

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

209

CWP-9983-2013
Date of Decision: 05.02.2024

Shabo Devi ...Petitioner

Versus

Bhakhra Beas Management Board and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Neeraj Goel, Advocate
for the petitioner.

Mr. Sarthak Gupta, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking directions to the respondents to consider her for regularization.
2. The petitioner on 01.09.1991 joined respondent-BBMB as part time Sweeper (Group-D). The petitioner since then is working with respondent, however, her service has not been regularized. The respondent from time to time has framed policies for regularization of employees but there is no policy for regularizing part time employees.
3. Learned counsel for the petitioner submits that the petitioner deserves to be regularized in view of her long service and she should be paid minimum wages as paid to the regular employees (Group-D).
4. A Division Bench of Supreme Court in **Union of India vs. Ilmo Devi & Ors., 2021 SCC OnLine SC 899** has considered issue involved in the

present case. The Court has set aside judgment of High Court whereby High Court has ordered to grant minimum basic pay of Group-D to part time daily wagers. The Supreme Court has further set aside directions of High Court with respect to regularization of part time employees. The relevant extracts of the judgment read as:

7. *By the impugned common judgment and order, the High Court has disposed of the aforesaid writ petitions with the following directions:—*

“[22] We, thus, direct the petitioner-authorities to re-visit the whole issue in its right perspective and complete the exercise to re-formulate their policy and take a decision to sanction the posts in phased manner within a specified time schedule. Let such a decision be taken within a period of six months from the date of receiving a certified copy of this order.

[23] Till the exercise as directed above, is undertaken, the respondents shall continue in service with their current status but those of them who have completed 20 years as part-time daily wagers, shall be granted ‘minimum’ basic pay of Group ‘D’ post(s) w.e.f. 1.4.2015 and/or the date of completion of 20 years contractual service, whichever is later.”

XXX

XXX

XXX

28. *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.*

29. 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 respondents 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.

30. Though, we are of the opinion that even the direction contained in paragraph 23 for granting minimum basic pay of Group 'D' posts from a particular date to those, who have completed 20 years of part-time daily wage service also is unsustainable as the part-time wagers, who are working for four to five hours a day and cannot claim the parity with other Group 'D' posts. However, in view of the order passed by this Court dated 22.07.2016 while issuing notice in the present appeals, we are not quashing and setting aside the directions contained in paragraph 23 in the impugned judgment and order so far as the respondents' employees are concerned.

31. In view of the above and for the reasons stated above, both the appeals succeed. The impugned judgment and order passed by the High Court and, more particularly, the directions contained in paragraphs 22 and 23 in the impugned judgment and order are hereby quashed and set aside. However, it is observed that quashing and setting aside the directions issued in terms of paragraph 23 in the impugned judgment and order shall not affect the case of the respondents and they shall be entitled to the reliefs as per paragraph 23 of the impugned judgment and order passed by the High Court.

5. Learned counsel for the petitioner on being confronted with aforesaid judgment expressed his inability to controvert its applicability to the present case.
6. The petitioner is admittedly working as part time employee and she belongs to Group-D. She is seeking regularization on the basis of part time work done by her. She is further seeking minimum pay as paid to regular employee. The case of the petitioner is squarely covered by aforesaid judgment.
7. In the wake of above discussion and findings, the present petition deserves to be dismissed and accordingly dismissed.

05.02.2024
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes