

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: **20.03.2024**

1. **Letters Patent Appeal No. 623 of 2023 (O&M)**

<u>Bahal Singh and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

2. **Letters Patent Appeal No. 459 of 2023 (O&M)**

<u>Harbans Lal and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

3. **Letters Patent Appeal No. 638 of 2023 (O&M)**

<u>Gurmukh Singh and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

4. **Letters Patent Appeal No. 936 of 2023 (O&M)**

<u>Shinder Pal and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

5. **Letters Patent Appeal No. 937 of 2023 (O&M)**

<u>Tehal Singh and another</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

6. **Letters Patent Appeal No. 995 of 2023 (O&M)**

<u>Bachan Singh and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

7. **Letters Patent Appeal No. 1298 of 2023 (O&M)**

<u>Balkesh Raj and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

8. **Letters Patent Appeal No. 1699 of 2023 (O&M)**

<u>Ramji Singh and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

9. **Letters Patent Appeal No. 762 of 2024 (O&M)**

<u>Khurshid Alam and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

10. **Letters Patent Appeal No. 766 of 2024 (O&M)**

<u>Jagjit Singh and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

11. **Letters Patent Appeal No. 767 of 2024 (O&M)**

<u>Gurdeep Singh and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

12. **Letters Patent Appeal No. 768 of 2024 (O&M)**

<u>Atma Singh and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

13. **Letters Patent Appeal No. 769 of 2024 (O&M)**

<u>Ram Narain and others</u>	Appellants
versus	
<u>State of Punjab and others</u>	Respondents

CORAM: HON’BLE MR.JUSTICE G.S.SANDHAWALIA, ACTING CHIEF JUSTICE
 HON’BLE MS. JUSTICE LAPITA BANERJI, JUDGE

Present : Mr. G.S.Bal, Senior Advocate with
 Mr. Dilshad Singh Gill, Advocate, for the appellants in
 LPA Nos.623-2023 & 638-2023.

None for the appellants in LPA Nos. 995-2023, 936-2023,
937-2023, 1699-2023, 459-2023 and 1298-2023.

Mr. Pawan Kumar Goklaney, Advocate, for the appellants
in LPA Nos. 762, 766, 767, 768 & 769 of 2024.

Mr. Saurav Khurana, Addl. Advocate General, Punjab,
for the respondents.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)**CM No. 1630-LPA-2023 in LPA No. 623 of 2023**

For the reasons mentioned in the application, delay of 23 days in re-filing the appeal is condoned. Application stands disposed of.

Main Appeals

2. Consideration in the present set of appeals is to the judgment dated 31.01.2023 passed by the learned Single Judge whereby 22 writ petitions filed by the writ petitioners (appellants herein) were dismissed and the relief claimed for regularization of the daily wagers/temporary workers/work-charged employees from the date of their initial engagement in the absence of any Act, Rules, policy or instructions was rejected by the learned Single Judge.

3. Learned Single Judge in a considered manner repelled the argument raised by the writ petitioners to the effect an award dated 23.09.1987 (Annexure P-2) had been passed by the Labour Court for regularization of 39 similarly situated persons and therefore, the writ petitioners were also entitled for the same relief. It is pertinent to mention that the said award was upheld by this Court passed in Civil Writ Petition No. 3228 of 1988 (Annexure P-3) and certain directions had been issued for enforcement of the said award vide order dated 22.01.2010 passed in Civil Writ Petition No. 4817 of 1988 (Annexure P-4).

4. Learned Single Judge in the judgment under appeal came to the conclusion that the law had been laid down by a Constitution Bench of the Apex Court in *Secretary, State of Karnataka and others vs. Uma Devi and others (2006) 4 SCC 1*, where it is held that it is not appropriate for the Courts to issue directions to regularize the services of the daily wagers/temporary

regularizing the services of the employees is a one time measure which would only give a ground to the State Government if the employees have completed 10 years of service.

