

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 14.11.2023

(1) CWP-6344-2019 (O&M)

Sant Ram and others

Petitioners

Vs.

State of Punjab and others

Respondents

(2) CWP-24124-2019 (O&M)

Surinder

Petitioner

Vs.

State of Punjab and others

Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Inayat Khullar, Advocate
for the petitioners.

Mr. Arun Gupta, AAG, Punjab
for respondent Nos.1 and 2.

Mr. Ankur Bali, Advocate for
Mr. H.K.Aurora, Advocate
for respondent No.3 in both the petitions.

DEEPAK MANCHANDA, J.(Oral)

1. This judgment shall decide the aforementioned two writ petitions as the issue involved in both the petitions is common and similar facts have been stated in the petitions. To decide the controversy the facts of CWP-6344-2019 have been extracted for adjudication of both the writ petitions.

2. The petitioners have filed aforementioned writ petitions under Articles 226 & 227 of the Constitution of India for issuance of a writ in the

nature of Mandamus directing the respondents to regularize the services of the petitioners as Malis in the regular pay scale in view of the resolution dated 17.06.2011 (Annexure P-2) passed by the Municipal Corporation, Jalandhar and also in view of the instructions issued by the State Government as well as "The Punjab Adhoc, Contractual, daily wage, temporary, work charged and out sourced employees Welfare Act 2016" (Annexure P-11) notified by the State Government. The respondents be further directed to regularize the services of the petitioners retrospectively and to grant all the consequential benefits arising therefrom such as fixation of pay in the regular pay scales, arrears etc.

3. The brief facts of the case are that in the year 2000, Matching Grant Scheme was introduced by the Municipal Corporation, Jalandhar to recruit Safai Sewaks (Sweepers) and Malis on consolidated salary of Rs.2000/- per month. Out of which 50% was to be borne by the Welfare Societies and matching grant of Rs.1000/- was to be paid by the Municipal Corporation. Under the said scheme 1200 Safai Sewaks (Sweepers) and 300 Malis were recruited. The present petitioners were recruited as Malis during the year 2000-2004. A copy of the certificate issued to the petitioner No.1 by the Counselor, Municipal Corporation, Jalandhar certifying therein that the petitioner No.1 is working as Mali is attached with the petition as Annexure P-1. These Safai Sewaks (Sweepers) and Malis represented themselves before the Respondent No.3 and submitted that their services should be regularized and should be absorbed in the Municipal Corporation, Jalandhar. The demand of these employees were accepted and 1200 Safai Sewaks (Sweepers) were regularly absorbed in the service of the Municipal Corporation, Jalandhar. However, the Malis who were also working on the same terms and conditions were left out.

The Malis represented to the respondents that they are also absolutely similarly and identically situated with the Safai Sewaks (Sweepers) and as such their services should also be regularized and they should also be absorbed in the service of the Municipal Corporation, Jalandhar. In view the various representations made by the petitioners, the Municipal Corporation, Jalandhar passed Resolution No.234 on 17.06.2011 (Annexure P-2) deciding therein to absorb the Malis as well in the service of the Municipal Corporation, Jalandhar in the regular pay scale. In the meanwhile vide instructions dated 18.03.2011 (Annexure P-3) issued by the State of Punjab deciding therein that the employees who are working on contract basis and have completed three years of service be regularized with effect from 01.04.2011. Thereafter, vide circular dated 17.11.2011 (Annexure P-4), in continuation of the instructions dated 18.03.2011 (Annexure P-3) another circular was issued by the State of Punjab deciding therein that the services of the presently working daily wager/work charged and contract employees in various Boards/Corporations falls under the various departments of the State Government be also regularized. Thereafter, vide letter dated 14.11.2011 (Annexure P-5), the Director, Local Government, Punjab had stated that the directions were issued by the Local government department on 25.11.2008 to all the Commissioners, Municipal Corporation, and all the regional Deputy Directors Local Government to regularize the services of Safai Sewaks (Sweepers) working in different Mohalla Sanitation Committees and the action in this regard be also taken at their own level. Vide Resolution No. 234 dated 17.06.2011 (Annexure P-2) Passed by the Municipal Corporation, Jalandhar wherein it was decided to absorb the Malis in the service of the Municipal Corporation, Jalandhar on regular basis was approved

by the State Government on 24.12.2011 (Annexure P-6).

4. Thereafter, appointment letters dated 26.04.2012 were issued to some of the Malis appointing them on regular basis in the regular pay scale and they were absorbed in the service of the Municipal Corporation, Jalandhar. However, subsequently Show Cause notices were issued on 15.06.2012 alleging therein to withdraw the appointment letters issued to the Malis. The said Show Cause notices have been challenged by the colleagues of the petitioners in Civil Writ Petition No.2047 of 2013-Kamaljit Singh and Others Versus State of Punjab and Others in which Notice of Motion was issued.

5. Learned counsel for the petitioners contends that once the resolution dated 17.06.2011 (Annexure P-2) passed by the Municipal Corporation, Jalandhar was approved by the State Government, there was no reason or justification in not implementing the same till date. He further contends that vide letter dated 31.12.2015 (Annexure P-9) of the Municipal Corporation, Jalandhar to the Director, Local Bodies Punjab-Respondent No.2 admitting therein that in pursuance to the resolution, the services of some of the petitioners were regularized after the recommendations made by the committee constituted for the said purpose. He also contends that the State of Punjab notified the Act called "The Punjab Adhoc, Contractual, Daily Wage, Temporary, Workcharged and out sourced employees welfare Act-2016" on 24.12.2016 (Annexure P-11) and for the same purpose, the petitioners, who have been continuously representing to the respondents are working as Malis for the last 15 to 19 years on the meager salary with the request that their services be regularized keeping in view the resolution already passed by the Municipal Corporation, Jalandhar which has already been approved by the

State Government and also in view of the instructions as well as the Act notified by the State Government. Number of representations have been submitted by the petitioners in this regard and the latest representation sent by the petitioners is dated 17.12.2018 (Annexure P-12) but no action has been taken upon the same so far.

