

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CWP-2237-2013 (O&M)
Date of decision : 12.02.2024

Johny and othersPetitioners

V/S

State of Punjab and othersRespondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Anil Chawla, Advocate for the petitioners.

Mr. T.P.S. Walia, AAG, Punjab.

Mr. Sanjeev Soni, Advocate with
Mr. Sarthak Soni, Advocate for respondents No.2 and 3.

Mr. Veneet Sharma, Advocate for respondent No.7.

NAMIT KUMAR, J. (ORAL)

CM-18832-CWP-2019

Prayer in the instant application filed under Section 151 of CPC is for correction of parentage name of petitioners No.3 and 4 and placing on record correct memo of parties.

Notice in the application was issued on 13.12.2019.

In view of the averments made in the application, which are supported by an affidavit, the same is allowed and amended memo of parties is taken on record.

Registry is directed to place it at its appropriate place.

CWP-2237-2013 (O&M)

1. The present writ petition has been filed by the petitioners under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 05.09.2012

(Annexure P-1), whereby the claim of the petitioners for regularisation of their services as Safai Sewak has been rejected.

2. The brief facts as have been pleaded in the present petition are that the petitioners are working as Safai Sewak through Mohalla Sanitation Committees. The case of the petitioners is that they are fully eligible to be regularized in terms of the policy dated 14.11.2011 (Annexure P-2) which provides that the Safai Sewak, who were in service on 01.04.2008 and are still working as on the date of issuance of policy dated 14.11.2011, are to be regularized. The claim of the petitioners has been rejected on the ground that as on 01.04.2008, they were not in service due to dissolution of Mohalla Sanitation Committees on account of fresh general elections of Municipal Corporation, Amritsar. It is the case of the respondents that the petitioners were again appointed after 21.05.2008 on various dates.

3. Learned counsel for the petitioners submits that since they were not paid salaries for the said period, therefore, they approached this Court by filing *CWP No.11206 of 2010 titled as 'Balwinder Singh and others Vs. Municipal Corporation, Amritsar and others'* which was allowed by the Coordinate Bench of this Court vide judgment 11.02.2019. The relevant paras of the said judgment read as under :-

“4. A perusal of the above shows that the Elections of the Mohalla Sanitation Committee if not unanimous, are to be held under the supervision of concerned Sanitary Inspector of the Municipal Corporation and any dispute in conduct of the election is to be referred to the concerned Executive Officer. After Election, the Mohalla Committee is constituted which is the over all in charge of all financial matters such as payment of wages and collection of voluntary funds from the residents of the Beat area. The

Executive Officer on behalf of the Municipal Corporation has to provide an amount equal to 50% of the monthly minimum wages fixed under the Minimum Wages Act, from time to time as Grant-in-Aid for further disbursement to the Sweepers/Sanitary workers engaged by the Mohalla Sanitation Committee. It is this disbursement for the period, qua petitioners no. 1 to 4 w.e.f. 01.08.2007 to 31.05.2008; qua petitioners No. 5 to 10 w.e.f. 01.08.2007 to 30.09.2008 and qua petitioners No. 11 to 14 w.e.f. 01.08.2007 to 31.07.2008 of which the grant-in-aid was not remitted by the Executive Officer to the Mohalla Committee. This led to the non payment of wages to the petitioners necessitating the filing of the present writ petition.

5. *I have gone through the respective pleadings and the annexures appended thereto and having heard learned counsels for respective parties.*

6. *I am of the opinion that the action of the respondent(s)/Municipal Corporation, Amritsar in withholding the grant-in-aid qua the wages of the Sweepers/Sanitary workers engaged by the Mohalla Committee does not stand the judicial scrutiny. The action of the respondent-Municipal Corporation, Amritsar, to withhold the said grant-in-aid is sought to be justified on the ground that the elections of the Mohalla Committee was since due, the petitioners had been removed and till the new Mohalla Committee was constituted, the said grant-in-aid cannot be disbursed as the claim had to be first verified by the elected Members of the Mohalla Committee.*

7. *Learned counsel for the respondent-Municipal Corporation draws support from letter annexed with its written statement as Annexure R1/1. This letter is written by Councillor of the Municipal Corporation, Amritsar to the Health Officer of the Municipal Corporation, Amritsar, informing that four Mohalla Sudhar (Sanitation) Committee in his Ward No. 52 were dissolved and all the persons engaged by the said Committee were discharged. He further states that he has no further responsibility of any kind. When confronted with the scheme, the learned counsel for the respondent(s) was unable to show as to how such a letter has got any validity in law in the teeth of Clause 4 and 5 of the Mohalla Sanitation Scheme which*

clearly empowers the Sanitary Inspector and the Executive Officer with regard to the management/election/dissolution of the Mohalla Committee.

