



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7254-2005 (O&M)

Reserved on : 05.10.2023
Pronounced on : 22.01.2024

Ganga Singh

...Petitioner

Vs.

The Punjab State Co-Operative
Milk Procedures Federation Ltd.,
(Milkfed), Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. P.S.Goraya, Advocate
for the petitioner.

Ms. Sehar Navjeet Singh Sandhu, Advocate for
Mr. A.S.Chadha, Advocate
for the respondents.

DEEPAK MANCHANDA, J.

Petitioner has filed this writ petition under Article 226/227 Constitution of India for issuance of a writ in the nature of mandamus/certiorari for directing the respondents to grant regularization to the petitioner w.e.f.01.04.1986 i.e. the date of appointment or from 22.07.1988 i.e.date of demand notice. Further, the prayer has been made for quashing of the order dated 16.04.2008 (Annexure P-11) passed by respondent No.1, whereby services of the petitioner were regularized, but previous benefits of the past service in terms of qualifying service arrears, seniority w.e.f. the date of promotion of the juniors were denied.

2. The facts in brief leading to the present petition are that petitioner-Ganga Singh was appointed as Clerk on ad-hoc basis on 23.09.1986 (Annexure P-1) against the regular vacancy, however, services of the petitioner were terminated vide order dated 25.04.1988. Thereafter, petitioner approached the Labour Court, Gurdaspur, where vide the award dated 10.12.1991 (Annexure P-12), the respondent-management was directed to reinstate the petitioner with benefit of continuity of service and full back wages from the date of demand notice i.e. 22.07.1988. But instead of that, the petitioner has not been paid back wages. Respondent No.1 challenged the award dated 10.12.1991 passed by Labour Court, Gurdaspur through CWP-14598-1992, which was dismissed vide order dated 08.03.1996 (Annexure P-2). Therefore, in compliance of the award dated 10.12.1991, petitioner worked continuously on the post of Clerk, however, was not granted benefit of regular increments. Thereafter, petitioner moved a representation dated 10.08.2002 (Annexure P-3) to the Punjab State Cooperative Milk Procedures Federation Ltd. (Milkfed), Chandigarh-respondent No.1 seeking confirmation and regularization of his service. As the benefits of previous service were not granted to him, petitioner sent a legal notice dated 01.07.2003 (Annexure P-4) to respondent No.1 seeking regularization of service as per the policy/instructions dated 23.01.2001 and 28.03.2003 issued by Punjab Government. Petitioner again sent a legal notice dated 19.02.2004 (Annexure P-6) to respondent No.1, however, no action was taken upon the same. After that, petitioner approached this Court through CWP-13010-2004, which was disposed of vide order dated 26.08.2004 (Annexure P-8) with a direction to the respondents to decide the legal notice dated 19.02.2004 moved by the petitioner by passing a speaking order within a

period of two months. After passing of the order by this Hon'ble Court, petitioner again moved a representation dated 04.10.2004 (Annexure P-9) seeking regularization of service with consequential benefits, where reply dated 10.11.2004 (Annexure P-10) to the legal notice sent by respondent No.1, stating therein that claim made in the legal notice cannot be accepted till the petitioner acquires required standard of performance and satisfactory record of service. Vide order dated 16.04.2008 (Annexure P-11), the services of the petitioner were regularized on the post of Clerk-cum-Typist in the pay scale of Rs.3120-100-3220-110-3660-120-4260-140-4400-150-5000-160-5160 with higher start of Rs.3220/- per month plus admissible allowance with immediate effect with the condition that same would be subject to the final outcome of present writ petition. Aggrieved with the aforesaid order dated 16.04.2008, on 03.12.2014, the petitioner filed present amended writ petition and vide order dated 24.12.2014, the same was taken on record, but no reply was filed.

