



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

101-1

CWP-4586-1999 (O&M)

Date of decision: 24.03.2025

Om Parkash and others

...Petitioners

VERSUS

State of Punjab and others

...Respondents

101-2

CWP-8885-2016 (O&M)

Date of decision: 24.03.2025

Ram Ujjagar and others

...Petitioners

VERSUS

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. R.L. Gupta, Advocate for the petitioner(s).

Mr. Saurav Verma, Addl. A.G., Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Involving common issues of law, both these writ petitions are being decided by a common judgment. Reference to the facts in brief is, however, being made from **CWP-4586-1999** titled as '**Om Parkash and others Vs. State of Punjab and others**'.

2. Prayer in the above writ petition is for declaring the order dated 03.12.1994 passed by the respondents, illegal to the extent whereby the services of the petitioners have been regularized with effect from 01.09.1992 with a further prayer that the regularization be done with effect from the date of their actual joining alongwith a prayer for being given the



same pay-scale, allowance(s) and benefits as were being given to the regularly appointed persons.

3. Learned Counsel appearing on behalf of the petitioner contends that the petitioners' had joined the respondent-Department between 01.02.1981 and 03.10.1984 in Provincial Division No.1 PWD (B&R), Patiala. The petitioners alongwith others filed CWP-2558-1987 before this Court for the grant of allowances including Dearness Allowance, C.C.A., H.R.A. and other allowances, which were admissible to other similarly placed regular employees and to regularize their services. The said writ petition was decided on 04.10.1993 wherein directions were given that if the petitioners therein fulfilled the necessary qualifications, the respondents would pass appropriate orders to regularize their services and that till such time that a decision is taken thereupon, the services of the petitioners be not retrenched. As no decision was taken for regularization of their services, hence, the petitioners filed COCP-602-1994. During the pendency of the said COCP, the respondents filed the written statement submitting that the services of the petitioners were regularized vide order dated 03.12.1994 (Annexure P-1). Consequently, the said COCP was dismissed and the Rule was discharged. Liberty was, however, granted to the petitioners to take recourse to appropriate remedy in accordance with law for claiming arrears of salary and/or to raise a challenge to the date of regularization, if any.

4. Various representations were thereafter submitted by the petitioners to the respondents for the grant of said benefits, however, as the needful was not done, the petitioners filed another CWP-12960-1995 for



seeking the salary and financial benefits and for regularization from initial appointment. The said writ petition was disposed of vide order dated 11.09.1995 and liberty was granted to the petitioners to file a representation for release of the said benefits. Despite the directions of this Court, the representations of the petitioners were not decided whereupon another COCP-209-1996 was preferred. The same was disposed of eventually on 26.02.1996, directing the respondents to take a decision on the said representations within a period of 02 months of the passing of the said order, however, vide order dated 24.04.1996, the representations were rejected.

5. The said order of 24.04.1996 was again challenged in CWP-9702-1996, which was decided vide order dated 10.03.1997 directing the respondents to pass a speaking order in light of the instructions already issued, within 06 months of passing of the said order. Subsequently, the impugned order dated 01.09.1997 was passed by respondent No.3-Executive Engineer, as per which the services of the petitioners were not to be regularized from the date of their initial appointment but no order was passed for the release of annual increments and other allowances, benefits etc. from the date of their joining. Hence, the present writ petition has been filed.

6. Learned Counsel appearing on behalf of the petitioners further contends that the petitioners had been permanently and continuously employed by the respondents and their service record had been good and without any complaint of any nature whatsoever. Despite the petitioners fulfilling all the requisite terms and conditions required for regular



appointment for the post which they were holding, the actual benefits of regularization have not been given with effect from the date of joining duties and other financial benefits have also not been given to them vide order dated 03.12.1994. He submits that the benefits of regularization and other allowances from the date of initial engagement had been given to certain similarly placed persons/employees, however, the said benefit had not been given to the petitioners, which such action is arbitrary. He contends that the impugned order does not take into consideration the legitimate rights of the petitioners.