6. Per contra learned State counsel submits that the petitioners have not shown any document/proof that they were recruited after following the due procedure established by law or as per the rules of the post. He further submits that petitioners have also not shown any advertisement for their recruitment, which entitles them to be regularized and to support his contention, he has placed reliance upon the judgment passed by the Coordinate Bench of this Court in CWP-20093-2003, titled as “*Avtar Singh Vs. State of Punjab and others*” and the another judgment passed by Hon’ble the Supreme Court in case titled as “*Secretary, State of Karnataka Vs. Uma Devi and others*”, 2006 (3) SLR 1. He has further argued that the petitioners are not entitled for regularization even being not covered under the policy dated 18.03.2011, therefore, he prays for dismissal of the petitions.

7. I have heard learned counsel for the parties and have perused the material available on record.

8. A perusal of record reveals that the petitioners were appointed as part-time Mali in the year 2000-2004 on consolidated salary of Rs.2,000/- per month out of which 50% was to be borne by the Welfare Societies and Matching Grant of Rs.1,000/- was to be paid by the Municipal Corporation. The object of the scheme was to engage the services of petitioners as part-time/adhoc Mali, as there was no commitment to regularize their services, even

as per the pleadings, the petitioners have claimed their rights as part-time/adhoc employees only. The same is well established from the Resolution passed by the Corporation. Even while communications sent by the State for recommending the petitioners, nothing as such was mentioned to support the claim of the petitioners for regularization.

9. A more fundamental issue which has fallen for consideration of the Constitutional Bench of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Uma Devi and others, 2006 (2) SCT 462 (SC)** has been cited before this Court. It has now been laid down that no writ of mandamus could be issued to the State or instrumentalities of the State requiring them to regularize the services of an employee unless it is shown that his appointment to the service was consistent with the provisions of Article 14 and 16(1) of the Constitution. In other words it is required to be shown by the petitioner that there was an advertisement issued for filling up the posts and competing claims of all the persons available in the market were taken into consideration while selecting the petitioner. If there is any irregularity which might have cropped up in the aforementioned process, one time concession has been granted to the Union of India/State Governments or instrumentalities of the States to frame a policy in respect of those employees who have continued with them regularly for a period of 10 years. However, the Hon'ble Supreme Court has categorically held that the procedure for appointment has to be consistent with Article 14 and 16(1) of the Constitution and the same is held to be the basic structure of the consideration. In other words any appointment made by back door entry cannot be held to confer any right on an employee, who from the day one is aware about the nature of his

appointment and the consequences which may flow from such appointment.

10. In a recent judgment reported in *“Union of India v. Ilmo Devi and others” 2021 (12) Scale 66*, the Apex Court was examining the judgment passed by this Court whereby this Court modified the order of the Central Administrative Tribunal and directed to re-visit the whole issue, complete the exercise to reformulate their regularization/absorption policy and take a decision to sanction the posts in a phased manner. The Supreme Court after considering the law laid down in Uma Devi's case (supra) and also in *Dr.Ashwani Kumar v. Union of India and Anr. (2020) 13 SCC 581*, *State of Karnataka and anr. v. Dr.Praveen Bhai Thogadia, (2004) 4 SCC 684*, *Anuradha Bhasin v. Union of India and ors., (2020) 3 SCC 637*, *Oil and Natural Gas Corporation v. Krishan Gopal and others (2020) SCC Online SC 150*, *State of Maharashtra and anr. v. R.S.Bhonde & Ors. (2005) 6 SCC 751* held as under:-

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The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.

8.5 *Even the regularization policy to regularize the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory directions to do so. In the case of R.S. Bhonde and Ors. (supra), it is observed and held by this Court that the status*

of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularization is done.

8.6 *In the case of Daya Lal & Ors. (supra) in paragraph 12, it is observed and held 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.

[See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1], M. Raja v. CEERI Educational Society [(2006) 12 SCC 636], S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279], Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680] and Official Liquidator v. Dayanand [(2008) 10 SCC 1.]

8.7 Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work."

11. In the present case nothing has been shown that the appointment of the petitioners was made consistent with the requirement of Article 14 and 16(1) of the Constitution after issuing advertisement and considering the competing claims of the persons, who might have been eligible to be considered. Therefore, in view of the fundamental issue decided by the Hon'ble Supreme Court, this Court is unable to issue any mandamus directing the respondents to consider the case of the petitioners for regularization because no legal right has come to be vested in the petitioners. It is well settled that in order to succeed in obtaining a writ in the nature of mandamus a legal right has

to be in existence and only then the respondents can be asked to perform their legal duties. The aforementioned decision has been reiterated by the Constitution Bench judgment in the case of *Uma Devi* (supra) by placing reliance on an earlier.

12. Consequently, both the writ petitions are dismissed.
13. The pending application(s), if any, also stand(s) dismissed.

(DEEPAK MANCHANDA)

JUDGE

14.11.2023

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No