instructions/policy dated 18.03.2011 and notification dated 17.11.2011 would not come to the rescue of the petitioner, as a perusal of the same would reveal that the same would be applicable to those contractual employees, who were recruited against sanctioned posts after fulfilling the settled eligibilities/entitlements by adopting proper procedure of appointments in transparent manner and their services shall be regularized w.e.f. 01.04.2011 or on completion of three years of their service, whichever is later, with further condition that no new post shall be created for them.

The petitioner herein was not appointed against the sanctioned post of

Fireman as is evident from the appointment/extension letters, as he was appointed against the vacant posts of Security Guard/Sub-Fire Officer and was drawing salary against the said posts. Admittedly, there were two sanctioned posts of Fireman against which Karamjit Singh son of Sukhdev Singh and Satnam Singh son of Prem Singh were appointed on regular basis and therefore, petitioner cannot be said to be appointed against sanctioned post of Fireman. The respondent-Board had decided to downgrade the post of Sub-Fire Officer to the post of Fireman but approval from the government was not granted on the ground that the petitioner was not covered under the policy/notification. It is settled position of law that a person not appointed against the sanctioned post cannot claim regularization as one time measure, irrespective of his length in employment as the same would be violative to the constitutional scheme as enshrined under Articles 14 and 16 of the Constitution of India. While dealing with the issue of regularization, the Hon'ble Supreme Court in paragraph 12 of the judgment rendered in *State of Rajasthan and others v. Daya Lal and others (2011) 2 SCC 429* has observed as under:-

“12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee

which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute. (emphasis supplied)

The Hon'ble Supreme Court in the judgment rendered in *State of Karnataka vs. Uma Devi and others* (2006) 4 SCC 1 has held as under:-

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed

or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.”

7. The petitioner herein was not appointed against the sanctioned post of Fireman. In fact, the petitioner was appointed as a Fireman against the sanctioned post of a Security Guard, and therefore mere continuance in employment for a long period would not confer a vested right in him to be regularized in service.

8. The argument as raised by the counsel appearing for the respondent-Board that similarly situated persons like petitioner herein approached this Court in writ petitions, which were dismissed by this Court while relegating them to seek their remedy before the Labour Court/Industrial Tribunal and therefore, instant writ is not maintainable, is not sustainable. In those cases, the respondent-Board took a decision to abolish 748 regular posts and therefore, terminated services of daily wagers working on said posts following Section 25G of the Industrial Disputes Act, on the principle of last come first go, from the date of issuance of circular by giving them one month's advance notice as per Section 25F of the Industrial Disputes Act. Those daily wagers were also given financial benefits due to them, as per the

said Act. Therefore, in that case, the respondent-Board itself invoked the provisions of Industrial Disputes Act while terminating the services of said daily wagers whereas in the instant case, service of the petitioner was simplicitor terminated with immediate effect.

9. In view of aforesaid finding, this Court finds no reason to interfere with the order (Annexure P-17) passed by the respondent-Board. Consequent, the instant petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

December 22, 2022
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No