

**CWP-4546-2014**

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**2023:PHHC:166647**

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

**CWP-4546-2014**

**Date of decision : 16.10.2023**

**Jagpal Singh and others**

**...Petitioners**

**Vs.**

**Punjab State Civil Supplies Corporation  
Ltd., Chandigarh and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Ms. Pooja Arora, Advocate for  
Mr. S.S.Duhan, Advocate  
for the petitioners.

Mr. Arun Gupta, AAG, Punjab.

Mr. Tarun Singla, Advocate  
for the respondent Nos.1 and 2.

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**DEEPAK MANCHANDA, J. (Oral)**

1. By filing the present writ petition under Articles 226/227 of the Constitution of India, petitioners seek issuance of a writ in the nature of certiorari for setting aside the order dated 06.01.2014 (Annexure P-8) passed by respondent No.2, whereby claim of the petitioners for regularization of their services was rejected. Further, prayer is for issuance of a writ of mandamus directing the respondents to regularize the services of the petitioners on the post of Chowkidar as per the regularization policies dated 18.03.2011 (Annexure P-1) and 17.11.2011 (Annexure P-2).

2. The facts emanating from the pleadings of the present case are that the petitioners joined the respondent-department as Chowkidar in the year 1984, 1985-86 and 1987 on contractual basis, however, w.e.f. 2000 and 2002,

petitioners are continuously working on the said post. The State of Punjab took a policy decision on 18.03.2011 and 17.11.2011 (Annexures P-1 and P-2) to regularize the services of the employees working on contract in different departments, boards & corporations. As per the policy dated 18.03.2011, the service of employees working on permanent posts on contract basis and who were appointed after fulfilling their eligibility criteria are to be regularized either from 01.04.2011 or after completion of three years contract service whichever is later. Therefore, petitioner Nos.1 to 5 approached this Hon'ble Court by filing CWP-10529-2012 and petitioner Nos.6 to 11 filed CWP-6886-2012 and CWP-7196-2012 with a prayer for issuance of directions to respondents to grant salary to the petitioners at minimum pay scale and other allowances as well as arrears. And the above writ petitions were disposed of with a direction to respondents to consider the petitioner's claim in terms of Full Bench decision dated 11.11.2011 rendered in CWP-14796-2003, titled as "Avtar Singh Vs. State of Punjab and others" (Annexures P-3 to P-5). However, in view of Avtar Singh's case, respondents considered the case of the petitioners, but granted regular pay scale only and did not take any decision for regularization of their services. Aggrieved again, petitioners filed CWP-16765-2013 and CWP-21976-2013 seeking regularization of their service, which were disposed of vide orders dated 02.08.2013 (Annexure P-6) and 04.10.2013 (Annexure P-7) with the direction to consider the claim of the petitioners, however, vide impugned order dated 06.01.2014 (Annexure P-8), claim of the petitioners has been rejected. Hence this writ petition.

3. Learned counsel for the petitioners submits that the impugned order dated 06.01.2014 (Annexure P-8) passed by respondent-Corporation is

totally illegal, arbitrary and against the regularization policy of the Govt. dated 18.03.2011 and 17.11.2011. He further contends that the case of the petitioners is fully covered as per the policies/instructions as petitioners have completed more than 10 years of continuous service, therefore, he prays for quashing of the impugned order dated 16.01.2014 (Annexure P-8). He has placed reliance on the judgment passed by the Coordinate Bench in CWP-24337-2012, titled as “Shri Pal and others Vs. State of Punjab and others” decided on 17.08.2015 (Annexure P-9).

4. Learned counsel representing respondents while referring to the reply dated 17.08.2015 filed by Ajitpal Singh Saini, General Manager, (Legal & Arbitration), Punjab State Civil Supplies Corporation Ltd., submits that respondent/corporation has rightly declined the claim of the petitioners as the regularization policy was issued as a one time measure, by the State Government in pursuance of directions issued by Hon’ble Supreme Court of India vide instructions dated 15.12.2006 (Annexure R-1), which was valid for a specific period of time and post that any regularization order can only be issued after specific approval from the State Government. Further, according to Instructions dated 18.03.2011, employee should be working against permanent post on contract basis and whose selection was as per eligibility and qualifications and by following proper procedure, but no new post would be created for them. If the employee does not fulfill the conditions then he cannot claim regularization and the petitioners were recruited without following selection procedure, issuing any advertisement and also not against permanent post, therefore, they cannot claim any benefit on account of Instructions dated 18.03.2011 or 17.11.2011, and he prays for dismissal of the present writ

petition.

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

6. A perusal of the impugned order reveals that the petitioners were not appointed against the regular sanctioned post as daily wage worker and have not undergone any selection process and as per policy dated 15.12.2006 with regard to regularization of daily wages employees, employees should have completed ten years of regular service upto 10.04.2006, their services are to be regularized, and this policy was only for six months. As far as regularization of the petitioners is concerned, they were granted salary at minimum pay scale and other allowances in view the orders passed by the Hon'ble Court, but at that time, none of the petitioners fulfilled the conditions of three years two months after completing ten years of service, which was necessary as per the condition No.3 mentioned in Avtar Singh's case. Apart from the above, none of the petitioners also fulfilled the condition of completing ten years of regular service upto December 2006, which was essential condition in the above said Instructions.

7. 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 **Secretary, State of Karnataka and others Vs. Uma Devi and others**, 2006 (2) SCT 462 (SC) 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."*

8.           Thus, as per the aforementioned law laid down by Hon’ble Supreme Court, this Court does not find much weightage in the submissions made by the learned counsel for the petitioners and is of the view that as the regularization of services was only a one time measure as per the policy/instructions dated 15.12.2006, therefore, petitioners are not entitled for the same. Further, as regard the claim of the petitioners as per policies dated 18.03.2011 and 17.11.2011 (Annexures P-1 and P-2, respectively), as pointed out by the counsel for the respondents, even as per instructions dated 17.11.2011, regularization is subject to the guidelines laid down in instructions dated 18.03.2011, which are not applicable to the respondent-corporation. Moreover, petitioners were recruited without following selection process, any advertisement and also not against permanent post and thus not entitled to claim benefit on the basis of said instructions.
9.           Consequently in light of the above, this Court is not inclined to exercise powers under Article 226 of the Constitution of India and finding no merit, the writ petition is dismissed.

(DEEPAK MANCHANDA)  
JUDGE

16.10.2023  
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| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |