

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

237

CWP-9587-2018 (O&M)
Date of Decision: 29.04.2024

1)
Paramjit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

2)
Mukesh Kumar and another

CWP-8668-2019 (O&M)
...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON’BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Rajesh K. Dadwal, Advocate,
for the petitioner in CWP-9587-2018.

Mr. G.P. Vashisht, Advocate,
for the petitioners in CWP-8668-2019.

Mr. Satnampreet Singh, DAG, Punjab.

AMAN CHAUDHARY, J. (Oral)

1.

These cases involve similar issues and therefore, are being disposed of together by this common judgment.
2.

The prayer in the present petition is for directing the respondents to consider the claim of the petitioner for regularization and further grant consequential benefits alongwith interest @ 18% per annum.
3.

Learned counsel would submit that the petitioners were appointed to the post of Safai Sewika/Sweeper on part time basis with the Education Department, rendered their services for more than 2 decades, thus entitled for regularization under the notifications issued, however, were denied on the

premise that their claim will be considered on the basis of seniority and eligibility, as provided in the written statement. Their cases are squarely covered by the judgment of **Surjit Kaur vs. State of Punjab and others**, CWP-1824-2014, decided on 16.01.2015, against which the LPA and SLP filed by the State were dismissed on 29.04.2016 and 09.12.2016, respectively, wherein the petitioner, who was also working on part-time basis as a sweeper, was granted similar benefit as claimed in the present petition. The relevant paras of the same read thus:

“The case of the respondents even today is that the services of the petitioner could not be regularized on account of non-availability of the regular vacancy as also the fact that the petitioner was lower down in the seniority list which was being adhered to in the matter of regularization of services.”

The petitioner claims that the denial of the benefit of regularization has deprived the petitioner of regular benefits of service and after the age of superannuation she has nothing to fall back on inspite of the fact that she has served the respondents throughout her life for as many as more than three decades.

On due consideration of the matter, I am of the considered opinion that the action of the respondents in denying the benefit of regularization to the petitioner is totally unjust. Some of the instructions of the State Government warrant that case of regularization has to be decided within a period of three years. Such a benefit obviously did not flow to the petitioner on account of the indecisiveness.

The plea of the respondents is that posts were not available can only be taken with a pinch of salt. If an employee's services are utilized for more than 3 decades then such a plea of the respondents can hardly be accepted. Evidently its a case of utter exploitation of human resource by the State of Punjab and at best be termed to be a unfair practice. This Court has already taken a similar view in CWP no. 15342 of 2012 titled as **Bhag Singh vs. State of Punjab and others** decided on 15.12.2014. In CWP no.1169 of 2011 titled as **Balwinder Kaur vs. The State of Punjab and others** decided on 16.12.2014 this Court has observed as under:-

“There is no dispute on facts. The deceased having worked with the respondents for almost three decades and the policy of the Government entitling the

employee to regularisation of his services after having completed three years of service is a crucial fact from which this Court would proceed to determine the issues raised before it. Considering the length of service rendered by the deceased employee without the benefit of regularisation can at best be termed to be an exploitative action on the part of the State and human resource whose service are so desired and utilized for such an inordinate long period, cannot be kept away from the fruits of a regular employment on the premise of non-availability of vacancies. The State which professes to be a Welfare State, bound by the dictates of the Constitution of India which mandates adherence to Articles 14 and 16 of the Constitution in terms of public employment, can ill afford to seek refuge in such hypocrisy. If the services of an incumbent are required for more than three decades and practically utilized for that purpose, then the plea of non-availability of regular posts is unacceptable. It is because of the fortuitous circumstances that the deceased employees were kept away from regularisation firstly on account of the will of providence and secondly on account of laxity on the part of the State.

Clause-4 of the Regularisation Policy would require the process of regularisation in the case of workcharge/daily wage workers within a period of four months. It is not the fault of the employee if the process is kept in abeyance for as long as 8 to 9 years to deprive him of the benefit of regularisation. Rather, such an approach of the respondent/State would necessarily result in the virtual negation of the policy itself. The policy talks of regularisation on the completion of 3 years of service and there can be no justification absolutely to keep the employees away from regularization if they have put in more than three decades of service and that too, when the policy contemplates the process to be completed within 4 months which was permitted to linger on for 8 to 9 years thereafter.

The Court is thus of the considered view that it is only on account of the fault of the State that the deceased employees were kept away from the benefit of regularisation.

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In the present case, as has been observed earlier, the Court feels that the action of the respondents is violative of Article 16 of the Constitution of India, if an employee is to be denied the benefit of regularisation, as this would tantamount to negation of the principle of equality in matters of employment. It is not a case of misplaced sympathy as the Court is

conscious that rules are to be adhered to and enforced, but the Court cannot overlook the exploitation of human resource at the hands of the State and this action at best, can be termed an unfair labour practice when it chooses to keep the fate of the employee hanging in balance to take advantage of his need for employment.”

For the aforesaid reasons, I would accept the instant petition and direct the respondents to grant the petitioner deemed date of regularization in terms of the policy instructions (Annexure P-1) and thereafter determine the consequential benefits in favour of the petitioner. Let needful be done as expeditiously as possible but not later than within a period of six months from the date of receipt of the certified copy of this order.”

