

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-2631-CWP-2019 in/and
CWP-14664-2004 (O&M)
Reserved on : 19.09.2023
Pronounced on : 04.01.2024

Asha Rani

...Petitioner

Vs.

Punjab State Electricity Board, Patiala
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. S.S.Rana, Advocate
for the applicant-petitioner.

Mr. Arav Gupta, Advocate
for the respondents.

DEEPAK MANCHANDA, J.

CM-2631-CWP-2019

This application has been filed under Section 151 C.P.C. for early hearing of the main petition, which stands admitted on 13.07.2007.

For the reasons mentioned in the application, same is allowed and the main case is taken on today's board itself.

CWP-14664-2004

By filing the present writ petition under Article 226/227 Constitution of India, petitioner seeks issuance of a writ in the nature of certiorari for quashing the order dated 11.06.2004 (Annexure P-9), whereby claim of the petitioner for regularization of her services was rejected. Further, prayer is for issuance of a writ of mandamus directing the respondents to regularize the services of the petitioner on the post of Sweeper in the

respondent-Department in view of the law laid down by the Division Bench of this Court in “*Sukhdev Kaur Vs. State of Punjab*” 2003 (1) SCT 361 and in view of policy decision dated 04.03.1999 and further to grant her regular pay scale from the date of initial appointment on the principle of “Equal Pay for Equal Work”.

The facts emanated from the pleadings of the present case are that the petitioner was appointed as part time Sweeper in August, 1985 and was posted with respondent No.2-Circle Superintending Engineer, PSEB, Hoshiarpur. In the year 1987, one-Ram Piari who was working on regular basis got retired from service and petitioner was posted in her place at Office of Circle Colony, Punjab State Electricity Board, Hoshiarpur and worked for 6/7 hours daily since the day of her initial appointment. She was paid Rs.1900/- per month and amount towards Employees Provident Fund was also deducted from her salary. Further, in view of the judgment passed by Hon’ble Supreme Court of India in “*State of Haryana Vs. Piara Singh, RSJ 1992 (3) 235*”, State of Punjab issued instructions/order dated 07.05.1993 and 23.01.1995/01.02.1995 (Annexures P-1 and P-2 respectively), according to which daily wage/casual workers, who had completed ten years of service or more as on 31.08.1992 shall be considered for regularization w.e.f. 01.09.1992 on availability of posts. Some of the sweepers working on part time basis in Education Department approached this Court through CWP-2117 of 1997 for issuance of directions to consider their case for regularization of services, wherein vide order dated 17.07.1997 (Annexure P-3) directions were issued to consider their claim within three months and SLP against this was also dismissed vide order dated 17.04.1998 (Annexure P-4). Thereafter, PSEB had also issued instructions

dated 18.03.2002 (Annexure P-6) providing therein that services of the part time sweepers, who had completed ten years shall be considered for regularization. The petitioner also moved representation dated 11.10.2003 (Annexure P-7) before Superintending Engineer, Punjab State Electricity Board, Hoshiarpur, however, no action was taken on the same, therefore, petitioner served legal notice dated 12.01.2004 (Annexure P-8). Thereafter, petitioner approached this Court through CWP-6005-2004, which was disposed off with directions to respondents to consider the claim of the petitioner, however, respondents rejected the same on the ground that the instructions issued by the Punjab Government with regard to regularization of services of sweeper are not applicable in the Punjab State Electricity Board, therefore, the petitioner has approached this Court to seek redressal of her grievance.

Learned counsel for the petitioner contended that the services of the similarly situated employees have already been regularized, but the petitioner has been left out for the reasons best known to the respondents and the respondents have discriminated against the petitioner. He prays that the impugned order dated 11.06.2004 (Annexure P-9) be set aside being illegal and arbitrary and the petitioner be considered for regularization of services, as the petitioner has served the department continuously for more than 19 years.

