

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

266 (3 Cases)+270+271+275+249

- 1)

CWP-9237-2023
Date of Decision: 15.11.2023
- Gopal Singh and Others

...Petitioners
- Versus
- The Bhakra Beas Management Board and Others

...Respondents
- With
- 2)

CWP-5165-2022
- Jagtar Singh and Others

...Petitioners
- Versus
- State of Punjab and Others

...Respondents
- With
- 3)

CWP-12589-2023
- Jarnail Singh and Others

...Petitioners
- Versus
- Bhakra Beas Management Board and Others

...Respondents
- With
- 4)

CWP-20305-2022
- Sunil Dutt and Others

...Petitioners
- Versus
- Bhakra Beas Management Board and Another

...Respondents

With

5) CWP-29111-2022

Kirandeep Singh and Others ...Petitioners

Versus

Bhakra Beas Management Board and Another ...Respondents

With

6) CWP-11413-2023 (O&M)

Arun Singh and Others ...Petitioners

Versus

Bhakra Beas Management Board and Others ...Respondents

And

7) CWP-6119-2021

Jagseer Ram and Others ...Petitioners

Versus

State of Punjab and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. R.K. Arora, Advocate with
Mr. Jugam Arora, Advocate and
Ms. Saguna Arora, Advocate for the petitioners
(in CWP-9237-2023)

Mr. R.S. Bains, Senior Advocate with
Mr. Amarjeet, Advocate for petitioners
(in CWP-5165-2022)

Mr. B.D. Rana, Advocate for the petitioners
(in CWP-12589-2023)

Mr. Varun Sharma, Advocate for the petitioners
(in CWP-20305-2022, CWP-29111-2022 & CWP-11413-2023)

Mr. Rajesh Garg, Senior Advocate with
Ms. Neha Matharoo Advocate and
Ms. Mandeep Singh, Advocate for BBMB

Mr. Ramesh Chand Sharma, Senior Panel Counsel,
for Union of India-respondent

Mr. Deepanjay Sharma, DAG, Punjab

Mr. Raman Sharma, Addl. A.G. Haryana

JAGMOHAN BANSAL, J. (Oral)

1. As the issue involved is common, with the consent of contesting parties, all the captioned petitions are disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP No.9237 of 2023*.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 10.03.2023 (Annexure P-21), 15.03.2023 (Annexure P-22) and 21.03.2023 (Annexure P-23) whereby representations of the petitioners for regularization of their service have been rejected.

3. The Bhakra Beas Management Board (for short '**Board**') through its Centralized Staff Selection Committee vide Advertisement No.2/2014 invited applications for the recruitment of various posts of Fireman, Electrical Mistri/Electrician, Hoist Operator, Drivers etc. All these posts fall in the category of Class III & IV employees. The petitioners pursuant to aforesaid advertisement applied for the posts of Fireman and Electrical Mistri/Electrician. The petitioners came to be selected after following due procedure i.e. the procedure which is followed for recruitment of regular

employees. In the advertisement as well as appointment letter, it was jotted down that appointment is for one year on contract basis and contract would be extended from time to time, if necessary. The petitioners joined as contractual employees and their contract was extended from time to time. The petitioners are performing technical job. It is apt to mention here that there are different States which are partner of the Board. Every State is having representation in the Board apart from representative of Govt. of India. The Board is making direct appointment of 33% employees and remaining employees come from partner States i.e. Punjab, Haryana, Himachal Pradesh and Rajasthan.

4. The petitioners, after completing 3 years of service, requested the Board to consider their case for regularization. The Board in its different meetings considered case of the petitioners for regularization. In every meeting, it was noticed that petitioners are trained employees and they have been appointed after following procedure prescribed for regular appointment and there is no irregularity in their appointment. On account of objection of one or another member, the matter was deferred, however, it was resolved that emoluments of the contractual employees shall be increased. The petitioners on account of non-regularization of their service approached this Court by way of *CWP No.27886 of 2022* which came to be disposed of vide order dated 05.12.2022 (Annexure P-20). The respondent-Board was directed to look into grievance of the petitioners by passing a speaking order. In compliance of order of this Court, the respondent-Board has passed order dated 10.03.2023 (P-21) whereby request of the petitioners has been declined.

