

**(2012) 10 P&H CK 0150**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CWP No. 9948 of 2005

Balwinder Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** Oct. 31, 2012

**Acts Referred:**

- Punjab Municipal Act, 1911 - Section 39

**Hon'ble Judges:** A.K. Sikri, C.J; Rakesh Kumar Jain, J

**Bench:** Division Bench

**Advocate:** K.L. Arora, for the Appellant; H.S. Sidhu, Addl. A.G., Punjab and Mr. Rajesh Sood, Advocate, for Respondent No. 3., for the Respondent

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**Judgement**

A.K. Sikri, C.J.

The petitioners have approached this Court second time; for different relief; though it is a part of the same chain of events which started with the filing of earlier writ petition bearing CWP No. 7807 of 1999. The petitioners, who are 12 in number, are the employees of the Municipal Committee, Makhu. 11 of them were appointed as Clerks and one was appointed as Driver way back in the year 1993-94. However, their appointment, were treated as on daily-wage basis and they were granted daily wages. On the first occasion when the petitioners had earlier filed CWP No. 7807 of 1999, their plea was that they be granted salary in the regular pay scale at the minimum of the pay scales plus all allowances and arrears of salary as such for the period of 3 years prior to the filing of the writ petition. This writ petition was allowed by this Court vide judgment dated 14.02.2000. As a result, all these petitioners were put in minimum of the regular pay scales and they are getting salaries in their pay scales. However, the respondents continued to treat the petitioners on daily-wage basis. Some time in the year 2001, Municipal Committee passed a resolution, as per which Scheme for regularization of daily-wage employees was issued. We will refer to the details of this Scheme at the appropriate stage. To complete the narration of facts, we point out that under this Scheme, many other employees working with the

Municipal Committee were regularized and orders were passed in this effect. However, this benefit was not accorded to the petitioners. It is for this reason, petitioners have filed the instant petition in the year 2005 with the following reliefs:-

- i) summon the complete records of the case from the respondents and be pleased to peruse the same;
- ii) issue an appropriate writ, order or direction, thereby commanding the respondent authorities for issuing formal orders of regularizing the services of the petitioners in accordance with the resolution passed by the competent authority on 30.04.2001 (Ref P-3/A) from 01.04.2001 and thereby grant all consequential benefits to the petitioners such as the annual increments and opening of service books, Provident Funds and other fringe benefits etc. which are allowed to the regular employees of the committee;
- iii) grant arrears of salary on account of filing of this writ petition to the petitioners and such arrears be ordered to be given to the petitioners with interest @ 18% p.a. from the date these benefits became due and payable to them, till the date their payment is made in their favour;
- iv) suspension of the resolution passed by the Regional Deputy Director (P/7) be ordered to be ignored in view of law laid down by the Division Bench of this Hon'ble Court reported as AIR-1993-P & H-150;
- v) the orders passed by the Deputy Commissioner (P/11) be also kindly ordered to be ignored because the annual increments and opening of service book have not been allowed in favour of the daily wage employees whereas the petitioners are regular employees vide resolution P/3-A;
- vi) grant any other relief/pass any other order as may be deemed fit and proper in the facts and circumstances of the case;
- vii) dispense with the filing of certified copies of annexures and accept true/translated copies thereof;
- viii) advance notices to the respondents be dispensed with;
- ix) costs of the petition be awarded in favour of the petitioners.

2. To put it in nutshell, according to the petitioners there are regular posts of Clerks and Driver available with the Municipal Committee; Municipal Committee has already decided in principle to regularize these petitioners; the petitioners are covered by the policy of regularization framed by the Government and adopted by the Municipal Committee as well and, therefore, there is no reason to deny this relief to the petitioners more-so when other similarly situated persons have been regularized.

