



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.15463 of 2002 (O&M)
Reserved on: 30.09.2024
Pronounced on: 15.10.2024

Gopal Charan Doda
.....Petitioner
Versus
The Punjab State Electricity Board, Patiala and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. G.S. Bal, Senior Advocate
with Mr. Dilshad S. Gill, Advocate
for the petitioner.

Ms. Avin Kaur Sandhu, Advocate
for the respondents.

NAMIT KUMAR J. (Oral)

1. The petitioner has invoked the writ jurisdiction of this Court by filing the instant petition under Articles 226/227 of the Constitution of India, seeking quashing of the order dated 02.08.2002 (Annexure P-13), whereby the claim of the petitioner for regularization w.e.f. 01.04.1978, has been rejected. Further a writ of mandamus has been sought, directing the respondents to treat the petitioner as regular employee w.e.f. 01.04.1978 and grant him all consequential benefits accruing therefrom.
2. The brief facts as have pleaded in the petition are that the petitioner was appointed as work-charge T-mate in the Punjab State Electricity Board now Punjab State Power Corporation Limited

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(hereinafter referred to be as ‘the Corporation’) w.e.f. 03.12.1975, on which he continued upto 31.05.1976. Thereafter, in pursuance to offer of appointment to the post of Lower Division Clerk, vide letter dated 02.08.1976, the petitioner joined as Lower Division Clerk on adhoc basis on 16.08.1976, in the pay scale of Rs.110-250/-. Thereafter, the Corporation issued Instructions dated 23.02.1979, with regard to the regularization of services of employees appointed on adhoc basis. As per said Instructions, the adhoc employees must have completed a minimum period of one year service as on 31.03.1978 and were still in service. The conditions mentioned in the said Instructions are as under:-

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“2. The Board had already prescribed certain conditions for the regularisation of adhoc employee vide instruction dated the 19th September, 1978 mentioned above. These conditions were as follows:-

(I) The adhoc employee must have completed a minimum of one year's service on the 31st March, 1978. While calculating the period of service, the following type of breaks in service rendered on adhoc basis may be ignored:-

(i) Where the break was of notional nature falling between adhoc appointments in same category of posts in the PSEB.

(ii) Where the break was on account of some administrative conditions such as the summer vacations during which the service of teachers are terminated so as to avoid the liability of payment for the said period.

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In other words the breaks in adhoc service will not be ignored in cases where:-

- (a) The employee concerned left service of his own volition whether to join some other department or some other reasons; or*
- (b) The adhoc appointment was against a post/vacancy for which no regular recruitment was intended/required to be made e.g. leave arrangements or filling of other short term vacancies.*
- (II) They fulfill the academic qualifications including experience, if any, prescribed for the job/post including the conditions of age at the time of their first appointment as such;*
- (III) Their names had been recommended for such appointment by the Employment Exchange or their applications had been received in response to the advertisement made for filling of such posts;*
- (IV) Their work and conduct has been satisfactory;*
- (V) A regular post/vacancy is available for regularization; and*
- (VI) Notional break up to a period of one month to be condoned.*

3. As far as conditions regarding the fulfilling of the prescribed academic qualifications including experience is concerned, it is substantive in character and there is no intention of dispensing with this conditions. In other words, only those adhoc employees are to be regularise who fulfill the requisite educational qualifications for the post for which they are intend to be regularised. As regards the completion of the procedural formalities relating to medical fitness and verification of antecedents, it has been

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decided that their completion need not held up the issue of orders for regularisation. The competent authority may go ahead to issue orders for regularising the services of adhoc employee on a conditional basis. These orders should specify, that, in the event of the concerned employees being found to be medically unfit/or their character and antecedents being found to be objectionable, their services would be terminated without any notice.

4. As already stated, another condition prescribed in the circular dated the 19th September 1978 is to the effect that the concerned adhoc employee to be regularised should have been recommended for employment by the Employment Exchange or his application should have been received in response to advertisement made for filling up the post. This condition is relevant in respect of an adhoc employee who has been directly recruited from the open market and in whose case a resort to such a procedure was feasible and necessary. However, there are a number of adhoc employee who have been appointed by methods other than direct recruitment. For instance, there are case where initially certain persons were work charged employees and were later on appointed, on adhoc basis, to the posts in regular establishment. In such cases the above condition regarding recruitment through Employment Exchange will not deem to be applicable.

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7. The seniority of the adhoc employee whose appointments are regularised in terms of the above policy shall also be determined in the following manner:-

- a) After approval by the appointing authority, the regularisation of their appointment shall date back to 1.4.1978 from which date their seniority shall be*

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determined vis-a-vis candidates appointed on regular basis after selection through the prescribed agencies.”