4. The services of a part time peon-cum-sweeper was regularised by this Court in CWP-1933-2014, **Kanta Rani vs. State of Punjab and others**, decided on 28.10.2014, after 3 decades of continuous and full time service, relevant paras thereof read thus:

“The second argument of the Id. Counsel for the respondents that there is no sanctioned post of sweeper in the office of respondent No.4 is also liable to be rejected. The petitioner has been continuously working with respondent No.4 since 1984. This necessarily implies that there is need for a sweeper in the office of respondent No.4. In fact, judicial notice can be taken of the fact that in every office there is necessity of at least one sweeper, and in bigger offices the requirement would be more. It has not been stated by the respondents that apart from the petitioner there are any other sweepers working in the office of respondent No. 4.

In **Nihal Singh v. State of Punjab, (2013) 14 SCC 65**, the Hon'ble Supreme Court held that when there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons for decades together itself would be arbitrary action (inaction) on the part of the State...

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Thirdly, it has been contended that the petitioner was a part-time sweeper, hence her case was not covered by the instructions dated 23.1.2001 (Annexure P-9) which are only in relation to work charged/ daily wage employees.

The petitioner in paragraph 3 of the petition has

stated that she has been working throughout as peon-cum-sweeper in the office of the Executive Officer, Block Samiti Dina Nagar during full office hours from 9.00 A.M. to 5.00 P.M. This fact regarding the number of hours of duty/work of the petitioner has not been specifically denied. There is only a bald denial stating that it is incorrect that the petitioner has been working throughout as peoncum-sweeper and it has been asserted that the petitioner has been engaged as part-time sweeper. From this, it is clear that though termed part-time, the petitioner has been working in the office of respondent No.4 as a full time employee. She has continued to work in the same capacity for over 30 years now. Terming her as part-time is manifestly unjust.

Thus, it has to be held that the petitioner was liable to have been regularised both in terms of the circular letter dated 4.3.1999 and 23.1.2001 and the action of the respondents in denying her the benefit of regularisation is illegal.

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Thus, in my opinion the petitioner's case for regularisation has been wrongly rejected. She was eligible to have been regularised under each one of the three policies referred to above. It is manifest that the petitioner has been extremely unfairly dealt with. For what should have flowed to her in normal course, she has been forced to repeatedly knock at the doors of the authorities and as a last resort approach the Court. While making her work full time, the respondents have persisted in terming her as part-time, taking shelter under the letter of appointment. This is sheer exploitation of the poor petitioner."

5. Relevant paras of **Sukhdev Kaur vs. State of Punjab**, CWP-12199-2000, decided on 23.09.2002, against which the SLP-4772-2003 filed by the State stands dismissed vide order dated 31.03.2003, wherein a part time sweeper was granted regularization, read thus:

“10. Admittedly, the petitioners belong to a poor section of the society. They have been working on the posts of Sweepers for a substantially long period of 10 years or more. Nothing has been placed on record which may even prima facie show that the petitioners have been found wanting in the performance of their duties. Still further, it is not disputed that there is a continuing need for the posts of Sweepers as it is necessary to have someone to clean the class-rooms and toilets etc. in the educational institutions.

11. In the background of this factual position, the short

question that arises for consideration is - Can the petitioners be denied the relief of regularisation merely because their names had not been sponsored by the respective Employment Exchanges at the time of their entry into service ?

12. To answer this question, we have repeatedly asked Mr. D.V. Sharma, if the State Government had issued any instructions to the Departments requiring that the posts of Part Time Sweepers shall be filled up only after submission of a requisition to the Employment Exchange. The counsel has not been able to point out anything from the record of these cases which may indicate that it was necessary for the Departments of the Government to ask for recommendations from the Employment Exchange. Still further, it is not disputed that the requirement for notification of the vacancies to the Employment Exchanges is not a mandatory pre-condition for filling up the posts in different services of the Government. In fact, a reference to Section 4(4) of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 clearly indicates that the provisions have not to be "deemed to impose any obligation upon any employer to recruit any person through the Employment Exchange to fill any vacancy merely because that vacancy has been notified under" sub-sections (1) and (2) of Section 4. The provision clearly militates against any plea of a mandatory requirement of law under which the employer may be required to notify the vacancies to the Employment Exchange.

13. In view of the factual position that there is nothing on record to show that the departments of the State Government had ever notified the vacancies of Part Time Sweepers under Section 4 to the Employment Exchanges or that any instructions had been issued to the Departments to notify the vacancies to the Employment Exchanges, the condition as now sought to be imposed is apparently arbitrary and unfair.

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15. On a consideration of the matter, we are satisfied that the impugned orders are not just and fair. The petitioners have been made to work for a long time without even being placed in a regular scale. In fact, they are being paid a meagre sum ranging from Rs. 375/- to Rs. 600/- per month. In the present day when the cost of living has gone very high, it is not a fair wage.

16. In view of the above, the writ petitions are allowed. The impugned orders are set aside. The respondents are directed to consider the claim of the petitioners for the regularisation of their services. They would be placed in a regular time scale of pay. The consequential reliefs shall also be given to them. The needful shall be done within one month from the date of receipt of a copy of this order."

6. Learned State counsel, despite his best efforts, has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.
7. In wake of the aforesaid, the present petitions are disposed of in terms of the judgments passed in **Surjit Kaur** and **Kanta Rani** (supra).
8. A photocopy of this order be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

29.04.2024
dinesh

Whether speaking : Yes/No
Whether reportable : Yes/No