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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22476-2022 (O&M)
Date of Decision: 23.11.2023

Paramjeet Singh

. . . . Petitioners

Vs.

State of Punjab and another

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Manu K. Bhandari, Advocate with
 Mr. Rohit Kataria, Advocate
 for the petitioner.

Mr. Paramjit Batta, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. This writ petition has been taken up in the urgent category as the learned counsel for the petitioner informs this Court that the petitioner will attain superannuation by the end of this Month on 30.11.2023.
2. This Court finds that with the concurrence of the Finance Department dated 04.10.1996, two posts of Data Entry Operator for computerization scheme were created in the pay scale of Rs.950-1800/- in the year 1996-1997 by the Welfare Department, Punjab. The posts were receiving 100% grant in aid from the Government of India as special central aid. The said posts were sent for being filled up by Subordinate Services Selection Board but the selections were not made. The Finance Department vide letter dated 06.06.1997 continued the scheme for the year 1997-1998 and the two posts were circulated to be filled by way of transfer but the same could not be filled up. Thereafter,

the Department of Personnel was requested to send names of candidates from list of surplus employees for filling up the posts, and after receiving no objection certificate, the petitioner was appointed as a Data Entry Operator in the pay scale applicable to the post on temporary basis on 12.08.1997. The selection was conducted from the candidates sponsored by the Department of Employment as per the prevailing instructions. The appointments were based subject to availability of regular candidates provided by the Subordinate Services Selection Board or by way of transfer.

3. The petitioner continued from the year 1997 without any break in the pay scale and the two posts of data entry operator also continued. The other candidate who was appointed against the other post of data entry operator expired, and the same was left vacant.
4. In 2006, the State Government issued a regularization policy but it is contended by learned counsel for the petitioner that the petitioner was not regularized. Learned counsel has also informed that on 18.03.2011, another instruction was issued for regularization but the case of the petitioner was not considered. The petitioner has continued since then on the post.
5. It is also stated that in the year 2014, the post was made permanent vide order dated 17.04.2014 by the Finance Department. The Welfare Department conveyed regarding the permanency granted to the two posts of data entry operator vide its letter dated 28.04.2014. However, the petitioner was not confirmed on the said post.

6. Learned counsel submits that the petitioner has wrongfully been denied confirmation for regularization on the post of data entry operator on which he has been working since 1997 in the regular pay scale. Learned counsel submits that the Director cum Joint Secretary had recommended schemes for regularization vide letter dated 10.11.2014 and again vide letter dated 04.05.2015, but the respondents did not regularize the petitioner, although the same was recommended by the Personnel Department.
7. The petitioner was conveyed about rejection of his representation for regularization on 06.07.2021. The petitioner filed writ petition no.CWP-12282-2022 wherein this Court vide order dated 31.05.2022 disposed of the writ petition with directions to the competent authority to decide the representation afresh by passing reasoned order as per law. Thereafter, a speaking order was passed on 30.08.2022 rejecting his representation.
8. Petitioner has thus challenged the speaking order dated 30.08.2022 and submits that no reasons have come forward for rejecting his representation and for not regularizing his services. The Director cum Joint Secretary, who had earlier already recommended the case of the petitioner for regularization, has rejected the representation solely on the ground that Government vide its decision dated 06.07.2021 had rejected the petitioner's representation.
9. Learned counsel appearing for the State has supported the decision dated 30.08.2022 and has argued vehemently that the petitioner could not have been regularized earlier to the date when the post was

declared permanent i.e. 2014, as there was no permanent post available with the Department.

10.I have considered the submissions.

11.It is to be noticed that the Government of Punjab vide letter dated 23.01.2001 had informed all the Heads of Departments of the State Government decision to review policy of regularization of work charged/daily wage and other categories of workers. The basic idea as conveyed was that the workers belonging to particular department should be considered only against available regular vacancy in that department. It was reiterated that the work-charged/ daily wager and other category workers would be regularized only against regular vacancy.

12.The question about the petitioner being appointed against an available vacancy or not is no more required to be gone into especially in view of the recommendations made by the Director cum Joint Secretary of the Department, who has stated that the petitioner was appointed against a post of data entry operator which was created by the Finance Department on 04.10.1996, as noticed above.

13.The post having been created, although may be under a 100% grant in aid, it cannot be said that there was no temporary post available with the department. Even the recommendation mentions and as noticed above, were made to fill up the post by Subordinate Services Selection Board and by way of transfer. Thus, the contention of the learned counsel for the respondents that there was no post available is factually found to be incorrect. As the petitioner was selected against the said

post and was appointed in the pay scale, merely because the post was of temporary nature, the petitioner's services cannot be said to be of ad hoc or of daily wager.

14. A person who is appointed temporarily is to be understood to mean that he is appointed against a post which may not be having a permanent nature i.e. a lien would not be created against the said post. As and when the post becomes permanent under the Budget, the concerned person holding the said post would be entitled to be confirmed on the said post and a lien is created against the said post.

15. The interpretation drawn by the respondents treating the petitioner akin to daily wager or a contractual employee is therefore found to be wholly erroneous as he was appointed against a pay scale, and was selected on a post which was to be filled as per the conditions of appointment through Subordinate Services Selection Board. The method of appointment adopted by the respondents was with approval of the State Government. Hence, it cannot be said that the petitioner was appointed either by backdoor method or by irregular method. The petitioner would therefore be entitled to entire benefits of services from the date he was initially appointed.

16. The respondents cannot therefore deny him the service benefits merely because the post has been made permanent from the year 2014. The petitioner would be treated as a confirmed employee from 2014 and would accordingly be entitled for entire benefits of service including the other service benefits as available to the regular employees of the department.

17.It is informed that the petitioner is due to retire on 30.11.2023, the respondents are therefore directed to make appropriate pay fixation and also release his retiral benefits upon his superannuation. The entire exercise may be conducted expeditiously, preferably within a period of three months henceforth.

18.Writ Petition stands *allowed* accordingly.

19.All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

November 23, 2023

Mohit goyal

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No