

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-26249-2021
Date of decision: 18.03.2024

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

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sunil Garg, Advocate for the petitioner.
Mr. Satnam Preet Singh, DAG, Punjab.

AMAN CHAUDHARY. J.

1. The prayer in the present Civil Writ Petition filed under Articles 226/227 of the Constitution of India, is to issue a writ in the nature of mandamus, for directing respondent Nos.1 to 3 to regularize the services of the petitioner.
2. Learned counsel would submit that the petitioner was appointed as a sweeper on 01.10.2008 on part-time basis and his services were terminated on 19.10.2011, which being illegal, was set aside by the Industrial Tribunal vide order dated 10.05.2017 with directions for reinstatement of service without back wages, after which he is continuing his service as sweeper-cum-chowkidar. He prays for disposal of the present petition, being covered by the decisions in **Kanta Rani vs. State of Punjab and others**, CWP No.1933 of 2014 decided on 28.10.2014 and **Sukhdev Kaur vs. State of Punjab**, CWP 12199 of 2000, decided on 23.09.2002, against which the SLP-4772-2003 filed by the State stands dismissed vide order dated 31.03.2003.

3. The operative portion of **Kanta Rani** (supra), in which under like circumstances, services of the petitioner working as a part time peon-cum-sweeper were ordered to be regularized, reads 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 peon-cum-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.”

4. Relevant paras of **Sukhdev Kaur** (supra), 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.”

5. Learned State counsel was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

6. In view of the aforesaid, the present petition is disposed of in terms of the judgments passed in **Kanta Rani** and **Sukhdev Kaur** (supra).

(AMAN CHAUDHARY)
JUDGE

18.03.2024
Hemant

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