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3. Vide order dated 11.04.1979, services of 20 adhoc Lower Division Clerks were regularized and it is the case of the petitioner that various persons junior to him were regularized and the case of the petitioner for regularization was deferred on the ground that there is break of more than two months in service from work-charge T-Mate to adhoc Lower Division Clerk. Thereafter, the petitioner along with others filed a petition i.e. CWP No.360 of 1979, titled as “Ramesh Chander and others vs The PSEB, Patiala, etc., seeking regularisation under the said policy in which the present petitioner was petitioner No.5. The said petition was disposed of vide order dated 04.05.1979, on the statement of learned counsel for the respondents, who had stated that services of most of the petitioners have been regularized and cases of some of the petitioners, including the present petitioner, are under consideration and their cases will be considered according to the subsequent Instructions issued by the Corporation. In pursuance thereto, services of two employees were regularized vide order dated 14.05.1979 and out of these two, one person was junior to the petitioner namely Baghel Singh. The petitioner again submitted representations claiming regularization vide his representation dated 18.05.1979, followed by 16.11.1989, 13.12.1989, 30.11.1997 and 06.02.2001. In the interregnum, in pursuance to the advertisement CRA No.87, the petitioner was

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appointed as Lower Division Clerk on regular basis vide appointment letter dated 10.05.1982 and he joined as such on 11.05.1982 and it is the case of the petitioner that the past service rendered by the petitioner as adhoc Lower Division Clerk was counted for the purpose of increment, earned leave, bonus and other benefits except the seniority and since his claim for regularization w.e.f. 01.04.1978, was not being considered by the respondent – Board, the petitioner again approached this Court by filing a petition i.e. CWP No.5290 of 2002, titled as “Gopal Charan Doda vs Punjab State Electricity Board, Patiala and others”, which was disposed by a Division Bench of this Court vide order dated 03.04.2002, by directing the respondents to decide the representations dated 30.11.1997 and 06.02.2001, within a period of four months. In pursuance to the said directions, the claim of the petitioner has been rejected vide order dated 02.08.2002 on the ground that since the petitioner had already been offered regular appointment, therefore, his case for regularization is not liable to be reconsidered. The said order has been impugned by the petitioner in the present writ petition.

4. Reply by way of affidavit of Madan Lal Mehta, Executive Engineer, Sub-Urban Division Ferozepur dated 21.06.2003, has been filed, which reads as under:-

“1. That I have read civil writ petition C.W.P. No. 15463 of 2002 and have seen the file of the case relating to the regularization of the petitioner.

2. That the petitioner was appointed as lower division clerk vide Annexure P-11. Vide para 1 of Annexure P-11 "It has

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been clearly stated, you will have to understand it in a very clear manner that for the purposes of service under the board, you will be treated as a new entrant."

3. That for all practical purposes the petitioner was appointed vide Annexure P-11 afresh and no consideration could be given to his earlier appointment as a work charge employee or an adhoc employee and as such there is no question of regularising his services with effect from 01.04.1978 as claimed by him. The petitioner joined afresh by accepting the conditions of Annexure P-11 vide acceptance letter dated 11-05-1982. Copy of the same is annexed as Annexure R/1. Now the petitioner cannot say that the conditions of the Annexure P-11 do not bind him."

5. Learned Senior Counsel for the petitioner has argued that the claim of the petitioner for regularization w.e.f. 01.04.1978, was earlier rejected on the ground that there is more than two months break in service from work-charge T-Mate to adhoc Lower Division Clerk and thereafter, it has been rejected on the ground that since the petitioner has already been appointed on regular basis and he has accepted the terms and conditions of the appointment letter dated 10.05.1982, therefore, the petitioner cannot claim regularization w.e.f. 01.04.1978. He has submitted that since the petitioner is not claiming any benefit of work-charge service rendered by him w.e.f. 03.12.1975 as T-mate, therefore, the said reasoning given by the respondents for rejecting the claim of the petitioner is totally irrelevant and uncalled for. He has further submitted that since the petitioner was fulfilling the other conditions of the Instructions dated 23.02.1979, therefore, he is entitled for

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regularization w.e.f. 01.04.1978.

6. Per contra, learned counsel for the respondents has submitted that since the petitioner has accepted the terms and conditions of the appointment letter dated 10.05.1982 (Annexure P-11), whereby he was appointed as Lower Division Clerk on regular basis, therefore, the petitioner cannot claim regularization w.e.f. 01.04.1978.

