

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Writ Petition No. 6771 of 2015  
And Other Connected Cases**

**Reserved On: 24.01.2023  
Date of Decision: 31.01.2023**

Shri Nivas and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. K.L.Arora, Advocate  
for the petitioner(s) (In CWP-6771-2015, CWP-10071-2018,  
CWP-5881-2019, CWP-5184-2022 and CWP-22143-2012).

Ms. Bindu Goel, Advocate  
for the petitioner(s) (In CWP-23885-2011 and  
CWP-24340-2011).

Mr. P.K.Goklaney and Mr. Ashish Goklaney, Advocates  
for the petitioner(s) (In CWP-15102-2012, CWP-15123-2012,  
CWP-3436-2012, CWP-16206-2012, CWP-347-2012, CWP-  
3327- 2012, CWP-566-2012, CWP-579-2012, CWP-638-2012,  
CWP-7561-2012 and CWP-7583-2012).

Mr. Jasbir Singh Mohri, Advocate  
for the petitioner(s) (In CWP-22363-2022 and  
CWP-23879-2022).

Mr. Shalender Mohan, Advocate  
for the petitioner(s) (In CWP-25594-2022).

Mr. R.K.Girdhar, Advocate  
for the petitioner(s) (In CWP-4826-2012).

Mr. R.S.Pandher, Additional Advocate General,  
Punjab, for the respondents.

**Anil Kshetarpal, J.**

1. This batch of 22 writ petitions (details whereof are at the foot of  
the judgment) has come up for final disposal. In the opinion of this Court,

the following question requires adjudication:-

- i) Whether the directions issued to regularize the services of daily wagers/temporary workers/work-charged employees can be made effective/implemented from the date of their initial engagement in the absence of any Act, Rules, Policy or Instructions empowering the concerned authority in this regard?

2. The learned counsel representing the parties are *ad idem* that since the issue which arises for adjudication in all the writ petitions is identical, hence, this batch of writ petitions can be disposed of by a common order. Consequently, the facts are being noticed from the ***Civil Writ Petition No. 6771 of 2015 (Shri Nivas and Others v. State of Punjab and Others)***.

3. This writ petition has been filed with the following substantive prayers:-

*“(ii) issue an appropriate writ, order or direction as deemed fit and proper in this case and thereby direct the respondent authorities to consider and regularise the services of the petitioners from the issue an appropriate writ, order or direction as deemed fit and proper in this case and thereby direct the respondent authorities to consider and regularise the services of the petitioners from the initial date of their appointment/ employment and grant them all consequential benefits - the case being squarely covered by order dated 22.1.2010 (Annexure P-3) and order dated 22.1.2010 (Annexure P-*

*4) as also the implementation orders passed by the department on 23.11.2011 (Annexure P-5), 29.11.2011 (Annexure P-6) and 2.12.2011 (Annexure P-7) - vide which the similarly situated employees of the same department have been ordered to be regularised from the initial date of their employment and consequential benefits have also been granted to them accordingly;*

*(iii) arrears of salary becoming due and payable on account of filing of this writ petition be ordered to be paid with interest @ 18% per annum from the date they became admissible till the date its payment is made.”*

4. At the outset, it is important to note that the services of the petitioners, who are working as Pump Operators, Fitter Coolie, Mali-cum-Chowkidar, Petrolman, Store Chowkidar and Beldar, have already been regularized by the Government as per the policy decision taken by the State from time to time. In substance, the petitioners pray that their services are entitled to be regularized from the date of their initial appointment/employment and consequently, they are entitled to the arrears of salary along with interest @ 18% per annum.

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

6. Sh.K.L.Arora, Advocate, learned counsel representing the petitioners in the lead case i.e. Civil Writ Petition No. 6771 of 2015 has made the following submissions:-

I) The claim of the petitioners is covered by the judgment

passed in *State of Punjab v. The Presiding Officer and Others (Civil Writ Petition No. 3228 of 1988, decided on 22.01.2010)* and *Sh. Kesar Singh and Others v. The Secretary to Government of Punjab (Civil Writ Petition No. 4817 of 1988, decided on 22.01.2010)*.

- II) While referring to Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the 1947 Act”), he contends that the Labour Court/Industrial Tribunal has the jurisdiction to direct regularization of the services of the employees from the date of their initial engagement.
- (III) He further contends that once the government has, while implementing the judgment passed by this Court, regularized the services of the various workmen who were identically placed, then, the petitioners are also entitled to be regularized in a similar fashion.

7. The learned counsels representing the petitioners in the various other writ petitions have espoused the arguments advanced by Mr.K.L.Arora, Advocate.

