

265 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.24955 of 2018 (O&M)
Date of decision : 18.01.2023

Jasminder Singh Electrician & Ors. Petitioners
versus
Punjab School Education Board & Ors. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. A.K.Walia, Advocate
for the petitioners.

Mr. Ranjit Singh Kalra, Advocate
for respondents No.1 & 2.

Mr. Inderpreet Singh Kang, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Petitioners have invoked writ jurisdiction of this Court under Article 226 of the Constitution of India by filing present writ petition seeking writ in the nature of Certiorari for quashing of the order dated 13.09.2018 (Annexure P-11) whereby office order dated 13.12.2011 (Annexure P-7) was ordered to be withdrawn.

The facts in brief that need to be noticed for adjudication of the present case are that the petitioners were engaged by respondent No.1-Punjab School Education Board (hereinafter referred to as 'the Board') on Class IV posts in the Maintenance Wing and have been working for last more than 25 years.

The particulars of the petitioners as tabulated in the writ petition read as under :-

Sr.No.	Name & DOB	Father's Name	Post on which appointed	Date of initial appointment
	Jasminder Singh, 05.02.1973	Sadhu Ram	Electrician	26.12.1996

2	Mohinder Singh, 10.10.1972	Megh Nath	Plumber	18.04.1995
3	Rajesh Kumar, 07.04.1974	Jagat Ram	Helper	01.08.1995
4	Gurnam Singh, 05.11.1970	Amar Singh	Electrician	01.09.1995
5	Baljit Singh, 25.04.1971	Kirpal Singh	Tubewell Operator	24.08.1996
6	Baldev Singh, 04.05.1971	Gian Singh	Helper	23.12.1996
7	Nanak Chand, 15.04.1974	Jagan Nath	Carpenter	06.11.1995
8	Ram Kewal, 01.09.1966	Yagya Dutt	Mali	05.01.1990

As a one time measure State of Punjab vide policy decision dated 15.12.2006 decided to regularize the services of all the employees who were working for more than 10 years upto 15.12.2006. In continuation thereof another circular dated 18.03.2011 was issued whereby daily wagers working in various departments in the State of Punjab were included within the ambit of aforesaid policy dated 15.12.2006. After instructions dated 18.03.2011, Department of Personnel and Administrative Reforms, the Department of Finance issued another set of instructions dated 17.11.2011 dealing with the regularization of services of daily wage/work charged employees working under Statutory Boards/Corporations. Respondent No.1-Board in its meeting held on 30.11.2011 relying upon the aforesaid instructions dealing with the claim of the regularization of the employees working in the Board decided to create 10 posts of Class IV employees in the pay scale of Rs.4900-10680+1300+240 and prepared a list of employees working in the Maintenance Wing i.e. the petitioners for considering their case for regularization. The agenda item was approved in the meeting of the Board held on 08.12.2011. It appears from Annexure P-7/T that the case of the regularization of the services of the petitioners was forwarded to the Government of Punjab for necessary approval in light of notification dated 17.11.2011. On 13.09.2018 Annexure P-11/T was passed whereby order dated 13.12.2011 (Annexure P-7) was ordered to be withdrawn on account of non-

receipt of the approval from the Government for regularizing the services of the petitioners. Operative part thereof reads as under :-

“Due to non receipt of approval from the Govt. for regularizing the services of the petitioners, office order No. PSEB-7ES-Estt.-2011/3161 dated 13.12.2011 is withdrawn and the claim of the petitioners is rejected.”

Counsel for the petitioners submits that after the petitioners were ordered to be regularised vide Annexure P-7 the said order ought not have been ordered to be withdrawn vide Annexure P-11. He further submits that in a bunch of writ petitions including ***CWP No.8109 of 2012 of titled as Balwinder Singh & ors. Vs. Punjab School Education Board & ors.*** decided on 23.11.2022 the issue of non-regularization of the employees in the absence of *ex-post facto* approval has been dealt with holding as under :-

“By this common order, this Court proposes to dispose of the above noted four writ petitions.

The instant writ petitions have been filed seeking a writ in the nature of mandamus directing the respondents-Punjab School Education Board to grant all consequential benefits to the petitioners herein, after they stood regularized by the respondents-Punjab School Education Board.

It is submitted that on account of irregular payment, the petitioners were facing great hardship. During the pendency of these proceedings, the matter was taken up and the Chairman, Punjab School Education Board and Principal Secretary, School Education, Government of Punjab were required to be present in Court to resolve the issue, specially taking into consideration that the petitioners herein were working at a meagre salary of about Rs.6,000/- to Rs. 8,000/- per month.

Pursuant to order dated 21.09.2022, a short affidavit of Ms. Gauri Parasher Joshi, Special Secretary to Government of Punjab, Department of School Education, on behalf of respondent No.14 in CWP-8109-2012, has been filed in Court today and the same is taken on record.

A reading of the said affidavit would reflect that the claim of the petitioners in all the four petitions has been considered and stands resolved by giving an ex post facto approval for regularization of 53 Class-IV daily wagers and 9 daily wage Clerks, working with Punjab School Education Board. This

approval has been granted on 22.11.2022. As per the affidavit, the claim of the petitioners stands redressed and, therefore, writ petition should be dismissed.

Having taken the said affidavit on record, the only question that survives is as to the release of monetary benefits due to the petitioners herein.

Learned counsel for PSEB would submit that they have to process the file, which will take a minimum of two months.

Since the petitioners, who are seeking regular pay scales and are agitating for the same since 2012/2015/2019 and the cost of living in the index has gone up tremendously in the past years, they are certainly facing a financial crunch. In such a background, when they have been held entitled to the benefits flowing from regularization as claimed, it would be expected of a welfare State, of which the said Board is also the part and parcel, to expedite the release of the payments to them.