3. To buttress the aforesaid submission, Mr. Arora, learned counsel appearing for the petitioners, has referred to the policy of regularization dated 23.01.2001 and also some other documents relevant to the context. A perusal of the policy of regularization dated 23.01.2001 would reveal that decision was taken by the State Government after a review of the earlier policy of regularization of work-charged/daily wage and other categories of workers engaged by various departments of the State Government in connection with the ongoing project, works of perennial nature like maintenance works and other contingent works. It was further decided that this policy shall also apply to Public Sector Undertakings, Corporations, Boards, Local Authorities and other autonomous bodies in the State of Punjab. It is not in dispute that the Municipal Committees are covered by the aforesaid policy of regularization being Local Authorities. Relevant portion of this policy are reproduced below:-

- (i) No new posts are ordinarily to be created to absorb and regularize existing work charged/daily wage and other categories of workers. Wherever the full circumstances of the particular situation warrant that new posts may be created, the case should be thoroughly examined, Finance Department should be consulted and approval of the CM should be obtained.
- (ii) Each Department may prepare a list of work-charged, daily wage and other categories of workers who have completed 3 years service and these lists may be updated from time to time. The lists should be prepared strictly as per seniority.
- (iii) Out of the lists prepared thus, workers should be absorbed/regularized only against regular posts existing in each Department. In the first instance work charged workers should be regularized in the order of seniority. Only when all eligible persons of this category have been accommodated, cases of daily wage and other categories of workers who have completed 3 years of service in the department may be taken up. The basic idea is that workers belonging to a particular department should be considered for regularization only against available regular vacancies in that department. The claim of work charged/daily wage/other categories of workers for regularization will extend only against available vacancies in the department to which these workers belong.
- (iv) For accommodating work charged/daily wage/other category workers as per the above policy against the existing vacancies the existing instructions requiring permission of the DOP and FD for filling up the vacancies would not apply. Wherever for the absorption/regularization of workers as per the above policy any Department's own Recruitment Rules come in the way, such provisions, of the Recruitment Rules will stand relaxed.

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4. Action to regularize the services of work-charged daily wage workers as a consequence of above policy may be completed within a period of 4 months.

4. The aforesaid provisions in the regularization policy bring out the following pertinent aspects:-

- a) it was decided not to create new posts but to absorb and regularize existing work-charged/daily wage employees against existing posts, namely, against regular posts existing in each department;
- b) in the first instance, regularization of the work-charged employees was to be done in the order of seniority and thereafter employees working on daily wage basis were to be accommodated;
- c) for effecting the absorption/regularization of the workers of the aforesaid categories, it was stipulated that the existing instructions requiring permission of DOP and FD for filling up of the vacancies would not apply. In equal measure, it was provided that even the provisions of Recruitment Rules would be relaxed, meaning thereby wherever Recruitment Rules prescribe certain conditions etc. which are not fulfilled by such persons who are to be regularized under this Scheme, provisions of such Recruitment Rules qua them would stand relaxed and those conditions would not be insisted upon; and
- iv) the entire exercise of regularization was to be completed within a period of four months.

5. After the framing of this policy, the Municipal Committee, where these petitioners are employed, considered the matter and the decision is contained in the resolution of the Municipal Committee dated 30.04.2001. This resolution was passed after obtaining legal opinion. The portion of the said legal opinion, which was also faced by the Municipal Committee and is relevant for our purposes, is extracted below:-

2. That Shri Sunil Kumar, Subhash Chander, Satish Kumar, Karam Singh, Raj Kamal, Rachhpal Singh and Jatinder Kumar all Octroi Clerks and Shri Amrik Masih Tractor Driver, all these employees fulfill the all required qualifications of their posts and they can be regularized in their service as per the latest Punjab Government Notification No. 11/34/2000-4PP III/1301 dated 23.01.2001 and also send by the Director Local Government, Punjab for its compliance. As per this notification any employee who completed the service of 240 days can be regularized. So in my opinion, all these employees can be regularized without any legal hitch.

6. On the aforesaid basis, following resolution was passed by the Municipal Committee:-

Resolution by the committee

The Nagar Panchayat is unanimously in agreement with the report of the Legal Adviser. In accordance with the instructions issued by the Government, Shri Jaswant Singh Clerk, Shri Sunil Syal Clerk, Shri Balwinder Singh Clerk, Shri Rachhpal Singh Clerk, Shri Subhash Chander Clerk, Shri Satish Kumar Clerk, Shri Jatinder Grover

Clerk, Shri Raj Kamal Clerk, Shri Karam Singh Clerk, Shri Vipan Kumar Clerk, Shri Pippal Singh Clerk and Shri Amrik Masih Driver have continuously been working for the last 7 years in the committee. The Nagar Panchayat hereby approves and regularizes the services of these employees from 01.04.2001.

