

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

213(1)

LPA No. 1839 of 2018 (O&M)
Date of Decision: February 02, 2022

Sarwan Singh
....Appellant

VERSUS

State of Punjab and others
....Respondents

213 (2)

LPA No. 1470 of 2019 (O&M)

Mangat Singh
....Appellant

VERSUS

State of Punjab and others
....Respondents

213 (3)

LPA No.1692-2019 (O&M)

Ramandeep Kaur
....Appellant

VERSUS

State of Punjab and others
....Respondents

213 (4)

LPA No. 88 of 2019 (O&M)

Vijay Kumar
....Appellant

VERSUS

State of Punjab and others
....Respondents

213 (5)

LPA No. 1722 of 2019 (O&M)

Sandeep Kaur and another
....Appellants

VERSUS

State of Punjab and others
....Respondents

213 (6)	LPA No. 2925 of 2018 (O&M)
Sanjeev Kumar and another	Appellants
	VERSUS
State of Punjab and others	Respondents
213 (7)	LPA No. 2930 of 2018 (O&M)
Kushwinder Kaur and another	Appellants
	VERSUS
State of Punjab and others	Respondents
213 (8)	LPA No. 493 of 2019 (O&M)
Parmjit Kaur and others	Appellants
	VERSUS
State of Punjab and others	Respondents
213 (9)	LPA No. 4935 of 2018 (O&M)
Rasleen Kaur	Appellant
	VERSUS
State of Punjab and another	Respondents
213 (10)	LPA No. 4939 of 2018 (O&M)
Gursewak and others	Appellants
	VERSUS
State of Punjab and others	Respondents

213 (11)

LPA No. 495 of 2019 (O&M)

Harpreet Kaur

....Appellant

VERSUS

State of Punjab and another

....Respondents

213 (12)

LPA No. 4979 of 2018 (O&M)

Bhagat Singh and others

....Appellants

VERSUS

State of Punjab and others

....Respondents

213 (13)

LPA No. 4980 of 2018 (O&M)

Gurpreet Singh and others

....Appellants

VERSUS

State of Punjab and others

....Respondents

213 (14)

LPA No. 1717 of 2019 (O&M)

Seema Viridi

....Appellant

VERSUS

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Pradeep Virk, Advocate for the appellant
in LPA-1839-2018.

Mr. Harinder Sharma, Advocate for the appellant in
LPA No.1692, 1717, 1722 of 2019.

Mr. Naresh Kumar, Advocate for
Mr. Randeep Singh Smagh, Advocate for the appellant(s) in
LPA Nos.493 and 495 of 2019.

Mr. Amandeep Saini, Advocate for the appellant(s) in LPA Nos. 2925, 2930, 4979, 4980, 4935 of 2018 and 88 of 2019.

Mr. Gurvinder Singh Sidhu, Advocate for the appellant in LPA No.1470 of 2019.

Mr. Neeraj Chandel, Advocate for the appellants in LPA-4939-2018.

Ms. Monica Chhibber Sharma, Sr. D.A.G. Punjab.

Mr. R.S. Kalra, Advocate for the respondent-Punjab School Education Board.

(The proceedings are being conducted through video conferencing, as per instructions).

G.S. SANDHAWALIA, J(Oral).

Present Letters Patent Appeals are directed against the judgment of learned Single Judge passed in **CWP No.7521 of 2018** (*Mangat Singh and others vs. State of Punjab and another*), wherein 9 writ petitions were dismissed, denying the claim of the petitioners for regularisation in terms of Policy dated 18.03.2011 (Annexure R-2/2), which has been placed on record by the respondent-Punjab School Education Board.

At the outset, it is pointed out that 14 appeals have been filed which are on account of some writ petitioners filing separate appeals, independently.

Learned Single Judge came to the conclusion that none of the writ petitioners completed the requisite period of 10 years of continuous service as in December, 2016 so as to entitle them for consideration for

regularisation by the Board, therefore, they are not entitled for the said benefit. The claim as such for regularisation under the Punjab Ad hoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced Employees' Welfare Act, 2016 was declined on the ground that the Board had never adopted the said Act and the provisions were not applicable in terms of the discretion, which was granted as per the provisions of the Act. Liberty was given to the writ petitioners with regard to challenge to the retrenchment to seek remedy under the Industrial Disputes Act, 1947. The benefits of salary to the writ petitioners, who were allowed to continue in service pursuant to the interim directions staying the retrenchment orders and who had actually worked, were also granted, which was assured by the counsel for the Board also.

A perusal of the paper book would go on to show that initially, it was not disputed that as per the pleadings itself, the petitioners had joined the Board as Computer Operators/Helpers as daily wagers from the year 2010 to 2015. Though, as per the chart (Annexure P-2), one Paramjit Kaur had joined on 05.12.1999 and Sarwan Singh had joined on 01.12.2006. Similarly, one Reena had joined on 10.01.2008. Initially, the petitioners had relied upon the Policy dated 18.03.2011 (Annexure P-4), wherein they had placed reliance upon the clause that regularisation benefits were to be granted after completion of 3 years service on contractual basis.

The Board in its reply had clarified that regarding the daily wagers, the Policy was also dated 18.03.2011 (Annexure R-2/2), wherein the requirement as such was 10 years of completed service till December,

2006 and for contractual employees the period of 3 years would apply. Apparently, thereafter the writ petitioners had placed the correct policy on record.