7. No other argument has been raised by the learned counsel for the petitioner(s).

8. Responding to the above, counsel for the respondents refers to the reply filed by way of counter affidavit on behalf of respondents No.1 to 3 and submits that since all the petitioners were engaged as *Beldars*, no specific qualification and skills were required for their recruitment. As their initial appointment was temporary, hence, they were recruited without any advertisement in the press and without following the procedure required for the recruitment of regular employees. Hence, it cannot be said that the petitioners were the best available talent at that time. The petitioners were not granted the increments as they were not in regular service. The petitioners were not under any contractual obligation to accept the extension of work authority and they accepted the terms and conditions willfully even though they were aware that they would not be granted annual increments at that time. They were continuously paid initial salary attached to the post and



they accepted the same without any remorse or representation. Hence, the prayer reflects that the terms and conditions of the engagement and emoluments given to the petitioners by the respondents were far better. It is also submitted that the services of the petitioner were regularized in terms of the regularization policy issued by the State Government in compliance to the judgment passed by the Hon'ble Supreme Court in the matter of **State of Haryana Vs. Piara Singh** reported as **1992 (4) SCC 118**. There is no challenge to the terms and conditions of the regularization policy which does not provide for the date of initial engagement as the date of regularization. The petitioners not being in regular service, cannot claim the applicable pay-scale and other benefits and emoluments at par with regularly engaged persons through a competitive process. All the service benefits post their regularization had already been released to them. The petitioners cannot claim accrual of right merely because some persons may have been wrongly regularized with effect from the date of their initial engagement. It was incumbent upon the petitioners to raise a challenge to the terms and conditions of the regularization policy, which fixed the date of regularization and in the absence of any challenge to the same, a mandamus for regularization of service from any date prior to the date as determined in the regularization policy cannot be accepted. He contends that notwithstanding the said reply having been filed in the year 2013, no replication/rejoinder has been filed by the petitioners controverting the said aspect.

9. Learned State counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the matter of **Piara Singh (supra)**. The



relevant extract thereof reads thus: -

“18. So far as the members of the work-charged establishment are concerned, the nature of their employment is already pronounced upon by this court in **Jaswant Singh v. Union of India, 1980 (1) SCR 426**). It is stated therein:

"A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.

The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specific work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive the retrenchment benefits or any benefits under the Employees State Insurance Schemes.

But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to



the benefits of the provisions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. The work-charged employees, therefore, are in a better position than temporary servants like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits."

Be that as it may, so far as the State of Haryana is concerned, this contention has become of academic interest in view of the orders issued on 24th March, 1987 and 6th April 1990, which we shall presently notice. In view of the said orders, the direction given by the High Court becomes unnecessary. Though the State of Punjab has not issued any such orders, it appears from the affidavit filed on its behalf (sworn by Sri P.C. Sangar, Deputy Secretary to the Government, Department of Personnel dated 19.3.1991) that a scheme of regularization of these employees has been prepared in pursuance of the impugned judgement. The said scheme is, however, not made conditional upon the result of these appeals against the judgment. On a perusal of the scheme, we find it to be a reasonably fair scheme. We hope and trust that irrespective of the result of these appeals, the said scheme shall be given effect to by the State of Punjab.



19. *The High Court has also directed that all those employees who fall within the definition of "workmen" contained in the Industrial Disputes Act will also be entitled to regularization on par with the work-charged employees in whose case it is directed that they should be regularized on completing five years of service in Punjab and four years of service in Haryana. This direction is given in favour of those casual labour and daily wagers who fall within the definition of workmen. In so far as work- charged employees, daily wage workers and casual labourers who do not fall within the definition of workmen are concerned, the High Court had directed their regularization on completion of one year's service. We find this direction as untenable as the direction in the case of adhoc/temporary employees. In so far as the persons belonging to the above categories and who fall within the definition of Workmen are concerned, the terms in which the direction has been given by the High Court cannot be sustained. While we agree that persons belonging to these categories continuing over a number of years have a right to claim regularization and the authorities are under an obligation to consider their case for regularization in a fair manner, keeping in view the principles enunciated by this court, the blanket direction given cannot be sustained. We need not, however, pursue this discussion in view of the orders of the*



Government of Haryana contained in the letter dated 6.4.1990 which provide for regularization of these persons on completion of ten years. We shall presently notice the contents of the said letter. In view of the same, no further directions are called for at this stage. The Government of Punjab, of course, does not appear to have issued any such orders governing these categories. Accordingly, there shall be a direction to the Government of Punjab to verify the vacancy position in the categories of daily wagers and casual labour and frame a scheme of absorption in a fair and just manner providing for regularization of these persons, having regard to their length of service and other relevant conditions. As many persons as possible shall be absorbed. The scheme shall be framed within six months from today.

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24. *With respect to direction No. 8 (equal pay for equal work) we find the judgment singularly devoid of any discussion. The direction given is totally vague. It does not make it clear who will get what pay and on what basis. The said direction is liable to be set aside on this account and is, accordingly, set aside.*

In the matters posted before and heard by us, there are several S.L.Ps. preferred against orders of the High Court allowing writ petitions following the judgment in Piara Singh's case.



Leave is granted in all such matters as well and the appeals allowed in the same terms as the appeals against the judgement in Piara Singh.

25. *Before parting with this case, we think it appropriate to say a few words concerning the issue of regularization of adhoc/temporary employees in government service.*

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee.

Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.



Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularization of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observation herein so as to reduce avoidable litigation in this



behalf. If and when such person is regularized he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be. So far as the work-charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6.4.90 referred to hereinbefore) both in relation to work-charged employees as well as casual labour.

We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularization of adhoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.



These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularization having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein.”

10. Referring to the above, it is contended that the Hon’ble Supreme Court had directed the respondent-State to frame a policy for regularization of the services of Class-III Adhoc employees, work-charged/daily wagers etc. and that there was no mandate that the regularization had to be given with effect from the date of initial engagement. The policy was, hence, framed in compliance to the order passed by the Hon’ble Supreme Court and the benefits have been given strictly in accordance with law. He further submits that this Court had issued directions to award pay-scale to the respondent therein. The said directions issued by the High Court were however set aside by the Hon’ble Supreme Court in paragraph No.24 of the judgment in the matter of **Piara Singh** (supra). It is thus submitted that the benefits set aside by the Hon’ble Supreme Court in the year 1992 cannot be awarded after a lapse of substantial period.

11. In support of his argument that a wrong committed by the respondent cannot confer an indefeasible right in favour of the claimant to



contend that a mandamus must be issued. Reliance is placed on the judgment of the Hon'ble Supreme Court passed in the matter of **Chandigarh Administration Vs. Jagjit Singh and another** reported as **1995(1) SCC 745**. The operative part of the same reads thus: -

“8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has



passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law- indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in



another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course barring exceptional situations- would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)”

12. In response to the above, learned counsel for the petitioner has made a reference to the award dated 25.09/03.10.1969 passed by the Labour Court in the case between the Workman and the Management of Chief Engineer PWD (B&R) Patiala, wherein the following direction was issued:-

“17. In regard to Issue No.2 there exparte award dated 8th Feb.1968 in which as stated above, it has been held that the permanent workmen and work charged are entitled to the same



facilities and it has been held by the Industrial Tribunal, as stated by Shri Harbans Singh A.W. in the case of Patti Sub Division, that the work charged staff are entitled to the same facilities which are being asked for by the work charged staff, should be made permanent. Whatever the decision of the Govt. may in this behalf need not be awaited in view of the finding already given in this connection by the Industrial Tribunal Punjab, in the exparte award dated 9th February, 1968 and the award relating to the workmen of Patti Sub Division (B&R) Branch, it is accordingly held that the work charged staff are entitled to the same facilities in regard to travelling allowance, daily allowance, joining time, earned leave, house rent and medical aid as are being given to the regular staff as it seems most inequitable and discriminatory that the work charged staff some of whom who have a continued service of 24 to 25 years would be deprived of these facilities while regular employees of such shorter duration should enjoy all such facilities. This issue is accordingly decided in favour of the workmen.”

13. Responding to the above, learned State counsel contends that the said reference is misplaced as the said order was not in relation to the petitioners in any manner. He further contends that said direction had been given by the Labour Court in the absence of any regularization policy whereas the admissible benefits have already been disbursed in accordance with the regularization policy that had been notified by the State



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subsequently. He submits that in any case, the present writ petition is not in the nature of execution of the said award and the same is not related with the petitioners, who had filed the reference before the Labour Court. The petitioners herein in were not given the engagement at the time when the said award was passed.

14. No other argument has been raised by the learned counsel for the respondent-State.

15. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant petition with their able assistance.