3. Learned counsel for the petitioner contends that the instructions dated 23.01.2001, envisages regularization for all those employees, who had been appointed on or before 13.06.1996 within a period of six months and same applies to public sector undertaking, corporation, Boards and other autonomous bodies in the State of Punjab. He further contends that the petitioner was initially appointed as Clerk on adhoc basis for a period of 89 days w.e.f. 21.03.1986, but his services were terminated on 25.04.1988, and the said termination order was set aside by the Labour Court vide award dated 10.12.1991 (Annexure P-12), which was later on challenged by the respondent No.1 in Civil Writ Petition bearing No.14598-1992 and same was dismissed vide order dated 08.03.1996 resultantly, the award attained finality which was

never challenged further by the respondents. Learned counsel also contends that the petitioner has been continuously working for the last 28 years where there was no adverse report/confidential report and inspite of the direction of reinstatement with benefit of continuity of service and full back-wages w.e.f. 22.07.1988 till reinstatement, the services of the petitioner were regularized only on 16.04.2008 (Annexure P-11), which is against the instructions dated 23.01.2001 and the letter dated 28.03.2003 as the respondents did not follow the spirit of the policy/Instructions. It is again contended that the petitioner faced hostile discrimination, at the hands of respondents as other persons including one Joginder Masih and Dilbag Singh, who were junior to him in service, were regularized ignoring the claim of the petitioner, hence he also deserves to be regularized with effect from the date, when those juniors were regularized and his past service is required to be treated as qualifying service for the purpose of retiral benefits.

4. Learned counsel has again submitted that after the award dated 10.12.1991, the petitioner was allowed to join only after the dismissal of the writ petition, which was dismissed after challenging the aforesaid Labour Court award and the certificate issued by the respondent No.3 clearly depicts that from 16.09.1986 till 20.04.2008, the petitioner continuously worked as adhoc Clerk. Therefore, the order of regularization dated 16.4.2008 be quashed or modified w.e.f. 01.04.1986 or at least from the date of demand notice i.e. 22.07.1988, being unsustainable in the eyes of law.

5. *Per contra* learned counsel for respondent No.1 submits that the initial appointment of the petitioner was completely against the rules as neither was the post advertised nor any applications were invited nor the names were

requisitioned from the Employment Exchange, therefore, the initial appointment of the petitioner is illegal, unconstitutional and is against the scheme of public employment where no right has been flown in favour of the petitioner. Learned counsel further submits that the petitioner was initially appointed as Clerk on adhoc basis on a fixed initial basic pay, who was reinstated in service as Clerk (adhoc) and is not entitled for annual grade increments like regular Clerks-cum-Typists, therefore, he has been allowed basic pay of the post of Clerk as per terms and conditions of his appointment. Learned counsel again contends that the allegations of hostile discrimination is not tenable as petitioner was not employee on the roll of the Federation at that point of time, so he could not have been considered against the said internal notification nor he applied and cannot be treated at par with other employees. Learned counsel for respondent No.1 has argued by referring to Annexure P-11 i.e. the order dated 16.04.2008 that the petitioner's services were considered on merits while passing the aforesaid order as his work and conduct was found to be unsatisfactory and his Controlling Officers were repeatedly reporting that petitioner is not fit for duties of Clerk-cum-Typist. Further, even Annual Confidential Reports also contained below average/adverse/advisory remarks, but during the pendency of this writ petition his performance was improved and there being a vacant position of Clerk-cum-Typist available, the request of offering him Clerk-cum-Typist in the regular pay scale of Rs.3120/-5160/- with higher start of Rs.3220/- per month was considered after taking into consideration the facts on record and now in the light of unsatisfactory record of his past service, the prayer of the petitioner for granting benefit from 01.04.1986 or 22.07.1988 cannot be considered as the order dated 16.04.2008

does not suffer from any illegality and same has been rightly passed.

6. I have heard the learned counsel for the parties and have perused the record carefully.

7. Through this writ petition, petitioner has challenged the order dated 16.04.2008 passed by respondent No.1 vide which the services of the petitioner has been stated to be regularized w.e.f.16.04.2008 where benefit of his past service in terms of qualifying service/seniority/promotion w.e.f. the date of juniors were promoted has not been given. A perusal of the order dated 16.04.2008 (Annexure P-11) reveals that though the services of the petitioner had been regularized and the sole reason for granting him said benefit from the date 16.04.2008 is that past record of the petitioner was not satisfactory and it is only during the pendency of the writ petition his performance improved. Based upon the said observation his services were ordered to be regularized from 16.04.2008.

8. In reference to above context, on 09.09.2015, 22.07.2019 and 01.02.2023, this Court also passed the following orders:-

Order dated 09.09.2015

“The position was no different on the last date of hearing.

The issue in this petition is as to whether the petitioner is entitled to regularisation from a date earlier to his actual date of regularisation, i.e. w.e.f 16.04.2008.