5. Learned counsels for the petitioners *inter alia* submit that from the perusal of the minutes of the Board's meeting, it is quite evident that Board was always of the opinion that service of petitioners should be regularized, however, final decision was deferred on account of objection raised by one or another member. In the agenda put up before the Board, it has been considered that petitioners are trained employees and they have been appointed after following due process. There is no irregularity in their appointment, thus, they may be considered for regularization. The respondent-Board is following rules and regulations framed by State of Punjab as well as Punjab State Power Corporation Limited (for short 'PSPCL'), governing recruitment and pay scale of their employees. The State of Punjab and PSPCL has regularized their employees on completion of 3 years contractual period. The petitioners, on the ground of parity, deserve to be regularized. The petitioners have been appointed after following procedure meant for the appointment of regular employees. Like the petitioners, appointments were made by respondents in 2019 and from the perusal of advertisement of 2019 as well as appointment letters, it is evident that except writing expression 'contract' in the case of petitioners, there is no dichotomy between appointment of the petitioner and regular employees. The regular employees were also initially appointed on temporary basis. The judgment of Hon'ble Supreme Court in ***State of Karnataka and Others v. Umadevi and Others, (2006) 4 SCC 1*** supports case of the petitioners because appointment of the petitioners was made following regular process. The petitioners were not appointed by back door entry. The relevant extract of the said judgment read as:-

“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.”

6. *Per contra*, learned Senior counsel for respondent-Board submits that it is factually correct that petitioners were appointed following regular process and there was no irregularity in their appointment, however, they cannot be regularized on the basis of regularization of employees of PSPCL and State of Punjab because respondent-Board is an autonomous body and it is not bound by rules and regulations framed or followed by State of Punjab or PSPCL. The Board is competent to make appointment of its employees on contract as well as regular basis. The matter of the petitioners, from time to time, was considered by Board, however, on account of lack of consensus between the members of the Board, the petitioners were not regularized.

7. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

8. The conceded position emerging from the record is that the petitioners were appointed pursuant to Advertisement No.2 of 2014 of subsequent advertisements. The respondent-Board before making appointment

of petitioners followed all the rules and regulations which are meant for appointment of regular employees. There was no irregularity in the appointment of the petitioners. In the advertisement as well as appointment letter, it was specifically mentioned that appointment is on contract basis for one year, extendable as per requirement. The appointment of the petitioners and other employees on temporary basis against Advertisement No.1 of 2019 was made following same process. The matter of the petitioners was repeatedly taken up by Board in its meeting, however, final decision could not be arrived at due to lack of consensus. The Board though did not finally decide the question of regularization, however, salary of the petitioners has been substantially increased. The respondent-Board is following rules and regulations framed by State of Punjab as well as PSPCL, however, Board being autonomous body is not bound to follow all the rules and regulation framed by State of Punjab as well as PSPCL. The State of Punjab as well as PSPCL, from time to time, has regularized their employees who were initially appointed on contract basis. The respondent is having 1922 vacant posts.

9. The petitioners were appointed during 2015-18. All the eligible candidates were free to participate in the selection process. A Selection Committee of the Board recommended appointment of all the petitioners after following due procedure prescribed for appointment of regular employees. In the appointment letter, it was specifically mentioned that the employee shall be governed by Bhakra Beas Management Board Class-III & Class-IV Employees' (Recruitment & Conditions of Service), Regulations, 1994 (for short '**1994 Regulations**') as well as other rules and regulations introduced and opted by Board. The petitioners were initially appointed for one year on

contract basis and their contract has been extended from time to time. The petitioners are working with respondent-Board since 2015 and no irregularity/derelection either in their appointment or their act and conduct has been noticed. The respondent-Board is competent to make contractual as well as regular appointments. The Board in its meetings, from time to time, has considered agenda with respect to regularization of petitioners. Though the question of regularization has been considered in different Board meetings, however, for the sake of brevity, agenda and minutes of meeting dated 20.12.2019 are reproduced as below:-

“ Note on Item No.233.18 of the Agenda for the 233rd Meeting of the Bhakra Beas Management Board.

(Deferred Item No.231.09 of Board’s 231st Meeting)

Item No.233.18

Regularisation of services of employees working on contractual basis in BBMB

An Agenda Note on the subject was placed before the Board in its 231st meeting held on 20.02.2019 as item no.231.09. The decision taken under item No.231.09 is as under.

“Special Secretary, briefed about the agenda, initiating the discussion, Member (HP) suggested that it would be better to discuss this issue in the presence of Member (Govt. of India-Power) and other members of the partner states. Accordingly, it was decided to defer the agenda to next Board Meeting.”