5. It is not disputed in the present case that the writ petitioners were appointed during the years 1984 to 1989 and they were regularized on different dates ranging from the years 1992 to 2004. It is apparent that the regularization orders thus were never a subject matter of challenge and neither the same have been placed on record by the appellants-writ petitioners and they were satisfied by the said regularization. Only on account of the fact that 39 persons had got an award in their favour in 1987 which was upheld in 2010, the matter as such was raked up in the year 2011 for the first time whereas others followed suit belatedly till 2015. In such circumstances, the learned Single Judge distinguished the factum of the regularization granted by the Labour Court by rejecting the argument raised on the plea of Article 14 of the Constitution of India on the doctrine of 'equality' and it was held that where a benefit was granted illegally or irregularly, the same could not be applied *dehors* the Acts, Rules, Regulations or policies. Reliance in this regard was placed on the judgment of the Apex Court in ***Union of India vs. M.V.Sarkar*** 2010(2) 2 SCC 59.

6. We are of the considered opinion that the learned Single Judge did not make any error in any manner while coming to the said conclusion. It is settled principle that in order to get the benefit as such of a writ of mandamus, the writ petitioners had to rely upon a policy, rules, regulations or statutes in order that the writ Court could issue a mandamus. In the absence of any such legal right, the learned Single Judge was well justified in rejecting the case. The Constitution Bench of the Apex Court, as noticed above in *State of Karnataka vs. Uma Devi (supra)*, while considering this aspect had held that

only if a statute imposes upon a legal duty on the authority and the party has a legal right under the statute or rule, a mandamus could be issued and in the absence of the same it cannot be issued. Reliance can be placed on relevant paragraph 52 of the said judgment which reads as under:-

*“52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in [Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College](#) [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.
(emphasis supplied)”*

7. A Constitution Bench of the Apex Court consisting of three Judges in ***Official Liquidator vs. Dayanand and others 2008(10) SCC 1***, noticed that creation and abolition of posts is a matter of Government policy and the Courts cannot take upon themselves the power of creation of a post. The appointments being on temporary basis for a fixed period and absorption of all as regular employees in the absence of any legal right as such was accordingly frowned upon. It was further held that inspite of observations made to this effect by the Constitution Bench of the Apex Court, various

Single Judges and Benches of the High Court were not following the verdict.

Relevant paragraph-70 of the judgment reads as under:-

“70. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not

*possible to countenance violation of the constitutional principle by those who are required to lay down the law.
(emphasis supplied”*

Rather it was held in the above judgment cited (supra) that the observations made by the two Judges Bench in ***U.P.State Electricity Board vs. Pooran Chandra Pandey 2007(11) SCC 92***, should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunal and other judicial foras nor they should be relied upon or made basis for bypassing the principle of ‘*equal pay for equal work*’.

8. The argument which has now been raised that it is a matter of equality as such on the principle of Article 14 of the Constitution of India is also not liable to be accepted. The writ petitioners had to specifically plead and prove to that effect that the persons who were the beneficiaries of the award were identically situated or were juniors and despite that they were granted the benefits. In the absence of any specific pleadings and not even referring to the dates of their appointments, we are of the considered opinion that the claim on the ground of parity invoking the provisions of Article 14 of the Constitution of India also would not give us the jurisdiction as such to go into the said aspect. Thus having not made out a case as such, on the basis of which a writ of mandamus could be issued, we are of the considered opinion that merely because certain set of persons got an award in their favour, which was also in peculiar manner to the extent that the workmen were seeking the status of work-charge employees on account of the fact that similarly situated persons had been granted the benefit. It was in such circumstances, the Labour

Court had granted the benefit and therefore, the learned Single Judge had rightly distinguished the said award while rejecting the argument.

9. In such circumstances, we do not find any infirmity or perversity in the order passed by the learned Single Judge which would warrant our interference. Accordingly, all the appeals are dismissed. Pending applications, if any, also stand dismissed.

(G.S.SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

20.03.2024

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No