8. On the other hand, the learned State counsel, while referring to a detailed order passed by the Superintending Engineer on 01.07.2013 (Annexure P9), submits that the petitioners are the back door entrants and their services have already been regularized as per the various policies of the State issued from time to time. He submits that the petitioners are not entitled to the regularization of their services from the date of their initial appointment.

9. This Court has considered the submissions of the learned counsel representing the parties and gone through the various other writ petitions along with the judgments relied upon by the learned counsels representing the petitioners.

10. A five Judge Bench of the Supreme Court in *Secretary, State of Karnataka and Others vs. Uma Devi and Others (2006) 4 SCC 1*, has already declared that it is not appropriate for the Courts to issue directions to regularize the services of the daily wagers/temporary workers/work-charged employees. In para 53 of the said judgment, the Supreme Court permitted the State governments to frame a policy for regularizing the services of the employees, as a one time measure, who had already completed ten years of their service.

11. In view of the fact that the learned counsels representing the petitioners have placed heavy reliance on the judgment passed in *Kesar Singh's case (supra)*, hence, it has become necessary to examine the facts and the background in which the order came to be passed. In the facts of the said case, on the request of 39 workmen, the State Government, vide notification dated 12.03.1984, had referred the following questions for adjudication of the Industrial Tribunal, Patiala (hereinafter referred to as “the Tribunal”):-

“(1) *Whether the workman on muster rolls, who have completed 240 days service are entitled to be put on work-charge cadre? If so, with what details*”

(2) *Whether the workman (list enclosed) who have break in service are entitled to be regularized by granting them*

*the leave of the kind due? If so, what directions are necessary in this behalf?”*

12. On appreciation of the pleadings, the Presiding Officer, Industrial Tribunal, Patiala, had culled out the following issues:-

- “(1) Whether the activity of Public Health Branch of Punjab Public Works Department (P.W.D.) of Punjab Government is an industry as defined in Section 2 (i) of the Industrial Disputes Act, 1947, and as such, this reference, which relates to the demands made by the workers of that Branch is maintainable? (O.P. on workman).*
- (2) Whether the workmen on muster rolls, who have completed 240 days service are entitled to be put on work-charged cadre? If so, with what details? (O.P. on workman).*
- (3) Whether the workmen (list enclosed) who have breaks in service are entitled to be regularized by granting them the leave of the kind due? If so, what directions are necessary in this behalf? (P.P. on workman).”*

13. The Tribunal while deciding the case, gave the following directions:-

*“In view of this judgment, the daily wages employees are entitled to get pay and allowances on par with regular and permanent employees doing identical work. In the present case, all the 39 concerned workmen as mentioned in Annexure I*

*enclosed with the statement of claim filed by the workmen, have worked for more than 240 days, and therefore, they are entitled to be put, on work-charge cadre, and by doing so, the aforesaid workmen shall be entitled to the same salary and allowances, as are paid to regular and permanent employees, with effect from the dates of their employment. This issues, is therefore, decided accordingly in favour of the workmen.*

*In view of my findings given in issue No.2, above, all the workman concerned in the reference, who have break in service shall be entitled to be regularized by the respondent-management by granting them the leave of the kind due besides other benefits, which are given to the work-charged employees. Thus, this issue is also decided in favour of the workman.*

*In the result, I give award to the effect that the respondent- management shall put all the 39 concerned workman as mentioned in Annexure I filed with the statement of claim, on work-charge cadre and also regularize their services with effect from the dates of their employment with the respondent. It is further directed that they shall also be entitled to get all the benefits which are likely to accrue to them on account of their being regularized. However, the parties are left to bear their own costs.”*

14. The aforesaid award passed by the Tribunal was the subject matter of challenge in the two writ petitions, one filed by the State and the other filed by the workmen. On 22.01.2020, two separate orders were

passed by this High Court. While disposing of the writ petition filed by the State of Punjab, the Court held that the Department of Public Health, Punjab, falls within the expression “Industry” as defined in Section 2(j) of the 1947 Act and the respondents are covered by the definition of “workmen” as defined in Section 2(s) of the 1947 Act. While disposing of the writ petition filed by the workmen, the Court passed the following order:-

*“Prayer in the present petition is for giving a direction to the respondent-State for implementation of the award dated 23.9.1987.*

*In the light of the order passed in CWP No.3228 of 1988 preferred by the State of Punjab challenging this very award which stands dismissed today, a direction is issued to the State of Punjab that if they have already not implemented the award, then they shall implement the same within a period of four months from the date of receipt of certified copy of this order.*

*Please writ petition is disposed of with these directions.”*

15. The learned counsel representing the petitioners has informed the Court that a Special Leave Petition filed by the State has been dismissed.