(Copy of Minutes of item No. 231.09 of 231st meeting held on 20.02.2019, issued Vide Secretary BBMB letter No. 981-97/B-9/231/1-M/Admn Dated 26.02.2019 is at (Appendix-Q-1).

Accordingly the Agenda Note was placed before Board in its 232nd meeting held on 17.08 2019. The decision taken under item No. 232.10 (Appendix-Q-2) is as under:

“Member (Punjab) desired that a comprehensive Agenda be put up before the Board showing the position of sanctioned strength employees in position, vacant posts, shares of each partner State in vacant posts and no. of employees to be regularized.”

“Further Member (Haryana) wanted to know the exact decision of the 219th meeting of Board.”

After deliberations, it was decided to put up the comprehensive proposal as desired by Member (Punjab) along with the decision of 219th meeting of Board.

In view of the decision taken in 232nd Board meeting as above, the Agenda is again presented as under:-

Background

In the matter of shortage of manpower for critical posts as identified by BBMB were discussed in BBMB 218th and 219th Board meeting held on 09.07.2014 & 25.08.2014 respectively. In these meeting deliberations were held w.r.t. retirement of personnel in forthcoming years, time taken to train newly inducted employee for learning the O&M procedures of Power Houses, Sub Stations, Dams etc. special emphasizes on filling up of critical posts identified by BBMB. Further, it was mentioned in the agenda that it takes about 4 to 5 year training to employees for learning O&M of Power Houses, Sub-Stations, & Dams and Appurtenant works and BBMB cannot allow at any cost to run the power houses, sub stations and Dams etc by raw hands.

After deliberations, the following decision was taken in 219th meeting dated 25.08.2014 (219.07) by the Board:-

“BBMB shall engage employees on contract basis on identified critical post(s) through the selection process conforming to the provisions of BBMB Regulations, 1994 for a period of one year on a fixed salary with a provision of extension as per requirement. However, the States shall provide regular staff within this period of one year. The posts filled up on contractual basis shall be given lump sum payment/fixed emoluments on the basis of initial pay + grade pay + DA as on 01.01.2014.”

(Copy of Minutes of item No. 219.07 of 219th meeting held on 25.08.2014 issued vide Secretary BBMB letter No.9399-9415/B-9/219/1-M/Admn. Dated 27.08.2014 is at Appendix-Q-3)

As per approval accorded by Board, Centralized Staff Selection Committee (CSSC) of BBMB recruited the manpower against the critical post(s) of various categories on fixed salary for a one year on contractual basis, in accordance to provisions of BBMB Class III & IV employees Regulations 1994 for recruitment, through open competition by wide advertisement and after observing all procedures & usual formalities as per rules.

It is pertinent to mention that rules for recruitment of regular employees were followed/observed for this recruitment.

Subsequently, as per work requirement and recommendations of Head of Departments regarding their work & conduct/ efficiency, their services have been extended further from time to time & are continuing till date.

The various categories of employees recruited through Centralized Staff Selection Committee (CSSC) is placed as Appendix-Q-4.

Many of these employees have almost completed 3 years of service as per Appendix-Q-5 ending FY 2018-19. It is brought to the notice of the members that most of these employees are working on critical posts on contract basis and have recruited through transparent recruitment process and playing important role in O&M and other areas of the projects. However, in view of uncertainty about their future these employees are getting restless and are looking for other professional opportunities. Since these employees have become trained over for past 2-3 years and have created useful manpower resource in BBMB, it would be prudent if these employees are regularized in BBMB. It is also brought to the notice of members that their retention in BBMB becomes more significant in view of 1922 critical posts (952 existing + 970 due to retirement) falling vacant by the year 2023 (details as per Appendix-Q-6). As such, the services of contractual employees recruited by following proper procedure for recruitment and qualification etc. as per BBMB Regulations, 1994 may be regularised on completion of 3 years' of their service in BBMB.

As desired by Member (Punjab) during 232nd meeting held on 17.08.2019, the position of sanctioned strength, employees in position, posts, shares of each partner State in vacant posts and no. of employees to be regularised (recruited on Contract basis) is placed at Appendix Q-7 & Q-8.

In addition to this it is also submitted that Govt. of Himachal Pradesh, Deptt. of Personnel (AP-III) is regularizing the services of contractual appointees as per letter No. PER (AP) C-B (2)-1/2019 dated 21.02.2019 (Appendix-Q-9).