In the said order, it has been stated that prior to that order, the petitioners' services were found not satisfactory/average/below average and ACRs to that effect were recorded. The petitioner, therefore, filed the present writ petition, during the pendency of which the aforesaid order dated 16.04.2008 has been passed.

None has put in appearance on behalf of the respondents and not even a reply has been filed by the respondents in the past 10 years. As such, as to what was the adverse record on the basis of which the petitioner was denied regularisation, in terms of any instructions issued by

the Government and adopted by the respondent-Federation, is not understood.

Consequently, this matter is adjourned to 30.09.2015.

Respondent No.2 is directed to ensure that record pertaining to the petitioners' service, including his ACRs or any other material on the basis of which it is stated that his services were not satisfactory, be produced on the next date of hearing, failing which respondent No.2-General Manager, Cattle Feed Plant, Ghania-ke-Bangar, District Gurdaspur, shall personally remain present in Court.

Since none is present on behalf of the respondents, a copy of this order be sent to respondents No.1 and 2 by the Registry of this Court."

Order dated 22.07.2019

"Cost Rs.2000/- paid to learned counsel for the petitioner. Learned counsel for respondent No.2 was directed to produce service record of the petitioner vide order dated 28.03.2019 and the same has been brought to the Court.

Learned counsel for respondent No.2 shall make the record available for learned counsel for the petitioner at 4:00 p.m. today in the Conference Hall of the Bar Room.

In case, he needs any documents, the same shall be made available to him at the cost of learned counsel for the petitioner.

Adjourned to 29.10.2019."

Order dated 01.02.2023

"Counsel for the respondents to place on record details of the employees regularized who were appointed after the day the petitioner was appointed i.e. 1st of April, 1986.

Adjourned to 13.03.2023."

9. A perusal of the entire pleadings reveals that despite ample opportunities no reply was filed and there is nothing on record to show that in spite of repeated directions by this Court, as to how the services of the petitioner during the period prior to the order dated 16.04.2008 were remained unsatisfactory/average/below average. Even on the date of final arguments,

neither the ACRs were produced nor any material on the basis of which it is stated that his services were not satisfactory was ever placed on record. In light of the same once the respondents are not able to justify the reasoning given in the order dated 16.04.2008 with regard to unsatisfactory performance of the petitioner. The petitioner has rightly said that he cannot be denied the benefits of his past services.

10. Further, no plausible reasoning has come forward in reference to hostile discrimination done by the respondents, where as the similarly situated employees have already been granted benefit.

11. Even the perusal of the award dated 10.12.1991 would show that services of the petitioner were reinstated with continuity of service and full back wages from date of demand notice i.e. 22.07.1988 till reinstatement, which was challenged through writ petition No.14598-1992 and the said writ petition was dismissed vide order dated 08.03.1996 which was never challenged by respondent No.1, meaning thereby that award dated 10.12.1991 attained finality.

12. The Hon'ble Supreme Court in the case of '**Om Prakash Banerjee vs. The State of West Bengal and others**' 2023 SCC Online SC 771, has held that the employee cannot be denied the benefit of regularization of his services, when his similarly placed fellow employees have been granted the said benefit.

In the abovesaid judgement, it has been held as under:-

“22. At the outset, we would like to state that this a case of gross violation of [Article 14](#) and [16](#) of the Constitution. The Appellant, who has been working in Respondent No. 3- Municipality since 1991, and was, subsequently, appointed as a clerk in 1996; has not been regularised in his service. Moreover, his several of his co-employees (including juniors) have been regularised in service. The High Court's Order dated 20.06.2000 in Writ Petition No. 19555 of 1999 clearly shows that absorption has been given effect to vide Order dated 26.09.1996. The said writ petition was dismissed to the extent of entitlement of back dated appointment and arrears. However, the Respondents never paid any heed to such order and

inordinately delayed the Appellant's appointment, while simultaneously absorbing other casual employees. Even the Appellant's service book records that Respondent No. 3- Municipality has absorbed the Appellant in view of the High Court's Order dated 20.06.2000 in Writ Petition No. 19555 (W) of 1999.