16. On a careful reading of the award passed by the Tribunal, which was ultimately affirmed by the High Court, it is evident that there is no direction issued to the State to regularize the services of the workmen from the date of their initial engagement. As per issue No.2 culled out by the Tribunal, the Court had only decided that the workmen on the muster rolls, who have completed 240 days of their service, are entitled to be put on

work-charge cadre. There was no further direction to regularize the services of concerned 39 workmen from the date of their engagement.

17. Similarly, while deciding the writ petition filed by the State, the Court examined the two arguments as noticed hereinbefore and dismissed the writ petition. While deciding the writ petition filed by the workmen, the Court only directed the implementation of the award. In these circumstances, the reliance placed by the learned counsels representing the petitioners on ***Kesar Singh's case (supra)***, is wholly misplaced.

18. The learned counsels representing the petitioners have also relied upon the following judgments:-

- a) ***Satbir Singh v. State of Haryana 2002(2) SCT 354;***
- b) ***Sukhjinder Singh v. The Director State Transport, Punjab 1998(1) SCT 466;***
- c) ***Jagdish Chand v. State of Haryana 1995(2) SCT 54;***
- d) ***State of Punjab and Others v. Jagjit Singh and Others (2017) 1 SCC 148;***
- e) ***Chamkaur Singh and Others v. State of Punjab and Others 2018(4) SCT 87;***
- f) ***Rupinder Kaur and Others v. State of Punjab and Others 2017(3) SCT 173;***
- g) ***Maninder Kaur v. State of Punjab 2003(3) SCT 655;***
- h) ***State of Punjab v. Balbir Singh 2002(1) SCT 293;*** And
- i) ***State of West Bengal and Others v. Anirban Ghosh and Others 2020(6) SLR 1001.***

19. In ***Satbir Singh's case (supra)***, a Division Bench of this High

- “(1) Wherever the rights of the parties have been settled by a judgment of the Court, the State has taken all remedies available to it in law against that judgment even upto the highest court of the land and the judgments has attained finality, then the State must accept the judgment and implement it in its true spirit and command. There is implicit obligation on the part or the State to grant same relief to other members of the cadre whose claim was based upon identical facts and points of law.*
- (ii) The State Government shall as expeditiously as possible in any case not later than four months re-act and respond to a legal notice/representation served upon it by any of its employees in redressal of his grievance/grant of relief, which has been granted to his co-employees similarly situated, in furtherance to the judgment of the Court. Unless, for reasons to be indicated in the reply, the State feels compelled to deny such relief. Needless to point out that denial must neither be evasive nor intended to circumvent the orders of the Court.*
- (iii) In the event such an employee is compelled to approach the court of law, whereupon the court awards interest and/or costs while allowing such a petition, then the expenditure incurred by the State including the costs/interest paid in furtherance to the orders of the Court should be recovered from the erring officer(s).*
- (iv) The concerned quarters of the Government are expected to work out the details in furtherance to the above directions and issue pervasive but definite instructions to all its departments forthwith to ensure compliance.”*

20. In ***Sukhjinder Singh’s case*** (*supra*), a Division Bench of this High Court examined as to “Whether an alternative remedy under Section

29 and 33-C (2) of the 1947 Act can be termed as “an efficacious and an effective remedy”? Similarly, in *Jagdish Chand’s case (supra)*, the question of availability of an equally efficacious remedy for implementation of the award of the Labour Court was again raised and decided.

21. In *Jagjit Singh’s case (supra)*, the Supreme Court examined the principle of equal pay for equal work. In *Chamkaur Singh’s case (supra)*, this High Court directed that if the work is of perennial nature and sufficient to employ the regular workers, then, the license to get the work done through the contractor cannot be issued and the daily wagers are entitled to draw the wages at the minimum pay scale payable to the regular employees holding the same post. In *Rupinder Kaur’s case (supra)*, the High Court examined the provisions of the Punjab Ad-hoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced Employees Welfare Act, 2016 (hereinafter referred to as “the 2016 Act”) in the context of the principle of equal pay for equal work. It was simply held that on the completion of three years of service, the workmen are entitled to be considered for regularization and nothing was laid down with regard to the date of such regularization. In *Maninder Kaur’s case (supra)*, a Division Bench of this High Court again elaborated upon the principle of equal pay for equal work. In *Satbir Singh’s case (supra)*, this High Court discussed the effect of a binding precedent. In *Balbir Singh’s case (supra)*, this High Court examined the menace of unfair labour practices and issued directions to regularize the services of such workmen. In *Anirban Ghosh’s case (supra)*, a Division Bench of the Calcutta High Court modified the judgment of the learned Single Bench and directed the State to make payment of salaries equal to the basic pay in the

pay scale of a regular teacher. Thus, it is evident that in none of the judgments relied upon by the learned counsel representing the petitioners, a positive direction has been issued to regularize the services of the workmen from the date of their initial engagement/appointment.

