



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1.

LPA-1109-2019 (O&M)

District Red Cross Society, Rohtak and another

....Appellants

Versus

Krishan Kumar

...Respondent

Reserved on:16.01.2026

Pronounced on:16.04.2026

Uploaded on: 27.04.2026

*Whether only operative part of the judgment is
pronounced or the full judgment is pronounced: full judgment*

**CORAM: HON'BLE MR.JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. K.K. Gupta, Advocate, for the appellants.

Ms. Sangeeta Dhanda, Advocate for the respondent.

ROHIT KAPOOR, J.

The instant letters patent appeal under Clause X is directed against the impugned judgment and order dated 26.02.2019, passed by the learned Single Judge in CWP No. 20072-2015, whereby the writ petition filed by the respondent-petitioner has been allowed. The learned Single Judge while allowing the writ petition, has set aside the termination order dated 07.04.2015, whereby the services of the respondent-petitioner have been dispensed with and has directed regularization of his services with the further direction to grant regular

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pay scale w.e.f. the date his co-plaintiffs in Civil Suit No.15 of 2010 have been granted the same benefit. The respondent-petitioner was however, held to be entitled to 50% of the back wages for the period he remained out of service with effect from the date of termination.

2. *Factual Matrix*

2.1 The brief facts necessary for the adjudication of the instant appeal are as follows:-

2.2 The respondent was initially engaged by the District Red Cross Society, Rohtak, (hereinafter referred to as 'the appellant-society') as a 'Peon' on 12.04.1991, for a stationery stall in the Court Complex, Rohtak, on D.C. rates. He was subsequently adjusted to the Family Counselling Centre (for short 'FCC') in the same position and continued working with the appellant-society for approximately 24 years with an unblemished record. The matter regarding consideration of payment of regular pay scale to the respondent and other similarly situated employees, was taken up by the Managing Body of the appellant-society in its meeting dated 27.01.2009. Finding the work and conduct of the respondent-petitioner and four other employees, who were junior to him, as 'Satisfactory', they were granted regular pay scale w.e.f. 01.02.2009. Since the orders regarding grant of regular pay scale were subsequently withdrawn by the appellant-society on the ground that the agenda passed by the Managing Body on 27.01.2009 was not confirmed in the subsequent meeting dated 18.06.2009, the respondent alongwith other co-

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plaintiffs, filed Civil Suit No. 15 of 2010 in the Court of learned Civil Judge (Junior Division), Rohtak, challenging such action.

2.3 In the written statement filed before the civil court, the stand of the appellant-society was, that the plaintiffs were appointed on fixed salary, which was increased from time to time. The respective dates of joining were not disputed. While denying the averments contained in para 5 of the plaint, it was stated that since the agenda regarding grant of regular pay scale was not confirmed in the subsequent meeting, the orders granting regular pay scale stood cancelled. It was denied that the plaintiffs are '*regular employees*' of the society or were ever regularized. The suit filed by the respondent and four other co-plaintiffs was dismissed vide judgment and decree dated 08.10.2012 by learned Civil Judge (Junior Division), Rohtak.

2.4 It transpires that subsequently in the year 2013, despite dismissal of the aforesaid suit, the appellant society granted the benefit of regularisation and regular pay scale to the other four co-plaintiffs. The respondent submitted various representations to the appellant-society for grant of identical benefit to him, wherein he highlighted that all other four employees were much junior and such selective action of grant of regular pay scale to other similarly situated employees, was discriminatory and arbitrary. One such representation came to be rejected vide order dated 17.03.2015, on the ground that he was an employee of the FCC, which was being run by the financial grants given by the Social Welfare Board of the Haryana Government, and not of the appellant-

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society. Soon thereafter, vide order dated 07.04.2015, the services of the respondent were terminated on the ground that since the Haryana State Social Welfare Board found the working of the FCC to be ‘very poor’ and has denied sanction of the grant-in-aid for the year 2014-2015, as a result of which, the decision was taken to close the FCC with immediate effect.

2.5 The respondent-petitioner challenged both orders, i.e. the rejection for his representation for regularisation and grant of regular pay scale, and the termination order, by approaching the writ Court in CWP 20072-2015. The learned Single Judge while relying upon the judgment of the Hon’ble Supreme Court of India in *Jivanlal Vs. Pravin Krishna, Principal Secretary and others, (2018) 1 SCC (L&S) 522* allowed the writ petition on the ground that the stand of the appellant-society that the respondent-petitioner was not its employee, was contrary to the specific pleadings and averments made by it in the written statement, filed in the civil suit. It was *inter alia* observed that the appellant-society could not have adopted a pick and choose policy while granting the benefit of regularisation/regular pay scale.