23. *The Respondent has relied on [Umadevi](#) (supra) judgment to contend that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. The relevant portion of the factual position in [Umadevi](#) (supra) is being reproduced as hereunder:*

"8.the respondents therein who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka claim that they worked in the Department based on such engagement for more than 10 years and hence they are entitled to be made permanent employees of the Department, entitled to all the benefits of regular employees. They were engaged for the first time in the years 1985-86 and in the teeth of orders not to make such appointments issued on 3-7-1984. Though the Director of Commercial Taxes recommended that they be absorbed, the Government did not accede to that recommendation. These respondents thereupon approached the Administrative Tribunal in the year 1997 with their claim. The Administrative Tribunal rejected their claim finding that they had not made out a right either to get wages equal to that of others regularly employed or for regularisation. Thus, the applications filed were dismissed. The respondents approached the High Court of Karnataka challenging the decision of the Administrative Tribunal. It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in [Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka](#) [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 :

(1990) 1 SCR 544] and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts."

24. *However, in the present case, as we have observed, the Appellant was appointed as a casual worker in 1991. While the services of other co-employees were regularised, that of the Appellant and some others was left out. The High Court in its Order dated 03.09.2010 passed in Writ Petition No. 17892 of 2010 has also recorded the Respondents' submissions that resolutions pertaining to the Appellant's absorption are already in place and the same have been sent for necessary approval. Therefore, the judgment rendered in [Umadevi](#) (supra) will not apply to the facts and circumstances of the present case.*

25. *Now, coming to the Reasoned Order dated 07.03.2012 passed by Respondent No. 2 herein, which states that in pursuance of the High Court's order dated 24.08.2009 to not to give effect to the instruction of the Labour Department (pertaining to regularisation of casual employees) as communicated in the circulars dated*

13.08.1979, 28.08.1980 and 13.03.1996; the Appellant's services cannot be regularised. However, what is to be seen here is that, as early as 2002, i.e., the High Court's Order dated 20.06.2000 in Writ Petition No. 19555 of 1999 clearly shows that absorption has been given effect to vide Order dated 26.09.1996. Moreover, as has been observed above, the Respondents had also submitted before the High Court in Writ Petition No. 17892 of 2010 that resolutions pertaining to the Appellant's absorption are already in place and the same have been sent for necessary approval. Apart from this, as is evident from the facts and circumstances mentioned above, the non-regularisation of the services of the Appellant in the present case, is, in our view, a violation of the fundamental rights of equality before law and equality of opportunity in matters relating to employment under the State, as enshrined under [Article 14](#) and [Article 16\(1\)](#) of the Constitution, respectively. It is to be noted that the Appellant has retired in 2021.

26. The facts of [U.P. SEB](#) (supra) are similar to the case at hand. The relevant portion of [the said judgment](#) is being reproduced hereunder:

"3. By means of the writ petition, 34 petitioners who were daily wage employees of the Cooperative Electric Supply Society (hereinafter referred to as "the Society") had prayed for regularisation of their services in the U.P. State Electricity Board (hereinafter referred to as "the Electricity Board"). It appears that the Society had been taken over by the Electricity Board on 3-4-1997. A copy of the minutes of the proceeding dated 3-4-1997 is Annexure P-2 to this appeal. That proceeding was presided over by the Minister of Cooperatives, U.P. Government and there were a large number of senior officers of the State Government present in the proceeding. In the said proceeding, it was mentioned that the daily wage employees of the Society who are being taken over by the Board will start working in the Electricity Board "in the same manner and position".

4. Pursuant to the said proceeding, the respondents herein were absorbed in the service of the Electricity Board.

5. Earlier, the Electricity Board had taken a decision on 28-11-1996 to regularise the services of its employees working on daily-wage basis from before 4-5-1990 on the existing vacant posts and that an examination for selection would be held for that purpose.

6. The contention of the writ petitioners (the respondents herein) was that since the Society had been taken over by the Electricity Board, the decision dated 28-11-1996 taken by the Electricity Board with regard to its daily wage employees will also be applicable to the employees of the Society who were working from before 4-5-1990 and whose services stood transferred to the Electricity Board and who were working with the Electricity Board on daily-wage basis.

7. The learned Single Judge in his judgment dated 21-9-1998 held that there was no ground for discriminating between two sets of employees who are daily wagers, namely, (i) the original employees of the Electricity Board, and

(ii) the employees of the Society, who subsequently became the employees of the Electricity Board when the Society was taken over by the Electricity Board. This view of the learned Single Judge was upheld by the Division Bench of the High Court.

