

(2004) 10 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4789 of 1985

Tirlochan Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 13-10-2004

Acts Referred:

Citation : (2005) 104 FLR 1171 : (2004) 138 PLR 883

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : T.P.S. Chawla, for the Appellant; A.S. Ladhar, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—All the petitioners came into service of the State of Punjab in the end of September, 1983. They filed the present writ petition claiming regularisation. It is stated that the petitioners had been appointed after interview. The vacancies had been sponsored by the Employment Exchange. The interviews were held by the Departmental Selection Committee constituted for the purpose for the districts of Kapurthala and Jalandhar. They were appointed in a running scale of Rs. 400- 600 with usual allowances. It was, however, mentioned in the appointment orders that the appointment is for a period of six months on ad hoc basis or till such time candidate selected by the Selection Board are made available (whichever is earlier). On expiry of six months period, the services of the petitioners shall automatically be terminated. It was also provided that the services could be terminated without assigning any reason and show-cause notice and their resignations can also be got accepted without any prior notice. The seniority in the cadre will be determined as per the rules in force, from time to time. The appointment orders also stated that the petitioners would be governed by the Government Employees Conduct Rules, 1966 as incorporated in Punjab Civil Services Rules, Volume 1, Part II and Chapter 23. The petitioners were also required to give an undertaking that they will not

undertake any job of private work as described in Chapter 23 of the Rules. All the petitioners fulfil the qualifications prescribed for the Posts of Vaccinators in Class III. The petitioners were imparted necessary training and they had been performing the duties of Vaccinators. By orders dated 20.11.1984 and 23.11.1984 the petitioners were relieved from the posts of Vaccinators. The petitioners were relieved, inspite of. the fact that no regular incumbents were appointed on the post of Vaccinators, by She Subordinate Services Selection Board. The petitioners remained out of service for about two months, when they were re-employed, pursuant to the order dated 21.1.1985 (Annexure P-4). The petitioners re-joined on 24.1.1985 and 25.1.1985. This time, the petitioners were appointed for 89 days. After the expiry of 89 days, the petitioners continued to work as Vaccinate though no orders were issued by the respondents. The petitioners were further informed that they should continue to work as Vaccinators and they would be paid the salary when the same is sanctioned by the higher authorities. Respondent No. 2, the Director, Health and Family Welfare, Punjab, Chandigarh issued a letter on 10.5.1985 (Annexure P-5) directing all the Civil Surgeons in the State of Punjab to utilise the services of the Vaccinators, including the petitioners who were working on ad hoc basis, as superior field workers, during the spray period for prevention of Malaria. The petitioners filed the present writ petition on 27.9.1985 apprehending that their services would be terminated as the Malaria season would come to an end on 30.9.1985. In the meantime, the President of India issued order dated 28.3.1985 (annexure P-6) directing that ad hoc/temporary Class III Employees who had completed a minimum of two years of service as on 1.4.85 and are qualified to hold the posts against which they were employed, be regularised on the post held by them. The Government of Punjab also issued instructions vide letter No. 12/1/82-1 GE/10933 dated 8.8,1985 (Annexure P-7) by which the condition of two years service as provided in the order (Annexure P-6) was reduced to one year. All the petitioners, therefore, fulfilled all the conditions mentioned in the order (Annexure P-6) and instructions (Annexure P-7). It was submitted that none regularisation of the services of the petitioners is violative of orders (Annexure P-6) and instructions (Annexure P-7).

2. The writ petition came up for motion hearing on 27.9.1985. Notice of motion was issued for 26.10.1985. Termination of the services of the petitioners was stayed till further orders. The petitioners continued to be in service, on the basis of the interim orders issued by this Court.

3. Written statement was filed by the respondents on 25.10.1985. The respondents had admitted that the petitioners were appointed as alleged. It is also admitted that the petitioners were imparted training for one month as Vaccinator. It is also admitted that the petitioners have continued to work as Vaccinator, although they had been appointed only for a period of 89 days. The claim of the petitioners for regularisation is, however, denied on the ground that none of the petitioners have either two years or one year serv- ice to their credit as on 1.4.1985, This was so, because they had been relieved of their duties on

20.11.1984.

4. Mr. Chawla submits that the claim of the petitioners is squarely covered under the order (Annexure P-6) and the instructions (Annexure P-7). The petitioners could not have been denied regularisation on the ground that they had not completed two years/one year service on 1.4.1985. The petitioners had been in continuous service since September, 1983. They had been duly selected through the Employment Exchange. They were qualified to hold the posts. Their services were illegally terminated on 20.11.1984. They were re-employed on 21.1.1985 and had continued as such.

5. Mr. Ladhar, however, submits that the services of the petitioners had been legally discontinued. Since there was a break between 20.11.1984 and 21.1.1985, the petitioners cannot be treated as having completed two years/one year service. Therefore, the claim of the petitioners would not be covered under the order (Annexure P-6) and the instructions (Annexure P-7).

6. Having considered the entire matter. I am of the opinion that the petitioners can- not be denied the relief of regularisation. As noticed earlier, the petitioners have been in continuous service since 20.9.1983. Non-regularisation of the services of the petitioners at this stage would be wholly unconscionable. When an employee had continued in service for a number of years, a presumption arises that the work is regularly available. Similar view has been expressed in a number of judgments of the Supreme Court and different High Courts. In the case of State of Haryana and others Vs. Piara Singh and others etc. etc., the Supreme Court, while directing the State Government to prepare a scheme for regularisation of employees who had continued in service for a fairly long spell, observed that if a casual labourer is continued for a fairly long spell-say two or three years - presumption may arise that there is regular need for his services. It was also observed that in such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person. A Division Bench of this Court in the case of Ms. Maninder Kaur and Ors. v. State of Punjab and Ors., 2003 (4) S.L.R. 771 has also directed that the petitioners therein were entitled to the relief of regularisation, on the basis of the policy dated 23.1.2001. In the present case, the petitioners are entitled to be regularised on the basis of the Presidential order dated 29.3.1985 (Annexure P-6) and the instructions of the Punjab Government dated 8.8.1985 (Annexure P-7). The break in the service of the petitioners will have to be ignored in view of the provisions contained in the presidential order (Annexure P-6). Clause I of the aforesaid order clearly states that ad hoc/temporarily appointed employees should have completed a minimum of two years of service on 1.4.1985. This was subsequently reduced by the State of Punjab in the instructions (Annexure P-7) to one year as on 1.4.1985. In the presidential order, it is also provided that "while calculating the period of service, any break of notional nature, falling between ad hoc/temporary appointments in the same category of posts and in

the same department is to be ignored". As noticed earlier, the petitioners were re- lieved by the respondents. They were re-appointed again by the respondents on their own volition. The petitioners were in no manner remiss for being relieved from their duties. Therefore, the service of the petitioners has to be treated as continuous service. Undoubtedly, the petitioners fall within the ambit of the presidential order (Annexure P-6) and the instructions (Annexure P-7).

7. Consequently, the writ petition is allowed. The respondents are directed to consider and regularise the services of the petitioners w.e.f. the end of September, 1983. Let the necessary orders be passed within a period of two months from today. The petitioners shall also be entitled to all consequential benefits. No costs.