2.6 It is in this backdrop that the instant letters patent appeal has been filed. At the time of issuing Notice, vide interim order dated 29.05.2019, direction of learned Single Judge to regularise the services of the respondent-petitioner and to grant him regular pay-scale was ordered to be kept in abeyance till the next date of hearing. However, part of the impugned judgement, setting aside the termination order and payment of

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50% of back-wages was not stayed and the appellants were directed to implement the same.

3. Arguments on behalf of the Appellants

3.1 Shri K.K. Gupta, Advocate appearing on behalf of the appellants-Society has argued that the respondent was never a regular employee of the appellant-society. His initial engagement was on DC rates for providing service at a Stationery Stall and he was subsequently adjusted in the FCC, in the same capacity on a purely temporary basis and this fact is clear from his engagement letter (Annexure R-1/1) dated 30.04.1991. It is urged that the relevant facts that the respondent was a temporary/project employee and that the agenda of the meeting for grant of regular pay scale, was not approved in the meeting held on 18.06.2009, have been ignored by the learned Single Judge and therefore the impugned judgment suffers from the vice of non application of mind.

3.2 It is further contended that the learned Single Judge failed to appreciate that the civil suit filed by the respondent-petitioner seeking identical relief for grant of regular pay scale since June 2009 and further to receive the arrears was dismissed by the concerned Civil Court and the said judgment having attained finality, the same relief could not have been granted in writ proceedings. It is submitted that despite the specific stand of the appellants that the other four co-plaintiffs, were actually the employees of the appellant society, whereas the respondent in contra distinction was engaged on DC rates and later on adjusted in the same capacity with the FCC, yet the learned Single Judge has erred in

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wrongly holding that the appellant had adopted a ‘pick and choose’ policy. Reliance has been placed upon the judgment of the Supreme Court in the case of ‘**Lal Mohammad and others vs. Indian Railway Construction Company Limited and others**’, (2007) 2 SCC 513, to contend that the employees engaged/appointed for a particular project cannot claim to be permanent employees or to be regularised as a matter of right, after the completion of the project.

4. Arguments on behalf of the Respondent

4.1 Learned counsel for the respondent, Ms. Sangeeta Dhanda, Advocate, controverted the arguments raised by the appellants and urged that the respondent has been working continuously before the order of termination, for almost two and a half decades and that itself would show that the requirement for the post was regular. While drawing our attention to the experience certificate dated 27.06.1998 (Annexure P-1) issued by the appellant-society, commending the work and conduct of the respondent as ‘very good’, it is contended that the same proves that he was the employee of the appellant-society. It is argued that the averments made by the respondent-petitioner regarding receipt of his salary from the appellant-society, have not been denied by the appellants and they have failed to show that while working with the FCC, his salary was not being paid by the society.

4.2 It is submitted that the appellants in their written statement filed in civil suit no. 15-2010, while denying that the respondent was a regular employee, did not deny the averments that he was the society’s

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employee. It is urged that the alleged distinction of the respondent being an employee of the FCC and the other four co-plaintiffs being employees of the appellant-society, was never pleaded before the Civil Court, which clearly shows that such stand is a mere after thought. It is further submitted that the deputation of the respondent to the FCC was made by the appellant-society itself, and he continued to serve in the appellant society as a 'Peon' throughout. The learned counsel for the respondent has further argued that the fact that similarly situated employees, who had jointly filed Civil Suit no.15-2010 alongwith the respondent, was subsequently granted regularization and regular pay scale, then denial of the same benefit to the respondent amounts to discrimination and 'pick and choose'.

4.3 Our attention has been drawn to paragraph No. 9 of the judgment passed the learned Single Judge, wherein reference has been made to information dated 01.08.2016, supplied under the Right to Information Act, to the effect that the appellant-society is governed by the Haryana Government Rules and Regulations and therefore, the submission is that the respondent is entitled to the benefit of regularization under policies notified by the Haryana government.

4.4 It is argued that the termination of the respondent, without any notice or opportunity of hearing, after the continuous and unblemished service, is in gross violation of the principles of natural justice and is manifestly arbitrary.

