

216

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

**LPA-957-2017 (O&M)
Date of Decision:31.01.2023**

PEPSU ROAD TRANSPORT CORPORATION & ANR

....APPELLANTS

V/S

MANPREET SINGH & ORS

... .RESPONDENTS

AND

LPA-959-2017 (O&M)

PEPSU ROAD TRANSPORT CORPORATION

....APPELLANTS

V/S

SWARNA SINGH & ANR

.... RESPONDENTS

**CORAM:- HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present Mr. Roshan Lal, Advocate for
Mr. DPS Ahluwalia, Advocate, for the appellants.

Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate
for respondents No. 1,2,4,9,13,16,17,18,19,41 & 45
(in LPA-959-2017)

M.S. RAMACHANDRA RAO, J. (ORAL)

Both these Letters Patent Appeals have been preferred against the
order dt.21.04.2017 passed by learned Single Judge in CWP-14887 of 2013 and
CWP-22210 of 2013.

The respondents herein had approached this Court by filing a Writ seeking regularization of their services placing reliance of the Pepsu Road Transport Corporation (Conditions of Appointments & Service) Regulations, 1981 and also sought consequential benefits.

They pleaded that they were working as Advance Booking Agents with Punjab Roadways Transport Corporation on contract basis and were appointed on contract, and as per the conditions for conducting booking for PRTC buses, the Booking Agents would have to execute a contract with PRTC, and work in time specified to be between 4:30 AM to 10:30 PM with duties to be performed as specified by the Controlling Officer. They placed reliance on a decision of the Supreme Court in *State of Punjab and others Vs. Jagjit Singh and others*¹, and contended that since the petitioners are discharging similar duties and responsibilities as are being discharged by regular employees holding the same/corresponding posts, they would be entitled to the same minimum pay scale. They sought for lifting the veil and determination of the exact nature of work done by them.

The appellant-Corporation disputed the said claim and contended that the petitioners were appointed on contract, that they were not employees of the PRTC, that they were paid commission, and the percentage of the commission varies from stand to stand as per the bus stands which have been classified in classes A, B and C depending on the volume of traffic. It contended that respondents were employed on contract, that they were Commission Agents and were engaged in view of a scheme approved by the

¹ 2017 (1) SCC 148

Board of Directors in its meeting held on 12.03.2003. It was also contended that there were no sanctioned posts of Advance Bookers.

The order of the learned single Judge

The learned Single Judge allowed the Writ Petition by a common order passed on 21.04.2017 and held that respondents are at liberty to approach the appellant-Corporation for regularization of their services, if the law permits, but that respondents shall be entitled to benefit of the minimum pay scale at par with the minimum of pay scale of regularly engaged Government employees.

The learned Single Judge gave a finding that respondents though contractual employees were discharging duties of a regular employee; and the contractual employees cannot be replaced by another unless it is found by the authorities that the persons working on contractual basis are not working satisfactorily.

Learned Single Judge, therefore, directed the appellants not to replace the respondents by other contractual employees unless their work is not satisfactory and if there is a decision to employ regular candidates.

The present LPAs

Challenging this order, Corporation has filed the instant appeals before this Court.

Counsel for the appellants contended that in the Corporation there was no regular or sanctioned post of Advance Bookers; therefore, no minimum pay scale can be ascertained; and the Corporation had never engaged any Advance Bookers ever on regular, temporary, contractual or *ad hoc* basis.

It is contended that respondents are not employees of the appellant-Corporation and they were working on commission basis i.e. they were to be paid agreed percentage of commission according to sale of tickets made by them.

It is also contended that the Corporation had no control on the working of respondents or act like a punishing authority.

It is stated that for smooth functioning, the appellant-Corporation had divided the total working hours from 4:30 AM to 10:30 PM in shifts, and at the end of day respondents could not be paid according to agreed percentage of the commission as per tickets sold by them.

It is also contended that the respondents are not governed by labour laws or service rules of the appellant-Corporation; there is no recruitment process or age criteria or educational qualification, except that they should be matriculates; that they are not entitled to any leave or post retiral benefits; and there is no interview, merit, medical or police verification.

Counsel for the respondents, however, refuted the said contentions and supported the order passed by learned Single Judge. He contended that learned Single Judge had rightly held that respondents are discharging duties of regular employees and that they are entitled to be considered for regularization and also to payment of minimum of the pay scale of regularly engaged Corporation employees.

We have heard counsel on both sides and noted their contentions.

We are of the opinion that having regard to the stand taken by the respective parties regarding the nature of work being performed by the respondents, it would have been appropriate for learned Single Judge to

relegate the respondents to a Labour Court, constituted under the Industrial Disputes Act, 1947 to go into the question *as to whether (a) the duties performed by the respondents are akin to those being performed by regular employees of the appellant-Corporation and (b) there is relationship of master in servant between the appellant and the respondents.*

The factual assertions made by respective parties require to be inquired into after giving opportunities to them to lead oral and documentary evidence; and in Writ Petition under Article 226 of the Constitution in India, such factual disputes are not normally entertained.

Therefore, without expressing any opinion on the rival contentions, we set aside the findings of the learned Single Judge about the existence of employer- employee relationship or about the nature of the work being done by the respondents being akin to that of regular employees of the Corporation; and leave it open to the respondents to approach the competent Labour Court for adjudication on both these aspects.

Appeals are allowed to the extent indicated above.

Pending CMs, if any, shall also stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

31.01.2023
priyanka

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