Recently, PSPCL vide its order dated 11.12.2019 (Appendix-Q-10) has also accorded approval, to regularise the services of contract based Lineman, who were recruited under CRA No. 281/13, from the date of completion of contract period of three years.

Proposal

Keeping in view the issue of retaining young and trained manpower resource recruited through proper recruitment procedure after observing all usual formalities, fair/transparent method by BBMB, and future retirement scenario, as well as policy of Govt. of Himachal Pradesh for regularization of Contractual appointees, Board may kindly consider and deliberate for formulating the policy for regularisation of services of contractual employees on their completion of 3 years in respective Financial year as mentioned above.

Submitted for consideration & approval please.

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XXXX

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Minutes of Meeting

Item No.233.18

Regularization of services of employees working on contractual basis in BBMB.

Special Secretary briefly explained the Agenda and informed that the replies to the queries raised in the previous Board Meeting have been given.

Member/HP informed that all employees in HP are recruited on contractual basis and then regularized subsequently.

Member/Rajasthan during discussions, opined that since

these appointments were on contractual basis (initially for one year and likely to continue) so competent candidates might not have applied for the same and further wanted to know whether proper selection process was adhered to during the selection process.

Director/Security, BBMB informed that proper recruitment procedure, as applicable for recruitment of regular employees, was followed for selection of these contractual employees and it has been observed that the performance of these employees is satisfactory.

Member/ Haryana desired to know if there is any difference in remuneration of contractual and regular employees to which Director/Security replied that the remunerations are different for contractual and regular employees.

Accordingly, after detailed deliberations, it was decided that the financial implications in regularizing these contractual employees be put up for examination in the next Board meeting.”

10. In the agenda of 235th Meeting of the Board, it was noticed that huge number of vacancies have fallen vacant. In the agenda, it was proposed that salary of the employees may be increased. The relevant extracts of the agenda and minutes of meeting read as:

“Item 235.15

Regularization of service of employees working on contractual basis in BBMB

XXXX XXXX XXXX

Agenda

“Punjab CSR as well as Rules & Regulations of Punjab Govt. are applicable in BBMB and the services of employees are regulated accordingly. Punjab Govt. vide its letter dated 02.03.2020, adopted vide this office letter dated 03.03.2020 (Appendix-P-6), has withdrawn the policy regarding extension in services beyond 58 years/60 years of age w.e.f. 31.03.2020. Resulting which huge No. of vacancies have fallen vacant. As such, pace

of posting of staff by partner states being very slow, the gap between sanction and vacant posts is widening with each passing month and is already at an alarming stage.

These contractual employees are suffering at both ends, as being contractual employees working on fixed emoluments on the basis of (Initial Pay plus Grade Pay plus DA as on 01.01.2014) for past 6 years (Appendix-P-7) and still not regularised. These contractual employees working in BBMB have represented seeking salary hike as salary given to them is very much on lower side i.e. fix rates with Initial Pay plus Grade Pay and DA as on 01.01.2014 whereas, the present rate of DA is 164% as on 01.07.2019 (Appendix-P-8). It is pertinent to mention here that most of these employees have become ineligible/overage to apply for any other Govt. job. These contractual employees have become expert in their respective and specific technical fields of BBMB projects, it would be prudent to utilise their services in BBMB and to increase their salaries as per prevailing DA w.e.f. date of issuing order till decision their regularisation is taken by Board.

Proposal

Keeping in view the facts explained above, it is proposed as under:-

- 1. To increase the salary of these employees by fixing emoluments as per prevailing DA on the basis of (Initial Pay plus Grade Pay plus DA as per prevailing rate) till decision on their regularization is taken by the Board.*
- 2. Subsequent DA as granted from time to time by the Government shall also be admissible to these employees and order shall be prospectively*

implemented from the date of issue of office order in this regard.

Note: DA as on date of issue of office order shall be paid and no arrear on this account shall be admissible.”

Minutes of Meeting

“ XXXX XXXX XXXX

After discussions, Board agreed to enhance the emoluments of the employees working on contractual basis hired as per Board's decision taken in 219th meeting by 64% (Initial Pay plus Grade Pay) of the post on which they are working with immediate effect as a one-time measure. This enhancement, however, will not provide any right to these employees for regularization. It was further decided to change the nomenclature of this agenda to be read as "Enhancement of emoluments of employees working on contractual basis in BBMB."

