

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

CWP-34963-2019

DECIDED ON: 23.08.2023

BALJIT SINGH

...PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Parkash Chahar, Advocate
for the petitioner.

Mr. Parshant Panwar, IAS, Deputy Commissioner, Fatehabad,
party in person- respondent no. 3.

Mr. Hitesh Pandit, Advocate and Ms. Suman, Advocate
for respondent No. 4.

Mr. Deepak Balyan, Advocate and Mr. Bhuvan Khurana
For respondent no. 5.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in nature of *certiorari* for quashing the orders dated 27.12.2018 and 27.02.2017 (Annexure P-13 and P-10) passed by the respondents No.1&2, respectively, vide which a decision has been taken not to regularise the services of the petitioner. Further a direction has been sought for directing the respondents to grant the benefit of regularisation of services to the petitioner w.e.f. 16.12.1996.

2. The petitioner was appointed on 29.01.1996 as a Sweeper on daily wage basis at Municipal Committee, Ratia. Thereafter, owing to the strike by the existing employees of the Municipal Committee, he was appointed on temporary/ad-hoc basis on 16.12.1996 so that the work of Municipal Committee is carried out

smoothly and does not suffer on account of the strike. The petitioner continued to work as Peon however, during the intervening period, he was relieved from duty on 19.02.1997 and on a dispute raised before the Labour Court, Hisar, the termination was set aside and the petitioner was directed to be reinstated with continuity of service. The services of the petitioner again terminated on 25.02.2009 and the said order was also set aside on an appeal filed by the petitioner and the petitioner was ordered to be reinstated in Municipal Committee, Tohana in place of MC, Ratia vide order dated 20.04.2011 (Annexure P5).

3. Learned counsel for the petitioner contended that in view of the instructions dated 13.05.1997 (Annexure P-2), the services of the petitioner were regularised w.e.f. 29.07.2011, however, the petitioner is aggrieved by the action of the respondents vide which the date of regularisation of the petitioner has been considered as 29.07.2011 whereas, his services ought to have been regularised from the date of his appointment i.e. 16.12.1996. It is further averred that looking into the facts of the case, the blatant abuse of executive power is writ large on the face of it inasmuch as the petitioner, who was appointed on the post of peon in the year 1996 and was regularised in the year 1999 and thereafter, he was shifted from one place to another after the said order of regularisation. To support his argument, reliance has been placed on *Union of India vs. Ilmo Devi and others 2021 AIR (SC) 4855*.

4. Reply by way of affidavit of Mr. Parshant Panwar, IAS, Deputy Commissioner, Fatehabad, has been filed on 22.08.2023, which is taken on record, wherein it has been averred that apart from the present civil writ petition, a number of other petitions have been preferred by the petitioner seeking regularisation of services. It is further submitted that as per the report submitted by respondent No.5, there is only one sanctioned post of Peon in the Committee on which Smt.

Kalawati is working and thus the petitioner had become surplus in the post of Peon

and his services are no longer required by the Committee and that there is no vacant sanctioned post in other Municipalities in the district and therefore, as per the letter received from respondent No.2 dated 27.02.2017, the services of the petitioner cannot be regularized in view of the letter dated 08.12.1999 issued by Directorate.

5. Similarly, as per the written statement filed on behalf of respondent No. 5 reiterating the stand *verbatim* taken by respondents No.1 to 3, it has been averred that the services of the petitioner cannot be regularised as he has not been engaged against duly sanctioned and vacant post and in terms of Apex Court decision in **Ilmo Devi's** case (Supra), a part time employee is not entitled to seek regularisation as he is not working against any sanctioned post and there cannot be any permanent continuance of part time temporary employee.

6. Heard learned counsel for the parties and gone through the record.

7. The petitioner through various representations has relied on the benefit granted to similarly placed employees, however, the order of rejection does not state as to what conditions the petitioners do not satisfy to substantiate its claim for regularisation at par with the similarly situated persons. A bare perusal of the affidavit filed by the respondent shows that no reasoning is coming forth as to why the date of regularisation has been considered as 29.07.2011 in place of 16.12.1996 except that the services of the petitioner cannot be regularized in view of the letter dated 08.12.1999 issued by Directorate. Even the written statement on behalf of respondent No. 5 available on record fails to point out the reason with respect to the consideration of date of regularisation as 29.07.2011.

8. The respondents cannot be permitted to deny the benefit of services rendered by the petitioner on temporary basis since 16.12.1996 that too without a sufficient cause. The petitioner had legitimate expectation that firstly the regularisation would be in terms of the instructions dated 13.05.1997 and secondly, he would be

given the same treatment as his colleagues who have been regularised under the same set of instructions. Such an expectation is based on the fact that there ought to be consistency in the actions of the State and any inconsistent treatment adopted by the State would be unfair and arbitrary. As such, this Court is of the opinion that in view of the applicability of doctrine of substantive legitimate expectation, the date of regularisation of the petitioner ought to be considered as 16.12.1998. Even otherwise, the respondents have not been able to provide any plausible reason or ground to consider the date of regularisation as 29.07.2011 in place of 16.12.1996.

9. Accordingly, this writ petition is allowed and the orders dated 27.12.2018 (Annexure P13) and 27.02.2017 (Annexure P10) passed by respondents No.1&2, respectively, are set aside and the respondents are directed to pass appropriate orders for granting the benefit of regularisation of services to the petitioner w.e.f. 16.12.1998 and grant all necessary consequential benefits accruing to him, along with interest @ 9% p.a. within a period of two months from the date of receipt of certified copy of the present order.

10. Ordered accordingly.

23.08.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No