

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-2269-2016

Date of Decision: 23.08.2023

Ajit Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. R.K. Arora, Advocate
for the petitioner.

Mr. D.K. Singal, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The petitioner by way of this writ petition prays for directions to respondent No.2 to regularize his services as Chowkidar in view of the circular dated 23.01.2001 issued by the Government of Punjab.

2. The petitioner admittedly has been working continuously as per the respondent's reply w.e.f. 06.02.1997. He was initially appointed as a Chowkidar in the office of Child Development and Project Officer, Jalandhar on 18.11.1996 and as per the respondents, he worked upto 09.01.1997 and for about 27 days, he was disengaged. Thereafter, on 06.02.1997, he was again engaged and has been continuously performing his duties. The respondents have stated in their reply that the petitioner is being paid the DC rates of Rs.6200/- per month. The respondents have further stated that since he was a contingency paid worker, he would not be entitled for regularization at par with the regular employees and would also not be considered for regular appointment as he was not appointed against a regular

sanctioned post initially.

3. Learned counsel for the petitioner has pointed out that from February 1997, the petitioner has been continuously performing his duties as a Chowkidar and he attained the age of superannuation on 31.05.2023 and has been deprived of regularization as well as regular pay scale without any fault. The post of Chowkidar was available with the respondents and the petitioner performed his duties against the post of Chowkidar. His name was sent for employment by the Employment Exchange and thus, the procedure which was being followed for appointment of class-IV employees as at that time, was followed even in the case of the petitioner. The fact has not been denied by the respondents. However, they have stated that the payment was being made on DC rates and therefore, he cannot be regularized or granted regular pay scales.

4. I have heard learned counsel for the parties at length and have considered the submissions.

5. This Court finds that the Government of Punjab, vide circular dated 23.01.2001 had noted the Scheme for absorbing and regularizing the existing daily wage workers and other category of workers but the petitioner has not been regularized although his name was recommended for regularization, vide letter dated 18.04.2001, 29.11.2004 and 09.02.2007. However, no reasons have come forward for denying him regularization. This case has also remained pending before the Court since 2016 and meanwhile, the petitioner has attained superannuation on 31.05.2023.

6. In the case of *Secretary, State of Karnataka and others Vs. Uma Devi and others, (2006) 4 SCC 1*, Hon'ble Supreme Court has held as under:-

“52. Normally, what is sought for by such temporary

employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be

filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

7. Again, in the case of ***State of Punjab and others Vs. Jagjit Singh and others, 2016(10) Scale 447***, Hon’ble Supreme Court has held as under:-

“57. Having traversed the legal parameters with reference to the application of the principle of ‘equal pay for equal work’, in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of ‘equal pay for equal work’ summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the

present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post."

8. In view of the law as laid down by the Hon'ble Apex Court, this Court is of the firm view that even if the petitioner had attained superannuation age, the right which flows from the judgments (supra) as well as the circular issued by the State Government, cannot be denied to him and the petitioner is found to be entitled to be considered for regularization in terms of the circular dated 23.01.2001.

9. Keeping in view the aforesaid findings, the present petition is allowed.

10. Accordingly, the respondents are directed to pass appropriate orders regularizing the services of the petitioner with effect from the date of issuance of the circular dated 23.01.2001 and treat him to have worked as a regular employee on the post of Chowkidar from 2001 onwards.

11. The period of service rendered on daily wage basis from the date of initial appointment i.e. from 1997 upto 2001 shall be counted for the purpose of calculating his pension. However, for other purposes, the said period shall not be counted. The petitioner would also be entitled to the salary and pay and allowances for the period from 2001 onwards till he attained the age of superannuation. The salary shall be fixed accordingly.

The arrears shall be calculated and the amount which has been paid to the petitioner for the intervening period shall be accordingly deducted and the remaining arrears shall be released to the petitioner along with interest @ 9% per annum. The interest shall have to be borne by the office of the Director, Social Security Women and Child Development, Punjab who may further fix the liability on the persons who are found to have denied the benefit of regularization, in terms of the circular dated 23.01.2001. The retiral benefits shall also be calculated accordingly and released to the petitioner within the same period as above. The payment shall be released to the petitioner within a period of three months from today.

23.08.2023*D.Bansal***(SANJEEV PRAKASH SHARMA)
JUDGE**

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