
(2012) 12 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3432 of 2009

Sachin Gaba

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Punjab Municipal Act, 1911 — Section 39

Citation : (2013) LabIC 330

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : K.L. Arora, for the Appellant; Piyush Kant, Addl. AG and Amit Singh Sethi, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The writ petition is for a relief that the petitioners are entitled to be regularized on the post that they were holding as Class III employees with the Municipal Committee, Khamanon. The petitioners were relying on a resolution passed by the Municipal Committee recommending their cases for regularization. At the time when the writ petition was presented, it appears that 8 other persons who held similar posts had approached this Court seeking for regularization and this Court had also rendered a decision in CWP No. 14289 of 2001 dated 18.12.2008 Annexure-P-1/1. In that writ petition, the Court had given a direction, inter alia, that the petitioners therein could be placed at the start of the basic pay scale of the regular employees performing the same duties, for, as long as they work or have worked as contract employees. After the institution of the writ petition, this order on the basis of which, the petitioners sought for regularization was set aside by the Division Bench in LPA filed against this order. A review application was also dismissed. The employees had taken the matter in Special Leave to the Supreme Court but by the time when the matter came up for final disposal, they had been issued with orders of regularization and being satisfied with the orders issued to them, they withdrew Special Leave petitions.

It is a matter of record that the petitioners have also been regularized. However, the petitioners are still not satisfied with the regularization which had been issued subsequently, since it has been made effective only from the date when the order was passed. The petitioners' contention before me is that the order of regularization must be effective from the date when the resolution of the Municipal Committee was passed. The learned counsel appearing on behalf of the petitioners would argue that the Municipal Committee is competent to draw its own cadre strength for Class III and Class IV employees under the power which is specified u/s 39 of the Punjab Municipal Act, 1911. According to him, the sanction which the Municipal Committee sought from the Government was otiose and the fact that the Government gave an approval subsequently, ought not to be a ground for delaying the right of regularization and their placement in the scale applicable to a regular employee from that date.

2. The learned counsel appearing on behalf of the Municipal Committee states now that the other persons who were regularized have been granted the benefit of regular scales only from the respective dates of order when regularization was made subsequent to the sanction from the Government and, therefore, the petitioners who have sought for similar relief as others would also secure only such benefit. The issue is a consideration of whether the petitioners shall forsake a right if such a right does exist by the only fact that other employees did not press for regularization from an earlier date. It could only bind the party who received the orders with an express condition that they were not claiming any better rights. So long as the writ petition was still pending, any order of regularization unless it was meant to be a complete accord and satisfaction that would have prevented the petitioners from prosecuting the writ petition further, the powers of the Court to grant relief of what the petitioners were entitled, cannot be whittled down. The learned counsel appearing on behalf of the Committee also argues that a resolution passed by the Committee itself contemplated a sanction from the Government and, therefore, the regularization could be effective only from the date when the Government granted such sanction. This precisely begs a question of what we have to answer, namely, of whether the Government sanction was necessary to a resolution of a Committee in a situation where the Committee itself was competent to prescribe the cadre strength and regularize their employees. A supervision of the decision of a Committee or an appraisal of the decision of the Committee is not the same thing as seeking for a prior sanction from the Government. A wrong decision of regularization could still be a matter of a veto from the State and a direction to review its decision or cancel the appointment or regularization could have been passed by the Government. That will be possible under the circumstances where the regularization itself was wrong or was against the statutory provisions or rules. When no violation of statute is pointed out, it will not be possible for the Committee to state that their own decision to regularize must be kept in abeyance for an indefinite period when the Government may issue sanction or not. It is not a case where the Government had rejected the sanction and has

found any reason to pick hole on the decision of the Committee not to regularize the employees. If the Government was actually affirming the resolution which the Committee had passed, it is a manner of saying that the Committee had rendered a lawful resolution and the decision was unexceptional.

3. Since the regularization orders have already been issued during the pendency of the petition, the relief that is appropriate through this order is that such regularization will take effect from the date when the Committee passed the resolution. The scales shall be worked out from 19.6.2001 notionally and the actual entitlement shall be reckoned for a period of 38 months prior to the filing of the writ petition. The amount in excess over what was paid as consolidated sums shall be calculated and released to the petitioners within a period of 8 weeks from the date of receipt of copy of the order. If the amount is not paid, the said sum will also attract interest @ 6% per annum from this date. The writ petition is allowed on the above terms.