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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4225 of 2015 (O&M)
Date of decision: 31.01.2024

Sunil Kumar
.....Petitioner
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

Mr. Ajit Singh Natt, AAG, Punjab.

Mr. Amit Bansal, Advocate
for Mr. A.K. Goyal, Advocate for respondent No.2.

Mr. P.S. Dhaliwal, Advocate
for respondent No.3.

NAMIT KUMAR J. (Oral)

1. The petitioner has approached this Court by way of filing the present writ petition, impugning the order dated 02.09.2014 (Annexure P-8), whereby his claim for grant of regular pay-scale has been rejected.
2. The brief facts, as have been pleaded in the petition, are that the petitioner was initially appointed as Chowkidar in Indian Red Cross Society, Sangrur at a fixed salary of Rs.800/- per month w.e.f. 14.12.1994 vide order dated 20.12.1994/30.12.1994. Thereafter, he was made regular vide order dated 28.11.1996 w.e.f. 01.01.1996. Thereafter, on creation of District Barnala by the Punjab Government, the services of the petitioner were transferred to Indian Red Cross Society, Barnala

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vide order dated 20.11.2006. However, he was not treated as regular employee and was paid fixed salary. He submitted various representations to the respondents for grant of regular pay-scale for the post of Chowkidar as was granted to him earlier in Indian Red Cross Society, Sangrur, however, since the same was not granted, the petitioner approached this Court by way of filing CWP No.8079 of 2014, which was disposed of vide order dated 29.04.2014 with a direction to respondent No.3 to dispose of the representation submitted by the petitioner within a period of 03 months. In pursuance to the said order, the claim of the petitioner has been rejected vide impugned order dated 02.09.2014 (Annexure P-8), wherein it has been stated that since there is no regular Class IV employee employed by Indian Red Cross Society, Barnala and only the petitioner along with one Vijay Kumar Class III were transferred from Sangrur to Barnala Society and the said Vijay Kumar, co-employee has already filed a case claiming revised pay-scale from Indian Red Cross Society, Barnala in the Labour Court at Patiala, which is being contested by Barnala Society and the same is still pending and since no fresh letter of appointment was given to the petitioner and all other employees employed by Barnala Society are on contract basis and no one is getting regular pay-scale, therefore, he is not entitled for revised pay-scale from Indian Red Cross Society, Barnala. It has further been stated in the said order that the petitioner would be at liberty to get himself transferred back to Indian Red Cross Society, Sangrur, which had originally appointed him and can stake his claim of revised pay-scale from the Indian Red Cross Society, Sangrur.

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3. Separate replies have been filed by respondents No.2 as well as respondents No.1 and 3. In the reply filed by respondents No.1 and 3, the above facts have not been disputed, however, it has been stated that the other employee namely Vijay Kumar had approached the Labour Court, Patiala for claiming the regular pay-scale and the petitioner can also file a petition before the said Labour Court and the present petition may not be entertained. It has further been stated that the petitioner cannot thrust himself upon respondent No.3 and he is at liberty to go back to respondent No.2 and can stake his claims there.

4. The award dated 08.11.2019, passed by the Presiding Officer, Industrial Tribunal, Patiala, in the case of Vijay Kumar has been placed on record as Annexure P-9, wherein the claim of Vijay Kumar, co-employee of the petitioner, has been accepted by the Tribunal and it has been directed as under:-

“RELIEF

22. In the light of my findings regarding above noted issues, the application is allowed and it is held that applicant is entitled to receive arrears of difference of wages for the period from 01.01.2007 till 31.12.2013 from respondent No.2 on account of revision of pay w.e.f. 01.01.1996, subject to departmental calculations, from respondent No.2 and respondent No.2 is directed to make the payment of the same within 45 days of the passing of the order, failing which the applicant will also be entitled to interest @ 6% per annum upon the ordered amount from the date of the order till realization.

File be consigned to record room, after due compilation.

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*PRONOUNCED IN THE OPEN COURT
08.11.2019*

*JATINDER KAUR-II
UID No.PB0062
Presiding Officer,
Industrial Tribunal, Patiala
08.11.2019.”*

5. Learned counsel for the petitioner submits that the petitioner is similarly situated like Vijay Kumar, whose services were also transferred from Indian Red Cross Society, Sangrur to Indian Red Cross Society, Barnala along with the petitioner and he was also treated in the same manner as the petitioner. Vijay Kumar approached the Industrial Tribunal, Patiala seeking regular pay-scale and the said claim has been accepted vide award dated 08.11.2019 (Annexure P-9), therefore, the petitioner is also entitled for the regular pay-scale for the post of Chowkidar w.e.f. the date he has been transferred to Indian Red Cross Society, Barnala.

6. On the other hand, learned counsel for respondent No.3 submits that since there is no regular post of Chowkidar in Indian Red Cross Society, Barnala, therefore, the petitioner cannot be granted the regular pay-scale, however, it has not been disputed that the petitioner is similarly situated like Sh. Vijay Kumar, whose services were also transferred from Indian Red Cross Society, Sangrur to Indian Red Cross Society, Barnala.

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

8. Admittedly, the petitioner was working on regular basis in the Indian Red Cross Society, Sangrur and on creation of District

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Barnala w.e.f. 19.11.2006, the services of the petitioner were transferred from Indian Red Cross Society, Sangrur to Indian Red Cross Society, Barnala. The transfer of the petitioner cannot change his service conditions from regular to contractual employee. Since the transfer was made on administrative exigencies, therefore, the petitioner cannot be made to suffer and cannot be denied the regular pay-scale as was getting in the Indian Red Cross Society, Sangrur. Further, he cannot be discriminated also as the similar claim raised by Vijay Kumar has already been accepted by the Industrial Tribunal, Patiala, vide award dated 08.11.2019 (Annexure P-9), which has become final and has been implemented vide letter dated 31.01.2023 and arrears of Rs.18,19,457/- have been given to the said employee in pursuance to the award dated 08.11.2019.

9. In view of the foregoing reasons, the present petition is allowed and the impugned order dated 02.09.2014 (Annexure P-8) is set-aside and respondent No.3 is directed to grant regular pay-scale to the petitioner for the post of Chowkidar w.e.f. 20.11.2006, with all consequential benefits. The necessary calculations be made and the amount be released to the petitioner after deducting the amount already paid to him, within a period of 03 months from the date of receipt of certified copy of this order.

31.01.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No