16. The primary grievance of the petitioners is in relation to the condition imposed in the order dated 03.12.1994 whereby the date of regularization of petitioners was determined w.e.f. 01.09.1992. Surprisingly, the aforesaid order specifically recorded that the same had been passed consequent upon the receipt of sanction from the Secretary to Government of Punjab, PWD B&R Department vide letter No.3/32/94-1/Estt.3/4318 dated 02.12.1994. The communication dated 03.12.1994 was only a consequential order in furtherance to the decision already taken on 02.12.1994 but the said decision is not under challenge. It is not the case set up that the fixation of date of regularization w.e.f. 01.09.1992 was not in accordance with the said decision. Hence, in the absence of the cause under challenge, implementation order of the said decision cannot be subject to a challenge.

17. Further, the order of regularization has been passed in terms of



the policy of regularization framed consequent upon the directions issued by the Hon'ble Supreme Court in the matter of **Piara Singh** (supra). The said judgment mandated the State Government(s) to frame a regularization policy after taking into consideration the length of service and to grant an opportunity to the persons who had completed 10 years of service in the State Government for being regularized. Significantly, the consequential policy having been based upon the order passed by the Hon'ble Supreme Court, the claims of the petitioners were considered in accordance thereto and the benefits admissible in terms of the policy already stand released to them.

18. Needless to mention that the initial engagement of the petitioners was not on regular basis and as such, the irregularities in the procedure followed by the respondents in their engagement was relaxed by the respondent-State and the irregularities in such a selection process were dispensed with. Thus, the appointment became regular with effect from the dated as fixed in the regularization policy and subject to the conditions prescribed therein. The contention of the petitioner, if accepted, would render the policy of regularization nugatory to the extent the same prescribes a specific date for regularization. Besides, there is no challenge to the terms and conditions of the policy of regularization by the petitioners, hence, this Court cannot travel beyond its powers.

19. The contention of the petitioner that similarly placed employees were given the benefits has been replied to by the respondent-State stating therein that the benefits given to similarly placed employees, if any, were



not in accordance with the policy, hence, this Court cannot validate an illegality committed by an officer, merely on the principles of parity. It was incumbent upon the petitioners to establish that the dues claimed by them accrued under the said policy decision. An erroneous act in application of the policy in relation to certain similarly placed employees cannot create an indefeasible right in favour of the petitioners to claim the said relief. Appropriate steps are to be taken by the respondents when such benefits had been wrongly given to undeserving persons at the initial stage. It would not be in the fitness of things to initiate such a process for withdrawal of the benefits wrongly given then at this stage as most of the persons have already retired and no purpose would be served by issuing any further directions as such directions would be in conflict with the subsequent judgment of the Hon'ble Supreme Court restricting the right of the State to effect recoveries, if any, as laid down in **State of Punjab v. Rafiq Masih, (2015) 4 SCC 334**. Further, the respondent-State has also taken a specific stand that the names mentioned by the petitioners in the writ petition do not relate to Provincial Division No.1, hence, refuting their claim of parity. The petitioners did not choose to file any replication/rejoinder to the said denial of the claim by the respondent-State.

20. It is also noted that the benefits of equal pay for equal work had already been declined by the Hon'ble Supreme Court in the matter of **Piara Singh** (supra) at that point of time. The petitioners become equal to other employees only on their regularization and hence, the other benefits cannot be extended from the date of initial engagement. No such benefit can be



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given even in terms of the award dated 25.09/03.10.1969 passed by the Labour Court in the case between the Workman and the Management of Chief Engineer PWD (B&R) Patiala as the said award was passed much prior in time to the regularization policy notified by the State, hence, the Labour Court never examined the scope of the Policy. The petitioners having been engaged after more than a decade of the passing of said award, cannot claim that they are entitled to the benefits under that specific reference notwithstanding the award having been passed under the prevailing circumstances therein.

21. Considering it from any of the said angles, I do not find that the petitioners have been able to show any accrued right for claiming the said benefits as asked for by them. All other benefits due have already been paid by the respondent-State. I do not find that the claim of the petitioners for seeking regularization from the date of their initial engagement would be sustainable. The other benefits, which are based on an assumption of regularization from the date of initial engagement are also rejected.

22. The writ petitions are accordingly **dismissed**.

(VINOD S. BHARDWAJ)
JUDGE

24.03.2025

Mangal Singh

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