7. To controvert the aforesaid submission made by learned counsel for the respondents, it has been submitted by learned Senior counsel for the petitioner that merely accepting the terms and conditions of the appointment letter would not amount to forego his rights to claim the benefit of regularization w.e.f. 01.04.1978. In support of his contention, he has placed reliance upon the judgment of Hon'ble Supreme Court in **“Central Inland Water Transport Corporation Limited and another vs Brojo Nath Ganguly and another”, (1986) 3 SCC 156.**

8. I have heard the learned counsel for the parties and perused the record with their able assistance.

9. The facts are not in dispute that the petitioner joined the Corporation as a work-charge T-mate on 03.12.1975, on which he continued upto 31.05.1976. Thereafter, he was appointed as Lower Division Clerk on adhoc basis vide appointment letter dated 02.08.1976 and he joined as such, on 16.08.1976 in the pay scale of Rs.110-250/-. Thereafter, persons junior to him were regularized vide order dated 11.04.1979 (Annexure P-3) and the claim of the petitioner for

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regularization was deferred on the ground that there is a break of more than two months in service from work-charge T-Mate to adhoc Lower Division Clerk. The petitioner had completed more than one year service as on 31.03.1978, therefore, he was entitled for regularization w.e.f. 01.04.1978. The break in service from work-charge to adhoc is not relevant once the petitioner has not claimed the benefit of work-charge service at any point of time. The petitioner has agitated his claim for regularization w.e.f. 01.04.1978, from time to time by submitting various representations to the department such as dated 18.05.1979, 16.11.1989, 13.12.1989, 30.11.1997 and 06.02.2001 and even approached this Court twice and finally, his case was rejected vide order dated 02.08.2002, after he had joined on regular basis on 11.05.1982. The said order has been challenged in the present petition, which has been filed in the year 2002, thereafter, admitted and termination was stayed vide order dated 23.01.2003. It has been stated during the course of hearing that the petitioner had already attained the age of superannuation on 30.09.2015. Since the reason for rejection of claim of the petitioner is not legally permissible, therefore, the petitioner is entitled to be regularized w.e.f. 01.04.1978, with all consequential benefits.

10. The Hon'ble Supreme Court in Brojo Nath Ganguly's case (supra), while considering the question as to whether an unconscionable term in a contract of employment is void under Section 23 of the Indian Contract Act, 1872, as being opposed to public policy and, when such a term is contained in a contract of employment entered into with a

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Government company, is also void as infringing Article 14 of the Constitution in case a Government company is “the State” under Article 12 of the Constitution?

While considering the said question in para Nos.103, 104, 105, it has been held as under:-

103. The Corporation is a large organization. It has offices in various parts of West Bengal, Bihar and Assam as shown by the said Rules, and possibly in other States also. The said Rules form part of the contract of employment between the Corporation and its employees who are not workmen. These employees had no powerful workmen's Union to support them. They had no voice in the framing of the said Rules. They had no choice but to accept the said Rules as part of their contract of employment. There is gross disparity between the Corporation and its employees, whether they be workmen or officers. The Corporation can afford to dispense with the services of an officer. It will find hundreds of others to take his place but an officer cannot afford to lose his job because if he does so, there are not hundreds of jobs waiting for him. A clause such as clause (i) of Rule 9 is against right and reason. It is wholly unconscionable. It has been entered into between parties between whom there is gross inequality of bargaining power. Rule 9(i) is a term of the contract between the Corporation and all its officers. It affects a large number of persons and it squarely falls within the principle formulated by us above. Several statutory authorities have a clause similar to Rule 9(i) in their contracts of employment. As appears from the decided cases, the West Bengal State Electricity Board and Air India International

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have it. Several Government companies apart from the Corporation (which is the First Appellant before us) must be having it. There are 970 Government companies with paid-up capital of Rs. 16,414.9 crores as stated in the written arguments submitted on behalf of the Union of India. The Government and its agencies and instrumentalities constitute the largest employer in the country. A clause such as Rule 9(i) in a contract of employment affecting large sections of the public is harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to whom it applies and consequently it is against public good. Such a clause, therefore, is opposed to public policy and being opposed to public policy, it is void under Section 23 of the Indian Contract Act.

104. It was, however, submitted on behalf of the Appellants that this was a contract entered into by the Corporation like any other contract entered into by it in the course of its trading activities and the Court, therefore, ought not to interfere with it. It is not possible for us to equate employees with goods which can be bought and sold. It is equally not possible for us to equate a contract of employment with a mercantile transaction between, two businessmen and much less to do so when the contract of employment is between a powerful employer and a weak employee.

105. It was also submitted on behalf of the Appellants that Rule 9(i) was supported by mutuality inasmuch as it conferred an equal right upon both the parties, for under it just as the employer could terminate the employee's service by giving him three months' notice or by paying him three months' basic pay and dearness allowance in lieu thereof,

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the employee could leave the service by giving three months' notice and when he failed to give such notice, the Corporation could deduct an equivalent amount from whatever may be payable to him. It is true that there is mutuality in clause 9(i) - the same mutuality as in a contract between the lion and the lamb that both will be free to roam about in the jungle and each will be at liberty to devour the other. When one considers the unequal position of the Corporation and its employees, the argument of mutuality becomes laughable.

11. Consequently, the present petition is allowed and the impugned order dated 02.08.2002 (Annexure P-13) is quashed and set-aside and the respondents are directed to consider the petitioner as Lower Division Clerk on regular basis w.e.f. 01.04.1978 and grant all the consequential benefits arising therefrom, within a period of three months from the date of receipt of certified copy of this order.

15.10.2024
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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No