



CWP-3327-2022 (O&M)

-1-

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

259

CWP-3327-2022 (O&M)

Date of decision: 08.05.2024

Kulwant Singh Sandhu and others

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. F.S. Dhillon, Advocate for the petitioner.

Mr. Arun Gupta, DAG, Punjab.

AMAN CHAUDHARY, J. (Oral)

1. The prayer made in the present petition is for directing the respondents to regularize the services of the petitioners against their respective posts.

2. Learned counsel contends that the petitioners have been serving the State Election Commission as Class III and IV employees for the last more than 25 years and are thus entitled to minimum of pay scale including DA, grade pay, etc. and regularization their cases being squarely covered by the judgments in **State of Punjab vs. Jagjit Singh**, 2017 (1) SCC 148, followed by this Court in **Amrish Sharma and others vs. State of Punjab and others**, CWP-19238-2013, decided on 26.02.2024.

3. The relevant portion of **Amrish Sharma** (supra), reads thus:-

“35. In the case in hand, the respondent in 2006 framed regularization policy which was followed by 2011 Policy. As per Policy of 2006 read with policy of 2011, an employee who has completed service of 10 years by the end of December’ 2006 is eligible for regular appointment. All the petitioners are Class ‘D’ employees. Few petitioners, as confirmed in different affidavits, during the pendency of litigation have been regularized and remaining have not been regularized due to lack of permanent/sanctioned posts. The respondent in 2023 has framed



another policy whereby dying cadre has been created. There was no minimum qualification at the time of their appointment. They without interruption are working for decades. They are assigned duties of Class IV. Courts repeatedly have held that long experience is as good as minimum qualification especially when an employee is effectively discharging his duties. Thus, it would not be justified, on the ground of minimum qualification, to deny benefit of regularization to an employee who is working for decades and is assigned duties of class IV i.e. lowest rung.

XX

XX

XX

40. From the conjoint reading of judgments of Supreme Court in Jagjit Singh (supra), Bahadur Singh (supra), Uma Devi (supra) and Ilmo Devi (supra), it can be culled out that part time employees who are working for few hours cannot claim pay parity. Daily wage workers who work at par with regular employees though cannot claim pay parity with regular employees yet are entitled to minimum pay. The minimum pay includes dearness allowance and grade pay. The petitioners herein are working for last 30-40 years and they are not part timer whereas they are daily wagger and work at par with regular employees which is more evident from the fact that few of their colleagues have already been absorbed against sanctioned posts. The majority of the petitioners are not absorbed due to non-availability of sanctioned/regular posts or they had not completed service of 10 years at the time of introduction of 2006 Policy. The petitioners who despite having rendered a quite long service, may be more than 30 years, if not regularized, deserve at least minimum pay which includes minimum of pay scale plus dearness allowance and grade pay. Accordingly, it is concluded that Respondent-State is liable to pay minimum of pay scale plus dearness allowance and grade pay to all those petitioners who neither have been/are regularized nor are part timer.

41. The respondent in its reply and during the course of arguments has pleaded that petitioners are paid monthly lump sum amount which is more than rate prescribed by Deputy Commissioner and minimum of pay scale available to regular employees. The dichotomy between figure of State and Petitioners has erupted due to non-inclusion of dearness allowance and grade pay. The State in view of above referred judgments is bound to add DA and GP while calculating minimum of pay scale.

42. Keeping in mind financial burden on State exchequer, binding precedents, rights of petitioners as well as equity, this Court hereby holds and gives its imprimatur to the State to pay minimum of pay scale plus dearness allowance and grade pay to all those employees who are not part timers and have completed service of 10 years.

XX

XX

XX

Conclusion:

47. In the wake of above discussion and findings, this Court comes to conclusion as below:



- i) This Court in the normal course cannot ask State to create or sanction posts.
- ii) The petitioners who had completed service of 10 years by the end of December’ 2006, either at present are in service or have already retired, are entitled to regular post and they cannot be denied regularization on the ground of lack of sanctioned post or minimum education qualification. To avoid burden on State exchequer, it is clarified that from the deemed date of their regularization, they shall be entitled to minimum of pay scale plus dearness allowance and grade pay till the date of this order and thereafter regular pay scale.
- iii) The petitioners who are still in service but did not complete service of 10 years by the end of December’ 2006 would form part of dying cadre created by 2023 Policy. The State, in view of long service of these employees, would not insist for minimum qualification. They from the date of completing service of 10 years would be entitled to minimum of pay scale plus dearness allowance plus grade pay till the date they are regularized in terms of 2023 Policy.
- iv) The petitioners who did not complete service of 10 years by the end of December’ 2006 and during the pendency of present litigation have superannuated or passed away would be entitled to minimum of pay scale plus dearness allowance and grade pay from the date of completing service of 10 years till the date of their retirement or death.
- v) The petitioners who have already been regularized by 31.12.2016 shall not be entitled to any additional financial benefit because they are already getting higher amount of salary for last couple of years.
- vi) The respondent-State shall not be liable to pay interest on arrears arising on account of re-fixation of pay.”

4. Learned State counsel despite his best efforts has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.
5. In view of the aforesaid, the present petition is disposed of in terms of the judgment passed in **Amrish Sharma** (supra).

(AMAN CHAUDHARY)
JUDGE

08.05.2024
Hemant

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