11. From the perusal of minutes of Board meetings, it is quite evident that Board has repeatedly accepted that a huge number of posts are lying vacant; the petitioners are trained employees and they have been appointed after following rules and regulations; many of the employees have become over-age and they cannot apply anywhere else and there is restlessness among the employees on account of uncertainty of job and lesser emoluments than regular employees though they are performing same duties.

12. A two Judge Bench of Hon’ble Supreme Court in ***Arjun Singh & Others v. State of Himachal Pradesh and Others, (2015) 15 SCC 713***, while dealing with appointment of contractual employees despite availability of

regular posts has observed that State being model employer should not make appointment on contract basis as it amounts to unfair employment practice as well as violation of Article 14 of the Constitution of India. The Supreme Court in *Uma Devi (supra)* has deprecated practice of appointment of contractual employees by back door entry on the ground of violation of Article 14 of the Constitution of India. The relevant extracts of the judgment in *Arjun Singh (supra)* read as:

“14. From the facts as noticed above, we find that the Electricity Board was in need of regular Assistant Account Officers Class I and there being 14 posts vacant, they made requisition to fill up all the 14 posts on regular basis. The respondents have failed to disclose the circumstances in which the advertisement was published by the Public Service Commission, the scale of pay was shown @ 50% of the regular pay and the nature of appointment on contract basis.

15. In fact in the said advertisement for the post of Assistant Accounts Officer Class I, the posts reserved for different categories were shown i.e. Gen.-09, SC-01, ST-01, OBC-01, Ex-Servicemen Gen.-01, Disabled person (Low Vision)-01 (Total-14 posts). Thus, we find even the rule of reservation was also followed.

16. The action on the part of the respondent State authorities including the Public Service Commission prescribing 50% of the regular pay of Rs 7750+DP on contract basis initially for one year, extendable on year-to-year basis is against the requisition and the decision taken by the Electricity Board. Such action on the part of the authorities not only amounts to unfair employment practice but also arbitrary and violative of Article 14 of the Constitution of India.

17. It is clear that the terms of conditions of payment @ 50% of regular pay and nature of appointment on contract basis was inserted in the advertisement by the State authorities and the H.P. Public Service Commission at a later stage just to deprive the candidates from their regular pay and their right to continue in the service. The High Court failed to notice the aforesaid fact and erred in holding that the regularisation of service is not permissible. In fact it was not a case of regularisation of service of the appellants but is a case wherein direction ought to have been issued on the respondents to provide the appellants with orders of regular appointment from the date of their initial appointment and to treat the initial period of two years as probation and to provide them with other consequential benefits.”

[Emphasis Supplied]

13. The petitioners were indubitably appointed following regular process i.e. rules and regulations meant for the appointment of regular employees. The petitioners are working with respondent since 2015 and they are getting consolidated remuneration instead of salary payable to regular employees. The Board in its meeting has repeatedly recognized that number of posts are lying vacant, petitioners are eligible for regularization because they were appointed after following due procedure and they are trained employees. The petitioners despite performing same duties and subjected to same rules and regulations as are applicable to regular employees, are getting lesser pay than regular employees. The State being model employer is supposed to treat employees equally who are performing same set of duties. The Board has not regularized petitioners because there was objection by one or another member of the Board on the ground of financial implications. The

respondent-Board is having quite huge number of vacant posts and petitioners can very well be adjusted against those posts. The judgment of Supreme Court in *Uma Devi (supra)* in not coming in the way of respondent-Board rather as per said judgment, the case of the petitioners could be considered for regularization because they were not appointed by back door entry. The appointment of petitioners was admittedly made after following due procedure as well as rules and regulations. The respondent-Board being autonomous body is not bound to follow rules and regulations followed by State of Punjab and PSPCL, however, there is persuasive value of rules framed by PSPCL because respondent-Board is following most of rules and regulations framed or followed by PSPCL.

14. In the wake of above discussion, findings and judgments of Supreme Court, this Court is of the considered opinion that petitions deserve to be allowed and accordingly allowed. The impugned orders are hereby set aside. The respondent-Board is directed to regularize all the employees from today and their seniority would be from the date of their appointment/recruitment as contractual employee. The petitioners shall be entitled to all consequential benefits from today and they shall not be entitled to any financial benefit for the past period.

Pending application(s), if any, also stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

15.11.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>