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4.5 During the course of hearing we had posed a query to the learned counsel for the respondent, as to whether the appellant-Society would fall within the meaning of State under Article 12 of the Constitution of India? In response thereto, she has argued that appellants have never raised the issue regarding maintainability of the writ petition, either before the writ court or in the instant appeal. It is contended that perusal of the Resolution appended with the appeal would itself show that Managing Body of the appellant-society comprises of fourteen members, out of which twelve, including the Deputy Commissioner, who is the President, are senior government officials. The state, exercises deep and pervasive control over the affairs of the Society. In furtherance of her argument that a writ petition is maintainable against the district Red Cross Society, reliance has been placed upon the judgments in *J.N. Gahlaut and others vs. Indian Red Cross Society, Haryana State Branch and others*, 2002 SCC Online P&H 1265, *Smt. Alka Ghai vs. J.R. Verma and others*, LPA No. 176 -2008, decided on 16.04.2009, *The District Red Cross Society, Sirsa Vs. Radha Kishan Rajpal and another*, 2004 SCC Online P&H 1376.

4.6 As regards grant of benefit of regularization, apart from the judgement in the case of *Jivanlal* (supra), learned counsel for the respondent has also placed reliance upon recent judgments of the Hon'ble Supreme Court of India in *Jaggo vs. Union of India*, 2024 SCC Online SC 3826, *Shripal and another vs. Nagar Nigam, Gaziabad*, 2025 SCC

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Online SC 221 and Dharam Singh and others vs. State of UP and another, 2025 SCC Online SC 1735.

5. Analysis and Conclusion

5.1 We have heard learned counsel for the parties and have gone through the material available on record, with their able assistance.

5.2 Upon consideration of the pleadings and the submissions advanced across the bar, the following issues arise for our consideration:-

- “(i) Whether the appellant society would be covered under the definition of ‘State’ or the expression ‘other authorities’, appearing in Article 12 of the Constitution of India?; and if the answer is in the negative, whether a writ petition under Article 226 would still be maintainable?
- (ii) Whether the termination of the respondent’s services vide order dated 07.04.2015 was illegal?
- (iii) Whether the appellants can deny the benefits of regularization and regular pay scale to the respondent, while granting the said benefits to other alleged similarly situated employees?
- (iv) Whether the earlier dismissal of civil suit no.15-2010 would operate as *res judicata*?
- (v) Whether the learned Single Judge exceeded its jurisdiction in issuing a direction to regularize the respondent’s services?”

5.3 Issue No.I- The Indian Red Cross Society Act, 1920 (hereinafter referred to as ‘Act’), was enacted for the constitution of the Indian Red Cross Society, after the first World War, *inter alia* with the object to continue in peace time, on a wider basis and with a wider purpose, the work carried on during war, and for affiliation with other Societies and Bodies having similar objects. Post Independence, the Act was amended from time to time including vide Act 14 of 1992. The

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President of India is the President of the Society. He nominates the Chairman and six members for a term, as he may deem fit. Twelve members are to be elected by the State Branch Committees. Section 4E provides for the President to supersede the Managing Body under certain circumstances, for a particular period. Power to make Rules has been conferred upon the managing body under Section 5, who may with prior approval of the President make Rules inter alia for management, function, control of the society and under clause (d) may provide for rules of procedure of election of members by State Branch Committees and under clause (f) for the powers exercisable by the managing body in the supervising the activities of the state branch committees. As per Section 8, if branch committees are constituted in any of the states in terms of the Second Schedule, then certain amount of the income of the Society is to be distributed proportionately amongst such branches, subject to the ratio contained in the schedule. Section 9 provides for affiliation of other societies/bodies. Subject to Rules and overall supervision of the Managing Body, Section 12 of the Act bestows upon the branch committees, complete power to receive gifts and expend monies received by it for its purposes, either directly or through other societies or bodies. As per the Indian Red Cross Societies Branch Committees Rules, 2017, the Governor of the State is the President of the State Branch and the Deputy Commissioners of the districts are the Presidents of the District Branches.

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5.4 A Single Bench of this Court, in the case of **Pant Raj Sachdev v. The Indian Red Cross Society and Others**, 1986 SCC Online P&H 59 examined the question whether the Red Cross Society is a ‘State’ within the meaning of Article 12 of the Constitution. Relying upon the test laid down in the case of **Ramana Dayaram Shetty v. The International Airport Authority of India**, (1979) 3 SCC 489 and **Ajay Hasia etc. v. Khalid Mujib Sehravardi**, (1981) 1 SCC 722, it held that the Society cannot be termed to be an ‘authority’ and, therefore, ‘State’ within the meaning of the expression in Article 12 of the Constitution. However, it went on to examine the dispute on merits on the ground that writ petition would still be maintainable since infraction of service rules and principles of natural justice was involved. Similar view was taken in **J.N. Gahlaut** (supra) and **District Red Cross Society Sirsa** (supra). In **District Red Cross Sirsa**, a division bench of this court, in a case pertaining to removal of an employee of the society, tested the argument regarding maintainability of the writ petition, by considering various judicial precedents on the subject, including the judgements in **Pant Raj** (supra), **Ramana Dayaram Shetty** (supra), **Ajay Hasiya** (supra) and the constitution Bench judgment of the Supreme Court in the case of **Pradeep Kumar Biswas and others v. Indian Institute of Chemical Biology and others**, (2002) 5 SCC 111. While agreeing with the views expressed in **Pant Raj**’s case, it was held that writ under Article 226 of the Constitution of India is maintainable against the Indian Red Cross Society and its branches. In the case of **Alka Ghai** (supra), while

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noticing that the Deputy Commissioner of the District is the President of the District Red Cross Society, Ambala and the Executive Committee, primarily comprises of senior government officials, it was held that since the issue of appointments of the District Red Cross Society, is controlled by the functionaries of the State Government, it would be open to the writ Court to exercise its jurisdiction under Article 226 of the Constitution of India, in a case of challenge on an issue pertaining to appointment. The said matter was carried to the Hon'ble Supreme Court of India, wherein the Special Leave Petition was dismissed.

5.5 Although various arguments were advanced that the government has deep and pervasive financial & administrative control over the functioning of the society and it is discharging governmental functions, however, we are of the view that the material available on record, cannot lead to a definitive conclusion in this regard. This may be for the reason that no objection regarding maintainability of the petition on such ground was taken. Be that as it may, we are of the opinion that the respondent-petitioner has failed to establish that the society and its branches answer the definition of 'State' or 'other authorities', within the meaning of Article 12 of the Constitution of India. Once that be so, the issue of maintainability would have to be tested. The preponderance of judicial opinion, as discussed hereinabove, is that even if the society or its branches, may not answer the definition of 'State' and 'other authorities', yet petition under Article 226 would be maintainable under various circumstances, including cases where grievance is based upon

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violation of principle of natural justice. Since challenge was also laid to the order of termination, on the ground of violation of principles of natural justice, and no objection regarding maintainability was taken at any stage, we are of the view that the respondent-petitioner cannot be non-suited on the issue regarding maintainability of the writ petition. Issue No.(i) is answered accordingly.

5.6 **Issue No.(ii)-** The services of the respondent were terminated vide order dated 07.04.2015 without issuance of any show cause notice or opportunity of hearing. It was the case of the appellant society that since the FCC was closed on account of withdrawal of grant-in-aid, there was no occasion for following any such procedure. We are unable to accept this argument. The respondent was engaged by the appellant society in the year 1991 and undisputedly was subsequently deputed/adjusted at the FCC in the year 1992. Nothing has been placed on record to show that the respondent was ever informed that his engagement would be co-terminus with the grant. The principles of natural justice would demand that even a temporary employee, who has served for a continuous period of more than 24 years, would at least be entitled to an opportunity of being heard, before taking an action which results in the deprivation of his livelihood. In the case of **Jaggo** (supra) it was held by the Supreme Court that even contractual employees are entitled to a fair hearing before any adverse action is taken against him, particularly when their service record are unblemished. It may be noticed that the direction of the learned Single Judge setting aside the termination order, was not stayed at

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the time of admission of the instant appeal. We accordingly hold that the termination of the respondent, without following the principle of natural justice, was ex facie arbitrary, unreasonable and unsustainable in law, we therefore uphold the finding of the learned Single Judge in this regard. Issue No.ii is decided in favour of the respondent.

5.7 Issue No.iii- The issue regarding denial of regularization and regular pay, is one of the core issues in the present appeal. It is not in dispute that four employees, who were co-plaintiffs in civil suit No. 15 of 2010, alongwith the respondent were granted such benefits. The appellants have sought to carve out a distinction by taking a stand that while the said employees were the employees of the society, the respondent-petitioner was engaged at DC rates on a temporary basis and was subsequently adjusted in the FCC, in the same capacity, and was never its employee in the true sense. We find no merit in this contention. Perusal of the written statement filed by the appellant-society in the civil suit, would clearly show that what was denied was that the respondent was not a regular employee, and not that he was not an employee of the appellant-society. No such distinction between the plaintiffs in the suit was ever pleaded. Perusal of the appointment letters of the other employees available on record would show that their employment was also stated to be on temporary/fortuitous/contractual basis, however, they were granted the benefit of regularization and regular pay scale and the claim of the respondent was wrongly rejected, in a pick and choose

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manner. The Supreme Court in the case of **Jivanlal** (supra) *inter alia* observed as under:-

“In that view of the matter, we do not find any justification in discriminating the appellants herein. The policy had been violated in many cases. There cannot be any pick and choose policy; it would certainly lead to corruption. Hence, the appeals are allowed with a direction to the respondents to grant similar treatment to the appellants herein as well and grant regularization to them with effect from the date of completion of ten years of service.”