A perusal of the Policy dated 18.03.2011 (Annexure R-2/2), which is applicable, would go on to show that in pursuance of the judgment of the Apex Court in ***Secretary, State of Karnataka and others vs. Umadevi (2006) 4 SCC 1***, Punjab Government had come out with two separate policies, one qua contractual employees, who were recruited by following the transparent procedure with regard to the prescribed qualification/eligibility, their services were to be regularised w.e.f. 01.04.2011 or on completion of 3 years on contract basis, whichever is later. For the benefit of regularisation of daily wagers/work charged employees, period prescribed was 10 years of completed service in December, 2006. The relevant portion of the Policy (Annexure R-2/2) reads as under:-

“2. On the basis of the information received from the department regarding the daily wagers/work charged employees working in their department, (as mentioned in enclosed list), who have completed 10 years of service in December, 2006, the Cabinet in its meeting on 9.3.2011 discussed the matter and as per the below mentioned decision of the cabinet, the employees who are included in the list by you (who fulfills the prescribed qualification and eligibility as the rules/instructions) are required to be appointed on regular basis:-

- (i) The daily wager/work charged employees who have completed 10 years of service in December, 2006, are to be appointed on regular basis and for the said purpose posts may be created and all the

employees who are eligible and fulfill the criteria as per the rules/regulations governing the post, be appointed on the said post.”

In such circumstances, learned Single Judge had noted that the petitioners did not complete the mandatory period, which was required on the basis of which they were seeking the benefit of regularisation, as admittedly they have been appointed between 2006 to 2015.

It is settled principle that the writ of mandamus can only be issued on the basis of legal right and once the same was missing, no fault can be found to the approach adopted by the learned Single Judge. It is not disputed that thereafter the order dated 28.03.2018 (Annexure P-11) was also brought on record, wherein the Board due to restructuring, had dispensed with the services of daily wagers by following the procedure prescribed under the Industrial Disputes Act, 1947 by giving the requisite one month advance notice. The said decision of the Board reads as under:-

“Subject: Regarding the daily wagers establishment working in the office of the board.

As per the decision of the Board taken in a meeting held on 25.09.2017 on issue No.9 and due to restructuring in the board 748 regular posts have been abolished. Therefore, the Board does not require the daily wages establishment and as such the services of the seasonal daily wagers working in the office (without court case/without stay/without interim relief/ Labour Court) (List Annexed) are terminated following section 25 G of the Industrial Disputes Act, on the Principle of last come first go, from the date of issuance of circular, as per Section 25 F by giving them one month's advance

notice, w.e.f. 5.00 P.M. These daily wagers shall be given financial benefits due to them, as per the Act.

Heads of all Branches must ensure that all the daily wage establishment working under them be apprised regarding this in writing. The sole responsibility of making them aware shall be of the concerned branch head.”

It is, in this context, learned Single Judge has also given the benefit to the writ petitioners to approach to the Labour Court in case any provisions of 1947 Act is violated.

It is settled principle that the writ Court will not go into the merits of the dispute on factual aspects and it would be for the Labour Court to go into the aspects whether the provisions of the Act have been violated or not, whether the requisite notice was issued and financial benefits have been given, as provided under the Act. The interest of the writ petitioners has been duly protected qua their dispensation of service, if they had completed the requisite period of 240 days and whether the principle of 'last come first go' was adhered to. In such circumstances, learned Single Judge was well justified in keeping the issue open and protecting the interest of petitioners to seek their remedy under the Industrial Disputes Act.

Regarding the issue of right of consideration under the Act of 2016, it is not disputed that as per the provisions of Section 3 and 4, both qua Group 'A', 'B', 'C' and 'D' employees, there is a proviso, which gives a right to the entities of the State to consider regularisation only if such entity is in a financial position to take the burden of such regularisation on its own without transferring any liability to the State exchequer.

The Board, as such, in its short reply filed was categorical to the stand that the Board had not taken any decision to implement the said Act in view of the statement made before this Court in CWP No.4187 of 2017 (*Anika Gupta and another vs. State of Punjab*), on 06.04.2017, wherein the learned Advocate General had given an opinion which was to be examined by the State Government for the legality aspect of the Act in view of the judgment in *Secretary, State of Karnataka and others vs. Umadevi (supra)*. Subsequently, even an additional affidavit had been filed in the said writ petition that the Government of Punjab has decided to repeal the said Act and the matter of formation of new policy is under process, which was recorded in the order dated 16.08.2016, which reads as under:-

“Additional affidavit of Raj Kumar Kapoor, Executive Officer, Improvement Trust, Rajpura, filed by learned counsel for respondent No.3-Trust (in CWP No.29117 of 2017), is taken on record.

Learned State counsel has placed on record reply by way of short affidavit of Harbans Singh, Deputy Secretary to Government of Punjab, Department of Personnel, Punjab Civil Secretariat, dated 16.08.2018, is taken on record.

It is stated therein that in compliance to the order dated 06.04.2017, passed by this Court, the action is being taken. We quote Para 3 from the aforesaid affidavit, which reads thus:-

“3. It is submitted that Government of Punjab has decided to repeal “The Punjab Ad-hoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced Employees’ Welfare Act, 2016”, and

replace it with a new Bill. Accordingly, the matter of formulation of new Bill is under process.”

Learned State counsel, therefore, would require time.

In that view of the matter, adjourn the proceedings for a period of four months from today.

List again on 19.12.2018.”

Keeping in view the above, we are of the considered opinion that learned Single Judge has not erred, in any manner, in denying the claim of the writ petitioners for regularisation as they could not make out any case as such for enforcement of their claims for issuance of a writ of mandamus. Counsels for the appellants could not point out any illegality in the order of learned Single Judge and accordingly, all the appeals are dismissed.

All the pending civil miscellaneous applications are rendered infructuous in view of the appeals being dismissed.

(G.S.SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

February 02, 2022

Sachin M.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No