7. The names which are mentioned in the aforesaid resolution are that of the petitioners. It becomes abundantly clear therefrom that as far as Municipal Committee is concerned, it had taken a specific decision by means of aforesaid resolution to regularize all these petitioners w.e.f. 01.04.2001. It will also be pertinent to mention here that this resolution categorically gave relaxation from Matric 2nd Division to such employees. We also like to mention at this stage that after the policy was framed by the Government, the Government had addressed communication dated 24.07.2001 leaving it to the Municipal Committees to take necessary action at their own level for regularizing the services of the daily wage employees in accordance with the said Scheme.

8. It is on the basis of the aforesaid Scheme and the resolution, learned counsel for the petitioners argues that the petitioners got right to get their services regularized and in spite thereof, needful is not done.

9. There is no dispute about the aforesaid facts. However, the stand of the State of Punjab is that there are no regular vacancies available and, therefore, the question of regularization of the petitioners does not arise. It is pointed out that as per the Scheme itself, the petitioners could be regularized only against the regular posts. Thus, the only question on which there is a dispute and which needs determination is as to whether there were any regular vacancies/posts or not?

10. In the counter affidavit filed on behalf of the State of Punjab by Mr. Bhupinder Singh, Deputy Director, Local Government, Ferozepur, it is admitted that 11 posts of Clerk and 2 posts of Peon had been approved in the budget for the year 1993-94 and other years. However, notwithstanding the aforesaid, the position which is taken is that approval of the budget does not make the petitioners a permanent regular employees. Thus, it is not in dispute that these posts were created while sanctioning the budget of the year 1993-94. It is also not in dispute that such budgetary provisions have been made even thereafter every year till date, which is the position which continues to exist. The stand of the respondents that regular posts were not sanctioned is belied by the documents of the respondents themselves. The Regional Deputy Director, Local Government, Ferozepur had sent communication dated 18.06.1993 to the Executive Officer, Municipal Committee/NAC, Makhu in response to the memo dated 11.06.1993 of the Municipal Committee. This communication pertains to the sanction to the budget estimates for the year 1993-94 of the Municipal Committee, Makhu under Rule 11.8 of the Punjab Municipal Act, 1911 for the year 1993-94. There are budgetary allocations under different heads which includes establishment as well. Annexure "A" appended to this communication also makes provisions of post which were approved in the

said budget. Various posts, which were approved including two posts of Clerks in General Section and 9 posts of Clerks in Octroi Branch and there is one regular post of Peon in General Section and 2 regular posts of Peon in Octroi Branch. Secondly, as per this Annexure, these posts are approved on "regular basis".

11. There are certain posts which are approved as "additional charge", namely, that of Executive Officer, Sectional Officer and Accountant. This communication clinches the issue in favour of the petitioners and against the respondents. This is a document which clearly evidences that the posts of Clerks and Peons were created on regular basis. Therefore, it would be totally misconceived to argue now that there are no posts of regular basis available against which the petitioners could be regularized. It would also be relevant to point out that when the decision was left to the Municipal Committee, Makhu by the respondents themselves and the Municipal Committee proceeded on the basis that regular posts are available (which it is competent to do) and took a specific decision regularizing the services of the petitioners herein, the respondents like the Local Government cannot put spokes in the said decision taken by the Municipal Committee. This is the position in law as per the provisions of Section 39 of the Punjab Municipal Act, 1911. This is so held by this Court as well in its decision dated May 26, 2010 rendered in Sukhminder Singh and others v. State of Punjab and another, CWP No. 13005 of 2001.

12. At this stage, a faint attempt was made by learned Additional Advocate General of Punjab to frustrate the petition of the petitioners on the ground that four of these petitioners do not have minimum Matric 2nd Division qualification with knowledge of typewriting which is essential for recruitment to these posts.

13. This argument is to be noted to be rejected. We have already pointed out that the Scheme itself provides for the relaxation of the provisions of the Recruitment Rules. As a result, this petition succeeds. Rule is made absolute and direction is issued to the respondents to issue orders of regularization of services of the petitioners in terms of the resolution passed by the Municipal Committee, Makhu on 30.04.2001 and also grant all consequential benefits to them. The necessary orders shall be issued and arrears of salary, on recomputation, shall be paid to the petitioners within a period of 2 months from today, failing which the respondents shall also be liable to pay interest @ 9% per annum. Cost of Rs. 10,000/- is allowed.