22. The learned counsels representing the petitioners have submitted that in view of Section 2(a) of the 1947 Act, the Industrial Tribunal/Labour Court has the jurisdiction to regularize the services of the workmen. Since there is no direction by the Tribunal in the award (Annexure P2), the aforesaid issue is rendered academic, hence, requires no further deliberation in the facts of the present case.

23. The last argument of the learned counsels representing the petitioners is based on the doctrine of “Equality” enshrined in Article 14 of the Constitution of India. Under Article 14 of the Constitution, two important aspects have been included which are equality before the law and the equal protection of the laws. Article 14 has provided for equality of all people before the law but every person is not the same and therefore, it is not possible to have a universal application of equality. Moreover, a claim on the basis of guarantee of equality by reference to someone similarly placed is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also a lawfully entitled to the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach the court for granting such illegal benefit to him as well. The doctrine of equality cannot be applied in a manner which promotes or perpetuates illegalities. Thus, if an action has been taken by the officials of

the State *de hors* the provisions of the Acts, Rules, Regulations, Policies or Instructions, then the same would not confer/vest a corresponding right in the other employees to seek parity and such action is liable to be declared illegal, null and void by the Constitutional Courts. Reference in this regard can be placed upon the judgment in *Union of India v. M.V. Sarkar (2010) 2 SCC 59*.

24. Keeping in view the aforesaid discussion, the conclusion is inevitable. Consequently, finding no merit, all the writ petitions are dismissed.

25. The miscellaneous application(s) pending, if any, in all the writ petitions shall stand disposed of.

(Anil Kshetarpal)  
Judge

January 31, 2023  
“DK”

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

| Sr. No. | Case No.             | Party’s Name                                                  |
|---------|----------------------|---------------------------------------------------------------|
| 1.      | CWP-5881-2019        | Baldev Singh And Others V/S State Of Punjab And Others        |
| 2.      | CWP-23885-2011 (O&M) | Harmail Singh And Others V/S State Of Punjab And Others       |
| 3.      | CWP-24340-2011(O&M)  | Gurmukh Singh & Ors. V/S State Of Punjab & Others             |
| 4.      | CWP-15102-2012       | Tarsem Lal & Others V/S State Of Punjab & Others              |
| 5.      | CWP-5184-2022        | Ram Kumar V/S State Of Punjab And Another                     |
| 6.      | CWP-10071-2018       | Lachhman Das And Others V/S State Of Punjab And Others        |
| 7.      | CWP-22363-2022       | Shinder Pal And Others V/S State Of Punjab And Others         |
| 8.      | CWP-23879-2022       | Bachan Singh And Others V/S State Of Punjab And Others        |
| 9.      | CWP-25594-2022       | Harbans Lal And Others V/S State Of Punjab And Others         |
| 10.     | CWP-15123-2012       | Jagjit Singh & Others V/S The State Of Punjab & Others        |
| 11.     | CWP-3436-2012        | Gurdeep Singh And Others V/S The State Of Punjab And Others   |
| 12.     | CWP-16206-2012       | Jaswinder Singh And Others V/S The State Of Punjab And Others |
| 13.     | CWP-347-2012         | Gurmeet Singh And Others V/S The State Of Punjab And Others   |
| 14.     | CWP-22143-2012       | Sikander Singh And Others V/S State Of Punjab And Others      |
| 15.     | CWP-3327-2012        | Davinder Singh And Others V/S The State Of Punjab And Others  |

Civil Writ Petition No. 6771 of 2015  
And Other Connected Cases

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| Sr. No. | Case No.           | Party’s Name                                             |
|---------|--------------------|----------------------------------------------------------|
|         |                    | Others                                                   |
| 16.     | CWP-4826-2012      | Jasvir Singh & Others V/S State Of Punjab & Others       |
| 17.     | CWP-566-2012       | Ramji Singh & Others V/S The State Of Punjab & Others    |
| 18.     | CWP-579-2012       | Ranjit Singh & Others V/S The State Of Punjab & Others   |
| 19.     | CWP-638-2012 (O&M) | Pawan Kumar & Others V/S The State Of Punjab & Others    |
| 20.     | CWP-7561-2012      | Narinder Kumar & Others V/S The State Of Punjab & Others |
| 21.     | CWP-7583-2012      | Malkiat Singh & Others V/S The State Of Punjab & Others  |

(Anil Kshetarpal)  
Judge

January 31, 2023  
“DK”