

217 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.4979 of 2016 (O&M)
Date of decision :13.02.2023

Ram Singh

..... Petitioner

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Ravi Gakhar, Advocate
for the petitioner.

Mr. Sehajbir S.Aulakh, Asstt. A.G., Punjab.

Ms. Jasvir Kaur, Advocate
for respondents No.3 & 4.

PANKAJ JAIN, J. (ORAL)

Petitioner prays for issuance of writ in the nature of mandamus directing the respondents to regularize the services of the petitioner. Further prayer has been made whereby the petitioner claims that his services are to be regularised in terms of the policy decision dated 2006 and is entitled for all benefits including arrears of pay and fixation of seniority etc.

Petitioner claims that he was engaged by respondent-Municipal Council on contract basis as Mali w.e.f. 01.08.1995. The services of the petitioner were illegally terminated on 02.08.2006 by the Municipal Council. An industrial dispute was raised at the behest of the petitioner which stands adjudicated by the Industrial Tribunal vide award dated 06.05.2013 holding the petitioner to be entitled for reinstatement with continuity of service. Petitioner

claims that on 26.05.2003 the State of Punjab had taken a policy decision to regularize services of employees working on 89 days/temporary/adhoc basis and the same was made applicable to all the public sector undertakings/Corporations/Board/Local authorities and other autonomous bodies. The policy dated 26.05.2003 contained guidelines for regularizing the services of the employees and also enumerated conditions to be fulfilled by an employee for regularization in the following terms :-

“2. While regularising the services of such employees, the following guidelines may be kept in view:-

(i) The policy shall apply only to those employees who were appointed on 89 days/adhoc basis/temporary basis on or before 13.6.1996 against permanent / Regular/ Temporary posts which later became permanent.

(ii) It shall be the duty of Administrative Department to verify and record a certificate that no person selected through advertisement/Selection Committee/Selection Board was deprived of appointment due to continuation allowed to an adhoc employees as per circular letter No.14/33/94-4PP-III/6779, dated 9.4.1997.

(iii) It shall also be verified that no supernumerary post was created to retain these employees in service when duly selected persons were appointed on regular basis.

(iv) The regularisation of these employees does not adversely affect those who were appointed on regular basis or following correct selection procedure.

3. Apart from the above the employee(s) concerned fulfils the following requirements -

(a) He/She possessed qualification prescribed for the post at the time of original appointment and satisfied all eligibility conditions as per service rules.

(b) The work and conduct of the employees through out has been satisfactory.

(c) A medical fitness certificate and documentary proof of date of birth as per standing instructions shall be obtained if not done at the time of extending

his appointment beyond 89 days. His/Her antecedents should be got verified from the Police Department as per Government instructions if it was not done earlier.

(e) The regularisation shall take effect from the date of orders to be issued and after determining inter-se-seniority amongst employees regularised under policy, with reference to continuous service. They shall be placed below the employees last appointed on regular basis after following proper procedure.”

Learned counsel appearing for the petitioner further refers to the covenant contained in the aforesaid policy that the policy was being implemented in terms of the orders passed by the Apex Court dated 08.04.2003 passed in **Civil Appeal No.5059 of 1997** titled as ***State of Punjab & ors. Vs. Balkar Singh***. It has been thus claimed that the petitioner ought to have been regularized, however, the respondents have failed to act in accordance with the policy despite repeated reminders and legal notice served at the behest of the petitioner.

Learned counsel for respondents No.3 & 4 has filed reply wherein it has been claimed that the petitioner was never employed by the answering respondents and thus his claim for regularization of the services against the answering respondents is not maintainable.

I have heard learned counsel for the parties and have gone through the records of the case.

The issue as to whether the petitioner is an employee of respondent-Council was precisely in issue before the Labour Court.

Learned counsel for respondents No.3 & 4 is not in a position to deny the fact that in the said award the petitioner was held to be an employee, employed by Municipal Council, Nabha and pursuant to that award the petitioner was employed by *none else* but the Municipal Council. Thus in view

of the aforesaid fact when the issue with respect to employer-employee relation between the parties already stands concluded and has attained finality, Municipal Council cannot now turn back and deny to consider the claim of the petitioner for regularization claiming that the petitioner is not their employee.

Consequently, present writ petition is disposed off with the direction to the respondents to consider the claim of the petitioner in terms of the policy decision taken by the State of Punjab dated 26.05.2003 and or any other policy subsequent thereto.

In case the petitioner is found to be entitled for regularization necessary order and the consequential relief be granted within a period of 12 weeks from the date of receipt of certified copy of the order. In case the respondents No.3 & 4-Municipal Council opine that the claim of the petitioner *sans* merit, the same be adjudicated by passing a speaking order in accordance with law after affording opportunity of hearing to the petitioner within the time period stipulated hereinabove.

Petitioner is granted 4 weeks time to supplement his representation already pending consideration before the Municipal Council in case, so advised.

(PANKAJ JAIN)
JUDGE

13.02.2023

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No