In the recent decisions like **Jaggo** (supra), **Shripal** (supra) and **Dharampal** (supra), the Hon’ble Supreme Court has come down heavily on exploitation of long serving employees in the name of ad-hocism and has criticized the misuse of ‘temporary labels’. We find force in the submissions made by the learned counsel for the respondent that the materials placed on record would show that the respondent continued to be in the employment of the appellant society even while working in the FCC. There is no rational basis disclosed by the appellant society for treating him differently from his co-employees. It is undisputed that as on date, the respondent has an unblemished service record of about 31 years to his credit. To deny him the benefit of regularization, by an organization claiming to follow government policies and headed by a senior government functionary, amounts to invidious discrimination and smacks of ‘pick and choose’, which cannot be approved of. Issue No.iii is accordingly decided in favour of the respondent.

5.8. **Issue No.iv-** The appellants have strenuously urged that the dismissal of civil suit No. 15 of 2010, vide a judgment dated 08.10.2012

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operates a *res judicata* and the learned Single Judge erred in granting the relief, which was rejected by the civil Court. The said submission cannot be countenanced for a multitude of reasons. Firstly, the doctrine of *res judicata* as embodied in Section 11 of the Code of Civil Procedure, 1908, operates between parties litigating on the same cause of action that was directly and substantially in issue in a prior suit. The principle has been held applicable to writ proceedings as a matter of public policy, but with a crucial qualification, the writ Court exercises its jurisdiction under Article 226 of the Constitution to enforce fundamental and legal rights and correct errors of jurisdictional and legal nature. A dismissal of civil suit does not, in itself, foreclose a writ remedy, particularly when new facts or changed circumstances have emerged subsequent to the civil suit.

5.9 Secondly, the cause of action before the writ court was materially different from that in the civil suit. The civil suit was filed seeking regularization and regular pay scale based on the unconfirmed agenda dated 27.01.2009. The challenge in the writ petition was to the rejection of the respondent's representation vide order dated 17.03.2015 (annexure P-10), and the termination order dated 07.04.2015 (Annexure P-11)- both of which came into existence after the dismissal of the suit. Further more, the supervening and material fact that the co-plaintiffs were subsequently granted the benefit of regularization and regular pay scale, by the appellant-society, while rejecting the claim of the respondent in a discriminatory in a pick and choose manner, was a fresh cause, which arose after the dismissal of the civil suit. It is well settled

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that when new facts constituting a fresh cause of action arise, a writ petition would be maintainable, notwithstanding adjudication by a civil Court, upon an earlier cause. Issue No.iv is therefore decided against the appellants.

6. **Issue No.v-** The argument of the appellants that the learned Single Judge exceeded its jurisdiction by issuing a positive direction to regularize the respondent's service, appears to be attractive in the first blush. The general principle is well established. Courts do not ordinarily direct creation of posts or regularization of employment, as these are matters of policy falling within the executive domain. However, in the peculiar facts and circumstances involved in the instant case, we find that the direction was premised on the fact that the appellant society had itself voluntarily regularized four identically situated co-employees. It found the Supreme Court direction in **Jeevan Lal** (supra) as instructive, where discrimination and pick and choose policy in the matter of regularization was deprecated and regularization was directed with effect from the date of completion of ten years of service. The position adopted in the case of **Jeevan Lal** represents a considered departure from the purely directory approach in cases involving established discrimination. Keeping in view the peculiar facts and circumstances of the case of the respondent-petitioner, whose junior co-employees stand regularized in the year 2013 and the fact that he has currently served for more than three decades without any blemish, we refrain from interfering in the directions passed by the learned Single Judge granting him the benefit of regularization and

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regular pay scale from the date his co-plaintiffs were granted the same benefits. Issue No.v is answered accordingly.

7. For the reasons mentioned hereinabove, we find no merit in the present letters patent appeal and the same is dismissed accordingly.

8. All the pending application, if any, shall stand disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

16.04.2026
dinesh

Whether speaking/reasoned

: Yes

Whether Reportable

: No