

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

Date of decision : 17th of February, 2023

CWP No.344 of 2017

Ram Chander and others

....Petitioners

Versus

Punjab State Power Corporation Ltd. and another

...Respondents

CWP No.10728 of 2021

Tilak Raj and others

....Petitioners

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rishav Sharma, Advocate for the petitioner(s)
in CWP-344-2017 and CWP-10728-2021.

Ms. Ananya Ahluwalia, Advocate for
Mr. Shrey Goel, Advocate for respondent-PSPCL.

Mr. Sehajbir Singh, Advocate
for the respondents-PSPCL in CWP-10728-2021.

Mr. Vikas Chatrath, Advocate
for respondent No.2.

PANKAJ JAIN, J.

In the afore-captioned two writ petitions the petitioners seek writ in the nature of mandamus in the form of directions to the respondents to take appropriate decision w.r.t. regularization of the services of the petitioners in terms of Policy decision dated 15th of

December, 2006, dated 4th of March, 1999 and judgment rendered by Division Bench of this Court in CWP No.16655 of 2003, dated 15th of March, 2004.

2. All the petitioners in these writ petitions are Class-IV employees working in the Punjab State Electy. Board and its successors(s) PSPCL/PSTCL for last 16 to 30 years.

3. Counsels for the petitioners are *ad idem* that precise issue w.r.t. regularization of services of similarly situated persons has been dealt in detail by Division Bench of this Court **in LPA No.95 of 2019 and connected cases** titled as **Punjab State Power Corporation Ltd. and others vs. Surinder Singh and others** which has been decided vide order dated 23rd of December, 2022 and various directions have been given in the same. Counsels for both the parties pray for disposal of present writ petitions in terms of the directions issued in LPA No.95 of 2019 *ibid*.

4. In LPA No.95 of 2019 it has been held as under :-

“In the present case, as also noticed, the appointment chart would go on to show that the appointments ranged from the period 1978 till 2002 and if the benefit of the cut off date is to be seen on 10.04.2006, the appellants had to take a considered decision as such keeping in view the said facts, which has not been done, which would be clear from the perusal of the alleged speaking order. The said order passed by an official of a designation of Chief Engineer decided the fate of 855 employees would go on to show total non-application of mind and the lack of reasons or the

applicability of the facts which would have to be seen pertaining to each individual. With one stroke of pen, he has castigated all the said 855 employees who had served the Corporation for the last over 20 years. The act and conduct of the Corporation and also in the manner in which they kept the part time employees hanging subject to the decision of the contempt also does not behove of a model employer. The resolution as such dated 23.07.2015 would go on to show that the moment the contempt petition was disposed of in view of the non-speaking order passed, the appellants chose to rescind the earlier decision and deny all the benefits of consideration for regularization by abolishing the vacant posts of Malis and Sweepers though as per the judgment in *Uma Devi's* case (supra), they were to take necessary steps as such to regularize them. In such circumstances, it is apparent that employees who had completed 10 years on 10.04.2006 were to be considered for the purpose of regularization, which the Corporation has not done while relying upon Clause 2(a)(iv) which already stood quashed. The decision as such to adopt on 07.05.2014, as argued by the counsel, cannot be held to be prospective as the appellant was under an obligation to comply with the decision of the Apex Court. Once the policy of the State dated 04.03.1999 was adopted, the employees who had completed 10 years on 10.04.2006 were given a fresh lease of life in view of the directions of the Apex Court as there was to be a one time measure and the same could not be pushed 8 years later to the year 2014. Resultantly, the right of the writ petitioners arose to seek a mandamus upon the strength of the policy adopted by the Corporation and the law laid down by the Constitutional Bench.

The principle of issuance of a writ in the nature of mandamus is a right which can be enforced on account of the authorities not doing their duty which they are required to do as per Statute or enforceable policy as such and would include the law laid down by the Apex Court under Article 141 of the Constitution of India. Reliance can be placed upon the said principle laid down by the Apex Court in *Anandi Mukta Sadguru*

Shree Mukta Jeevandasswasi Suvarna Jaya vs. V.R. Rudani and others, AIR 1989 SC 1607. The argument as such that a writ cannot be issued for the said purposes for enforcing the policy, thus, cannot be accepted as even the Apex Court in para no.52, noticed this fact in Uma Devi's case (supra) that if there is a legal duty, the aggrieved party has a legal right under the Statute or a rule to enforce it. The Apex Court in *Sanjana M. Wig vs. Hindustan Petroleum Corporation Ltd., (2005) 8 SCC 242* has held that a High Court could enforce fundamental or statutory rights including giving consequential relief by ordering payment of money if realized by the Government without authority of law if it involves the question arising out of public law functions on the part of the State or its authority.