8. *In view thereof, I hold that the Councillor had no power to make any recommendation or any declaration that the Committee stood dissolved. Entirely, it was the responsibility and the jurisdiction of the Executive Officer, with the aid and assistance of Sanitary Inspector, to oversee the dissolution and election of the Mohalla Committee. Situation would have been entirely different if the Sanitary Inspector would have written any such letter to the Executive Officer saying that there is no representative of Mohalla Committee to verify the claims of the Sweepers or otherwise state that there are no Sweepers now engaged by the Mohalla Committee to carry out the duties of sanitation/removal of garbage.*

9. *The argument of learned counsel for Municipal Corporation is flawed by absurdly, inasmuch as the same would mean, that whenever, there are to be election for new elected body, then for the interregnum between the end of the term of the earlier elected body and until the formation of the new elected body, the entire work force shall have to be sacked and then reengaged on formation of the new elected body. The same will mean total stoppage of sanitation work in the town and create utter chaos and vacuum in the functioning of not only the Mohalla Committee, but also in Municipal Corporation, if the same principle, as canvassed by the learned counsel for respondent, is applied to the Municipal Corporation.*

10. *Another aspect of the matter is that right to health, has been equated with right to life. It is the fundamental right of the citizens as enshrined under Article 21 of the Constitution of India to have good health conditions. To suggest that for the period, the Mohalla Committee has been dissolved and until the new one is elected under the supervision of Sanitary Inspector/Executive Officer, no sanitation work will be carried out in the Municipal limits of the town, is completely absurd, to say the least.*

11. *In view of the above observations and the conceded position that the Sweepers were engaged during the relevant period, a direction is issued to the respondent-Municipal Corporation, Amritsar through its Executive Officer to disburse its share of grant-in-aid, as per the*

scheme within a period of 02 months from the date of receipt of certified order of this Court. Upon remittance thereof, the same be disbursed to the petitioners within a period of 15 days thereafter, by the respective Mohalla Committee.”

4. Learned counsel for the petitioners submits that the above-said judgment has been implemented after filing of contempt petition by the petitioners and their salaries have been paid and they are in continuous service w.e.f. 01.04.2008 till the issuance of the policy/instructions dated 14.11.2011 (Annexure P-2). Although, thereafter, the services of the petitioners have been dispensed with after March, 2012, however, the claim of the petitioners for regularization is prior to the said date. He further submits that 708 similarly situated employees have already been regularized in pursuance to the policy dated 14.11.2011 (Annexure P-2).

5. Learned counsel for the respondent-Corporation submits that the claim of the petitioners shall be reconsidered and decided in view of the judgment dated 11.02.2019 passed by this Court in CWP-11206-2010 (supra), wherein the claim of the petitioner for grant of salary for the intervening period has been allowed.

6. I have heard learned counsel for the parties and perused the relevant documents.

7. Since the stand which have been taken by the respondent-Corporation in the present writ petition is the same as was taken in CWP-11206-2010 and for the intervening period the petitioners have already been paid salaries in terms of said writ petition, therefore, the

claim of the petitioners for regularization is liable to be reconsidered and decided in accordance with law.

8. In view of the above, the respondent-Corporation is directed to reconsider and decide the claim of the petitioners for regularization of their services in view of the judgment dated 11.02.2019 passed in CWP-11206-2010 within a period of three months from the date of receipt of certified copy of this order and in case the petitioners are found eligible, the necessary benefits shall be released to them forthwith.

9. The present petition is disposed of in the above terms.

10. Misc. application pending, if any, shall stand disposed of accordingly.

12.02.2024
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(NAMIT KUMAR)
JUDGE

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