

CWP-7591-2016

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2023:PHHC:141864

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

CWP-7591-2016

Date of decision : 07.11.2023

Sukhbir Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Sanjay Majithia, Sr. Advocate with
Mr. Sumit Sinha, Advocate
for the petitioner.

Mr. T.P.S.Walia, AAG, Punjab.

Mr. R.S.Kalra, Advocate
for respondent Nos.2 and 3.

DEEPAK MANCHANDA, J. (Oral)

1. By filing the present writ petition under Articles 226/227 of the Constitution of India, petitioner seeks issuance of a writ in the nature of certiorari for quashing the order dated 22.03.2016 (Annexure P-6) passed by respondent No.2, whereby claim of the petitioner for regularization of his services was rejected. Further, prayer is for issuance of a writ of mandamus directing the respondents to regularize the services of the petitioner as per the regularization policy dated 26.05.2003 (Annexure P-4) issued by State of Punjab and to sanction pension, re-calculate his retiral benefits and to pay the same with interest @15%. per annum.

2. The facts emanating from the pleadings of the present case are that the petitioner joined the respondent-department as Chowkidar on 01.12.1985

and continued in service, however, on 23.12.1987, services of the petitioner was illegally terminated, therefore, petitioner approached the Labour Court, but the reference of the petitioner was dismissed. Aggrieved against the award dated 04.05.1994, the petitioner filed CWP-4568-1994 before this Court, which was allowed vide order dated 06.12.2013 (Annexure P-1) by reinstating the petitioner with continuity of service and monetary benefits due to the petitioner were ordered to be disbursed to him alongwith interest @9% per annum. In compliance of the order dated 06.12.2013, respondents reinstated the petitioner in service on 11.04.2014 and posted him as Chowkidar at PUNSUP Kendra, Dhanaula (Barnala). Thereafter, petitioner moved a representation dated 12.03.2015 (Annexure P-2) before respondent No.3 requesting regularization of his services on completing 27 years of service and the same was forwarded to respondent No.2 vide letter No.5831 dated 19.03.2015 (Annexure P-3). It is further pleaded in the petition that on 26.05.2003 (Annexure P-4), the State of Punjab issued regularization policy with regard to regularize the services of the daily wage workers. It is mentioned that the case of the petitioner was fully covered as per the policy and he was to retire from service on 31.03.2016 after attaining the age of superannuation. As no action was taken upon the representation of the petitioner for regularization of the service, therefore, he filed a writ petition bearing CWP No.2730-2016 for issuance of directions to respondents to consider his case, which was disposed of vide order dated 11.02.2016 (Annexure P-5) with direction to respondent No.2 to consider the claim of the petitioner. However, respondent No.2 vide impugned order dated 22.03.2016 (Annexure P-6) rejected the claim of the petitioner. Hence this writ petition.

3. Learned senior counsel for the petitioner submits that the impugned order passed by respondent No.2 is totally illegal, discriminatory and violative of Article 14 of the Constitution of India. He further contends that the case of the petitioner is fully covered as per the policy and petitioner has completed about 27 years of service. According to learned senior counsel, respondent No.2 while rejecting the claim of the petitioner vide impugned order dated 22.03.2016 (Annexure P-6) has not considered the judgment 06.12.2013 (Annexure P-1) passed in CWP-2730-2016 by this Court in favour of the petitioner, therefore, he prays for quashing of the impugned order dated 22.03.2016 (Annexure P-6).

4. Learned counsel representing respondent Nos.2 and 3 while referring to the reply dated 27.04.2022 filed by way of additional affidavit of Dampreet Walia, General Manager, (Legal), Punjab State Civil Supplies Corporation Ltd., Chandigarh submits that respondent/corporation has rightly declined the claim of the petitioner as the petitioner joined on 11.04.2014 and after this, there is no policy of Government of Punjab regarding regularization of services of daily wage chowkidars. He also contended that the regularization policy was issued as a one time measure, by the State Government 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, he has drawn the attention of the Court to Annexure A-5 and submits that the claim of the petitioner cannot be considered, therefore, 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. As per Annexure A-5, i.e. the order dated 20.04.2022, issued by Punjab State Civil Supplies Corporation Ltd., it is mentioned that keeping in view the orders passed by Hon'ble High Court, continuation of service is given to Sh.Sukhbir Singh, Daily Wage Chowkidar (Retd.), PUNSUP, Barnala and as far as regularization of the employee is concerned, he was re-instated in the service keeping in view the orders passed by the Hon'ble Court on 06.12.2013 and at that time there was no policy in force to regularize the daily wage Chowkidar. The earlier policy of the Punjab Govt.to regularize the daily wage chowkidar was for a limited period which has come to an end and whenever the policy is formulated by the Govt.to regularize the daily wagger chowkidar, the case of the petitioner will be considered.

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 petitioner and is of the view that as the regularization of services was only a one time measure as per the policy,

therefore, services of the petitioner cannot be regularized.

9. Consequently in light of the above, the writ petition is devoid of merits and is accordingly dismissed.

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

(DEEPAK MANCHANDA)
JUDGE

07.11.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No