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**(2013) 07 P&H CK 0897**

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

**Case No:** Letters Patent Appeal No. 1122 of 2013 (O and M)

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|---|---|
| State of Punjab | APPELLANT |
| Vs | |
| Mrs. Sukhminder Kaur and Others | RESPONDENT |

**Date of Decision:** July 2, 2013

**Citation:** (2013) 3 SCT 801

**Hon'ble Judges:** Surya Kant, J; Surinder Gupta, J

**Bench:** Division Bench

**Advocate:** J.S. Puri, Additional AG, Punjab, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

Surya Kant, J.
The State of Punjab is aggrieved by the order dated 8.2.2013 whereby the learned Single Judge has allowed the writ petition of private respondents with a direction to regularize their services as per the Government policy decision dated 23.1.2001 (Annexure P-7) alongwith all the consequential benefits except the monetary benefits which have been restricted to three years and two months prior to the date of filing of the writ petition. The facts are broadly admitted. The private respondents were appointed as Clerks and Peons in the Nagar Panchayat, Sahnewal, District Ludhiana, vide resolution No. 94 dated 9.9.1993 (Annexure P-1). The appointment letters like dated 10.9.1993 (Annexure P-2) were issued and all of them have been working since then. The initial appointment of the private respondents though was for 89 days on a fixed salary and purely on temporary basis, but the Nagar Panchayat, Sahnewal passed a resolution on 10.12.1993 (Annexure P-3) resolving to regularize their services. The said resolution, however, was not approved by the Competent Authority but notwithstanding the non-approval, the private respondents continued to serve on fixed salary. They approached this Court in CWP No. 329 of 1997 seeking a direction for the grant of regular pay scale and the said writ petition was allowed on 19.10.2000 holding them entitled to the minimum of the pay scales of the posts held by them. The said order was challenged upto the Hon''ble Supreme Court but

the SLP having been declined on 12.5.2001, it attained finality. Consequently, the private respondents were placed in the minimum of the pay scale(s) applicable to the posts occupied by them.

2. In the second round of litigation, the private respondents sought a mandamus for regularization of their services in the light of the Government Policy dated 23.1.2001 (Annexure P-7). It would be apposite to reproduce the following clauses of eligibility conditions contained in the aforesaid policy:-

(i) No new posts are ordinarily to be created to absorb and regularise 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 up-dated 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 filing up the vacancies would not apply. Wherever for the absorption/regularization of workers as per the above policy and Department''s own Recruitment rules come in the way, such provisions, of the Recruitment Rules will stand relaxed.

3. There is no denial to the fact that hundreds of work-charged/daily wagers were brought on regular establishment on implementation of the aforesaid policy but the private respondents have been denied such benefit on the solitary ground that their appointments were on contract basis. Such a plea taken before the learned Single Judge has been repelled and in our considered view rightly so for the reason that after the initial appointment on contract basis for a period of 89 days, the private respondents were appointed on temporary basis and in the regular pay scale (with minimum of the pay scale). Learned Single Judge has also found that they were appointed against duly

sanctioned posts on temporary basis.

4. It may be true that a Writ Court would not ordinarily issue a mandamus for regularization of services of an employee as such an exercise falls within the domain of Executive as ruled by the Hon''ble Supreme Court in State of Haryana and others Vs. Piara Singh and others etc. etc., and other later decisions. However, when the question of implementation of a conscious decision taken by the State or its instrumentalities arises, the Constitutional Court shall be well within its rights to issue the desired directions for the implementation of such a policy in a nondiscriminatory manner so that all the employees are granted its benefit without any artificial classification. This is what has been done by the learned Single Judge also. For the reasons aforementioned, we do not find any merit in this appeal.

Dismissed.