Let all the necessary steps be taken to release the aforesaid benefits to the petitioners herein, expeditiously, within the outer limit of two months from today, in accordance with law.

The instant writ petitions are disposed of with the directions as aforesaid, leaving it open to the petitioners herein to agitate for non-compliance of the order. ”

He thus submits that an affidavit was filed by none else than the Special Secretary to the Government of Punjab, Department of School Education giving an *ex-post facto* approval for regularization of 53 Class-IV daily wagers and 9 daily wage Clerks and thus the reason of non-receipt of approval from the Government for regularizing the services of the petitioners who are similarly situated cannot be sustained.

Per contra Mr. Ranjit Singh Kalra, Advocate for respondents No.1 & 2 submits that the Board is under financial distress and is not in position to pay the salaries. He further submits that in the case of ***Balwinder Singh's case (supra)*** as in that case there was no order of withdrawal of regularization thus the same cannot be relied upon to grant relief to the petitioners in the present case. In support of his contentions, he relies upon judgment passed in ***Yogesh Mahajan***

Vs. Prof. R.C.Deka, Director, All India Institute of Medical Sciences (2018) 3

SCC 218, State of Gujrat & ors. Vs. R.J.Pathan & others, (2022) 5 SCC 394
and *University of Delhi Vs. Delhi University Contract Employees Union & ors.*
(2021) AIR (Supreme Court) 3305.

I have heard learned counsel for the parties and have gone through the records of the case.

Facts are not much in dispute. Mr. Ranjit Singh Kalra, Advocate for respondents No.1 & 2 does not dispute that the Board of Governors in their meeting approved the claim of the petitioners for getting their services regularised and order Annexure P-7 was passed. Admittedly claim of the petitioners was found by the respondent-Board to be covered by the policy decision taken by State vide policy dated 17.11.2011. The Board while passing Annexure P-11 stated that the order Annexure P-7 is being withdrawn on account of non-receipt of the approval from the Government. Case of the Board is not that the claim of the petitioners is not covered under the policy decision. Likewise the fact for non grant of *ex-post facto* approval as assigned by respondent No.4 reads as under :-

“Although as per para 2(i) of the letter dated 18.03.2011, issued by the Department of Personnel there is a provision that to regularize the services of such employees, who had completed 10 years of service on December 2006, the post may be created in the concerned department. But in case of State of Karnatka and others Vs Uma Devi and others, the Hon'ble Supreme Court of India clearly passed the order that services of only such employees may be regularized who had completed 10 years of service till 2006, who are already working against the sanctioned posts. In this case the concerned daily wager employees completed 10 years of service in 2006 but were not working against sanctioned posts. Whereas, the posts were created by Punjab School Education Board in Board of Directors meeting held on 8.12.2011 just to regularize the services of employees. Besides, the policy instructions dated 18.03.2011 issued by the Department of Personnel is under challenge in CWP 13828 of

2013 titled as Handicapped Welfare Union Punjab and others Versus State of Punjab in the Hon'ble Punjab and Haryana High Court and their matter is sub judice in the Hon'ble Court."

In the aforesaid facts the issue arises as to whether the action of the Government in rejecting the case of the petitioners stating that there was no provision for grant of *ex-post facto* approval can be sustained especially in the light of the stand taken by the State in the case of ***Balwinder Singh's case supra***, answer is no. Special Secretary to the State is on affidavit in the said writ petition claiming that the issue of the regularization of the petitioners in that writ petition stands resolved by granting *ex-post facto* approval for regularization of 53 Class-IV daily wagers and 9 daily wage Clerks working with the Board. So far as reliance of Mr. Kalra, Advocate on ***State of Gujrat & ors. Vs. R.J.Pathan (supra)*** is concerned there is no dispute with the proposition that the High Court cannot while exercising writ jurisdiction direct the regularization of temporary employees by creating supernumerary posts. In the present case there is no direction by the High Court for creating such posts. Board in its own meeting has resolved to create posts and to regularize the claim of the petitioners being covered by the policy decision taken by the State. Thus ratio of law laid down in ***State of Gujrat & ors. Vs. R.J.Pathan (supra)*** will not be applicable. Likewise in ***University of Delhi Vs. Delhi University Contract Employees Union & ors.*** Apex Court held that in the absence of policy no such direction can be issued. Admittedly in the present case the Board found that there is a policy decision and the case of the petitioners is covered thereunder. Resultantly, the same will also not be applicable. Similarly, in ***Yogesh Mahajan's case supra*** also there was no policy of the State and thus the Apex Court held that there was no statutory right vested in the contractual employees seeking regularization of services.

In the present case the Board itself has recognized the right of the petitioners and resolved to regularize their services, thus the question was as to whether the Board was within its right to withdraw the said right by subsequent order Annexure P-11 or not.

The Board has already taken a conscious decision to regularize the services of the petitioners holding them covered by the policy. The same was sought to be reviewed merely on the ground that there was no *ex-post facto* approval and there was no provision for granting such *ex-post facto approval*. The said stand cannot be sustained especially after the affidavit was filed by the State in the case of ***Balwinder Singh's case supra***.

Resultantly, the order dated 13.09.2018 cannot be sustained.

As a sequel of the aforesaid discussion held hereinabove, present writ petition is allowed. The petitioners are deemed to be regular employees of the respondent-Board in terms of order dated 13.12.2011. They are entitled for all consequential benefits. The respondent-Board is directed to calculate the same and make payment thereof within a period of three months from the date of receipt of certified copy of the order.

(PANKAJ JAIN)
JUDGE

18.01.2023

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No