8. We are in agreement with the view taken by the Division Bench and the learned Single Judge.

9. The writ petitioners who were daily wagers in the service of the Society were appointed in the Society before 4-5-1990 and their services were taken over by the

Electricity Board “in the same manner and position”. In our opinion, this would mean that their services in the Society cannot be ignored for considering them for the benefit of the order dated 28-11-1996.

19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years' service and it will surely not be reasonable if their claim for regularisation is denied even after such a long period of service. Hence apart from discrimination, [Article 14](#) of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularisation and are made to face the same selection which fresh recruits have to face.”

27. The principles of natural justice, too, demand that the Appellant cannot be denied the benefit of the regularisation of services when his similarly placed fellow employees have been granted the said benefit.

28. Therefore, we do not agree with the view taken in the impugned judgment of the High Court as well as by the learned Single Judge in Writ Petition No. 31399 (W) of 2017. The Appellant herein, in our considered opinion, is entitled to receive back wages and benefits from 1991, along with an interest of 10%.

29. Accordingly, the Appeal is allowed. The impugned judgment of the High Court dated 10.12.2019, passed in MAT No. 611 of 2018 and CAN No. 10038/2018 is hereby set aside. However, in the facts and circumstances of the case, we do not make any order as to costs.”

13. Further, the Division Bench of this Court in “**Mewat Model School Society, Nuh Vs. Mahesh Chand and others, 2019(1)LLJ 144**” has held as under:-

“7. The termination order which was subsequently declared to be unjustified and illegal was the only stumbling block, otherwise had the respondent-workman continued in service, he would also have been entitled for regularization like other similarly situated 13 employees who were junior to him. Once the termination order was found to be illegal and unjustified and reinstatement order was directed with continuity of service and full back wages, it would be deemed as if there was no termination and the respondent-workman was entitled to the same treatment as was meted out to 13 similarly situated employees junior to him.

*8. Learned Single Judge while applying the principle of nondiscrimination to grant relief of regularization to the respondent-workman has placed reliance upon the decision of the Hon'ble Apex Court in case **Hari Nandan Prasad and another v. Employer I/R to Management of Food Corporation of India and another (2014) 7 Supreme Court Cases 190** wherein in paragraph-39 it has been observed:-*

"39.....However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of [Article 14](#) of the Constitution. Thus, the Industrial adjudicator would be

achieving the equality by upholding Article 14, rather than violating this constitutional provision."

14. Accordingly, petitioner is entitled for his service benefits w.e.f. 22.07.1988 as per award dated 10.12.1991, which is the admitted position as per the record and passing of award in favour of petitioner has not been disputed by learned counsel for respondent No.1, which attained finality. He had sought time to file reply to the amended writ petition, but the same has not been done since the date of acceptance of amended petition i.e. 24.12.2014, whereas while passing the order dated 09.09.2015, this Court had specifically observed about non-filing of reply even after passing of ten years, which shows pleadings of the petitioner were never controverted so same are deemed to be accepted.

15. Admittedly, the similarly situated employees as alleged by the petitioner being the juniors of the petitioner were appointed from 01.04.1996, but once the date of granting the benefit has already attained finality through award dated 10.12.1991 so the petitioner would be entitled all those benefits w.e.f.22.07.1988. Further, this fact has also not been disputed by learned counsel for the respondent no.1 that juniors of the petitioner as alleged in the petition were never appointed in that case the petitioner is able to prove the hostile discrimination against him, which the respondents are not able to controvert, moreover vide order dated 01.02.2023 a specific direction was issued by this Court to place on record, the details of the employees regularized, who were appointed after the day the petitioner was appointed i.e. 01.04.1986 which was also never complied with by the respondents.

16. Given the above discussion as well as the settled proposition of law, this writ petition is allowed and the order dated 16.04.2008 is quashed to

the extent that petitioner is entitled for consequential benefits w.e.f.22.07.1988.

The respondents are directed to grant all the benefits including arrears of pay and seniority to the petitioner from the due date i.e. 22.07.1988 and the same shall be released within eight weeks from the receipt of certified copy of the order.

(DEEPAK MANCHANDA)
JUDGE

22.01.2024
vanita

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