Learned counsel representing the respondents contends that at the time of filing of the present writ petition i.e. in the year 2004, there was no policy governing regularization in respondent-Board. Even the policies/instructions/orders dated 07.05.1993 and 23.01.1995 (Annexures P-1 and P-2), on which the petitioner has placed reliance, only pertains to State of Punjab and have never been adopted by the respondent-Board. He further

contends that according to the adoption policy of 1999 (Annexure P-5), petitioner's case along with all other part time workers was considered by the Committee and it was found that they all are neither appointed through employment exchange or through advertisement, therefore, do not fulfill the conditions of regularization. He also submits that the only regularization policy applicable and adopted by the respondent corporation is policy dated 04.03.1999 (Annexure P-5) and as per the said policy, the petitioner does not fulfill the requisite condition of appointment either through employment exchange or through open advertisement in the press.

Apart from this, it is further contended that the petitioner worked on the post of sweeper, which is not a sanctioned post. In support of his contention, learned counsel has placed reliance upon the judgment passed by Hon'ble Supreme Court rendered in Civil Appeal Nos.5689-5690-2021, titled as "*Union of India and others VS. ILMO Devi and another*" wherein it has been held that there can be no regularization against unsanctioned post and part time employees cannot claim parity with the regular employees and submits that in view of the aforementioned settled proposition of law the prayer of the petitioner cannot be accepted.

I have heard learned counsel for the parties and have gone through the case file carefully.

Learned counsel for the respondents while placing reliance upon the settled proposition of law in aforementioned judgment passed by the Hon'ble Supreme Court has argued that there can be no regularization against unsanctioned posts and part-time employees cannot claim parity with the regular employees. Learned counsel for the petitioner has not placed on record

any document to show that sanctioned posts were available with the respondents and petitioner was not considered against the same whereas the learned counsel for the respondents have force in his arguments that unless and until sanctioned posts are available petitioner has no right to claim regularization and her services cannot be equated with the regular employees. Moreover the claim of the petitioner along with other employees was considered and it was found that all such employees did not fulfil the conditions of regularization, hence were not considered. It is not in dispute and cannot be disputed that there are no sanctioned posts and there is no documentary evidence on record to establish and prove that the petitioner was working continuously. Even otherwise as observed hereinabove, she was working as contingent paid part-time sweeper and this is not the case that her appointment was done after following due procedure of selection. While dealing with the similar issue involved in present matter Hon'ble Supreme Court rendered in Civil Appeal Nos.5689-5690-2021, titled as "***Union of India and others VS. ILMO Devi and another***" on which the learned counsel for the respondents placed reliance has held that:-

*"8.6 In the case of **Daya Lal & Ors.** (supra) in paragraph 12, it is observed and held as under:-*

12. We may at the outset refer to the following well- settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under [Article 226](#) of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees.

The right to claim a particular salary against the State must arise under a contract or under a statute.

[[See State of Karnataka v. Umadevi](#) (3) [(2006) 4 SCC 1], [M. Raja v. CEERI Educational Society](#) [(2006) 12 SCC 636], [S.C. Chandra v. State of Jharkhand](#) [(2007) 8 SCC 279], [Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand](#) [(2007) 15 SCC 680] and [Official Liquidator v. Dayanand](#) [(2008) 10 SCC 1.] 8.7 Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

8.8 Applying the law laid down by this court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order, more particularly, directions in paragraphs 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under [Article 226](#) of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularization policy dated 30.06.2014, which is absolutely in consonance with the law laid down by this Court in the case of Umadevi (supra), which does not apply to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the regularization can be only as per the regularization policy declared by the State/Government and nobody can claim the regularization as a matter of right dehors the regularization policy. Therefore, in absence of any sanctioned post and considering the fact that the re-

spondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy dated 30.06.2014.”

As such in the absence of any sanctioned posts in the respondent-board in which the petitioner was working, there was no question of appointing the petitioner after following due procedure. Thus, as per the aforementioned law laid down by Hon’ble Supreme Court this Court does not find much weightage in the submissions made by the learned counsel for the petitioner and is of the view that petitioner, who is part-time employee is not entitled to seek regularization as she did not work against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Moreover, the only regularization policy adopted by the respondent-corporation was Annexure P-5 dated 04.03.1999 and even as per said policy the petitioner does not fulfill the requisite condition of appointment and her case was already considered and rejected vide order dated 05.11.2014 which has never been challenged.

Consequently in light of the above, the writ petition is devoid of merits and is accordingly dismissed.

Pending application(s), if any, shall also disposed of.

(DEEPAK MANCHANDA)
JUDGE

04.01.2024
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No