As noticed, the abolition of posts was done whereas, rather the posts had to be created as a one time measure and their defence that there could be no sanctioned posts has also been examined by the Apex Court in *Nihal Singh & others vs. State of Punjab & others, (2013) 14 SCC 65* while keeping in view the limitations imposed by the Constitutional Bench in Uma Devi's case (supra), wherein it was held that while issuing directions for regularization of Special Police Officers that the State could not take their defence that there were no sanctioned posts. Resultantly, the judgment passed by this Court was set aside and necessary directions were issued by holding that the person had to be appointed by a competent authority. The relevant portion in Nihal Singh 's case (supra) of the judgment reads thus:-

“19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were

made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants.

20. No doubt that the powers under section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular

appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

“4. ... The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called “litigious employment”, has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public

employment as recognised by our Constitution, has to be seriously pondered over.”

The unbundling of the Punjab State Electricity Board has already been noticed above and the fact that the principal employer is Powercom. Rather, it is to be noticed that it got itself impleaded in CWP No. 3262 of 2018 as respondent No.5 on this ground since the writ petition was filed against Transco on the oral request of Mr. Vikas Chatrath, counsel appearing for Powercom. Accordingly, the necessary amendment was made in the Memo of Parties on 09.07.2018. An affidavit dated 17.08.2016 of Parminder Kaur, Deputy Secretary of Powercom was also being filed in CWP No. 2828 of 2016 accepting the fact that seniority and promotion of all the personnel transferred from PSEB vested with it. It has been further averred that the staff transferred from Powercom to Transco is on deputation/secondment basis and that all the relief sought would lie against Powercom in view of the notification dated 16.04.2010.

The judgment in *District Bar Association's case (supra)*, relied upon by counsel for the appellant, would be of no help as it was a case of appointment of daily rated workers of 209 Court officials and the High Court had directed regularization in mass. Consideration as such, thus, has been directed by the learned Single Judge for regularization in view of the policy which is the correct approach in law and, therefore, it cannot be faulted, as it has been held in the said judgment that re-consideration is to be done as it had proceeded on erroneous basis that the issue of regularization has attained finality.

A perusal of the chart, which has been reproduced above, would go on to show that if we go backwards from 2006 for a period of 10 years, the persons mentioned at Sr. Nos.1, 3, 4 and 5 would naturally become eligible for consideration as the requisite period of 10 years as such is complete. We see no plausible reason as such why the Corporation could not consider their cases for regularization as they are working on the Class-IV posts like

Beldar/Mali for which there is no educational qualification as such required which is to be kept in mind and, therefore, they are only irregular appointments. Once the policy itself was there that the part time employees were also to be regularized is already in vogue on 04.03.1999 prior to the judgment in Uma Devi's case (supra) also, it was the bounden duty of the Corporation to enforce it in view of the judgment of the Constitution Bench. By delaying the said decision for a period of 8 years in spite of the fact that directions were being issued time and again against them only would go on to show defiant nature of the Corporation against the settled principles, which cannot be appreciated in any manner.

Thus, once Powercom itself accepted its liability, it is for it to comply with the directions issued by the learned Single Judge. Accordingly, the present appeals are dismissed with the following directions:-

(i) That the Powercom shall firstly consider all employees including those of the erstwhile PSEB for regularization of employees who were working with it for a period of 10 years as on 10.04.2006 in view of the judgment in Uma Devi's case (supra) without any bar whether they were employed through employment exchange or through open advertisement in the press as they can be considered as irregular appointments on account of the length of the service.

(ii) Secondly, on account of the adoption of the policy on 07.05.2014, the employees are entitled for a writ of mandamus for similar consideration as per the policy dated 04.03.1999 and, therefore, the employees who had completed 10 years and had the requisite 80% attendance on 10.04.2006, would be necessarily considered and the stand that it would only be prospective from the date of adoption on 07.05.2014 is rejected.

(iii) Resultantly, the notice dated 02.02.2018 whereby the decision was taken to outsource the part time employees without adjusting them and regularizing their services in pursuance of the directions of the Apex Court in *Uma Devi's case (supra)* is also held to be bad and illegal.

The needful be done within a period of 2 months by reconsidering them for regularization from the date of receipt of certified copy of the judgment.”

5. In view of the aforesaid, the instant writ petitions are allowed. Respondents are directed to consider the claim of the petitioners in the light of directions issued in LPA No.95 of 2019 and other connected cases vide order dated 23rd of December, 2022 within a period of two months from the date of receipt of copy of this order.
6. A copy of this order be kept on the file of other connected case.

February 17, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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