

1458 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP-19580-2003 (O&M)
Lakhvir Singh Petitioner
Vs.
State of Punjab and others Respondents

2. CWP-14711-2003 (O&M)
Lakhvir Singh and others Petitioners
Vs.
State of Punjab and others Respondents

Date of Decision: 06.12.2023

CORAM: HON’BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Manu K. Bhandari, Advocate
for the petitioner in CWP-19580-2003.

None for the petitioners in CWP-14711-2003.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The issue raised in the present petitions is no more *res integra* and the issue stands adjudicated by this Court *in CWP-22575-2015, in Pushpa Devi vs. State of Punjab and others*, decided on 05.07.2023.
2. The facts which need to be noticed in this case are that petitioner in CWP-19580-2003 was initially appointed on 28.08.1996 on temporary basis in the pay scale of Rs.950-1800. The petitioners in CWP-14711-

2003 were also appointed in the year 1996. However, they were termed as ad hoc jail warders and the petitioners continued to perform their duties with the best of their abilities. Vide order dated 26.05.2003, the Government of Punjab introduced a regularization policy by issuing a circular directing to regularize employees appointed on 89 days/ ad hoc/ temporary basis with the condition that they should be appointed on or before 13.05.1996 and be working against permanent/regular/temporary post.

3. Learned counsel submits that the petitioners have been appointed in terms of the orders passed by the Court to fill up the posts which were lying vacant on account of the litigation being continued relating to regular selection process for appointment of jail warders since 1992. The petitioners were however not considered while other jail warders who had completed 89 days were regularized under the said policy.
4. The petitioners had to approach this Court by filing writ petition bearing No.CWP-14711-2003 when an apprehension arose regarding terminating of their services.
5. This Court protected them and ordered that their services shall not be dispensed with. The petitioners have been continuing since then without break. While the said writ petition was pending, the petitioners have preferred this writ petition separately with a prayer to regularize them challenging the order of the respondents in not considering their candidature for regularization, and have prayed to direct the respondents to regularize their services. In CWP-14711-2003, the petitioners have prayed to quash the notice dated 10.09.2003 whereby

their services were sought to be terminated, and further also made identical prayer for regularization.

6. Learned counsel further submits that during the pendency of the writ petition, the respondents have further issued a circular dated 18.03.2011 for regularizing persons who have completed 10 years of service or more.
7. Learned counsel submits that the petitioners have worked for a period of more than 25 years now, and there is no occasion for not regularizing their services, and merely because of the pendency of the writ petition, the respondents have not considered their case.
8. Learned counsel further submits that the termination notice was also unjustified as the post was lying vacant and had not been filled. He submits that the principle of hire and fire has been deprecated, and their services could not have been dispensed with, and hence fresh person could not have been appointed in their place. An interim order is of course therefore passed by this Court in their favour.
9. *Per contra*, respondents have filed their reply and it is admitted that the petitioners were appointed in the months of August, 1996 and October, 1996 on ad hoc basis by issuing of an advertisement and filling the posts which were lying vacant and could not be filled on regular basis. They have been placed in the pay scale of Rs. 950-1800 while being appointed.
10. Therefore this Court finds that in fact the petitioners have been performing duties akin to regularly appointed persons as warders in the jail. The post held by the petitioners is a very responsible post and the

discipline has to be strictly maintained on the said post. There is no apparent fault in the performance of the petitioners.

11. In these circumstances, this Court finds that the issue as dealt by this Court in the case of ***Pushpa Devi*** (supra) will have application to the present case. In the said case, this Court has observed as under:

“6. As per the circular issued by the Punjab Government dated 18.03.2011, it is provided as under:

“i) Those daily wager/workcharge employees, who are having 10 years service to their credit as on December 2006, for the regularization of their services, posts be created in the concerned department and against these posts, those officials fulfill the education qualification and other condition, be regularized.”

7. Since the petitioner was appointed in 1996, as on December, 2006 she would be deemed to have put in 10 years of service and the view taken by the department is apparently erroneous as the award passed by the Labour Court/Industrial Tribunal was not challenged by the respondents. It has attained finality granting 50% back wages resulting in the petitioner's services to be treated as continuous from the date of initial appointment.

8. Accordingly, the petitioner would be entitled to the benefit of the aforesaid provision and she is entitled to be regularized.

9. Regarding the other ground taken by the respondent for denying regularization that she has not completed 120 hours course of computer from any recognized institution, this Court is of the view that the petitioner who has already put in about 30 years of service cannot be denied benefit of regularization on account of the said aspect. It is the duty of the State Government and its department to provide opportunity to its employees especially a female employee to be given benefit of higher education by sending her for further training. The same can also be done after having regularized her on the said post.”

12. Keeping in view above, this Court finds that the order impugned dated 10.09.2003 issuing notice to terminate services of the petitioners is found to be without any basis. The operation of the same was stayed by this Court and therefore the interim order passed by this Court is made absolute. The order dated 10.09.2003 (Annexure P-13 in CWP-14711-2003) is quashed and set aside.
13. The petitioners would be deemed to be continued in service from the date of their initial appointment, and their cases shall be now considered by counting their services right from the year 1996 for regularization. On completion of 10 years of service, they would be given all consequential benefits of continuity. The period of service rendered on ad hoc basis for the first 10 years shall also be counted for the purpose of qualifying service for pension. Said exercise is to be conducted within a period of three months.
14. Writ Petitions stand ***allowed*** in aforesaid terms.
15. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

December 06, 2023

Mohit goyal

- | | |
|-------------------------------|----------------------|
| 1. Whether speaking/reasoned? | <i>Yes/No</i> |
| 2. Whether reportable? | <i>Yes/No</i> |