

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4773-2014 (O&M)

Decided on 11.07.2025

PSPCL & Ors.

... Appellants

VS.

Arshad Jawed

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parminder Singh, Advocate for the appellants

Mr. HK Brinda, Advocate for the respondent

Sandeep Moudgil, J.

(1). The present regular second appeal under Section 100 CPC has been preferred assailing the judgment and decree dated 23.12.2003 passed by Civil Judge (Jr. Divn.), Ropar as well as the judgment and decree dated 29.04.2014 passed by Addl. District Judge, Rupnagar vide which the suit for declaration filed by the respondent-plaintiff has been decreed and he has been held entitled for regularization as lift attendant.

(2). The brief facts of the case of the respondent-plaintiff are that he is an employee of appellant-defendant corporation and is working as lift attendant in the office of EM-5 Battery Cell, EMC circle GGSSTP Ropar. The respondent-plaintiff joined the service with appellant-defendant as skilled worker on work charge basis on 1.1.1989 and then on 1.6.1989 he was designated as lift mechanic on daily wage basis. Thereafter on 1.4.1990 respondent-plaintiff was designated as lift attendant on daily wage basis and his cadre was changed from daily wage basis to work charge lift attendant w.e.f 1.6.1994. Appellant-defendants vide letter dated 27.3.2006 and 4.7.2006 took policy decision to regularize service of employee who joined the service

of Board up to 31.12.1994, are in service of and have completed 12 years of service. Respondent-plaintiff had joined service of appellant-defendants prior to 31.12.1994 and had completed 12 years of service. As he was in continuous service of appellant-defendant, he was entitled for regularization of his service. Appellant-defendants regularized services of other employees, ignoring the respondent-plaintiff without giving any reason. Then appellant-defendants again vide letter dated 20.10.2009 issued instructions extending cutoff date for regularization of service of its work charge employee 3 from 1.1.1996 to 31.12.1998 having minimum 10 years of service. Thereafter, appellant-defendants through letter dated 20.10.2009 issued offer of appointment to respondent-plaintiff vide memo No. 3851 dated 15.3.2011 as lift attendant and respondent-plaintiff joined accordingly.

(3). The respondent-plaintiff is entitled for regularization as per instructions issued vide letter dated 27.3.2006 and 4.7.2006 as respondent-plaintiff fulfilled all the terms and conditions for the same. The respondent-plaintiff has clean and unblemished service record and there is no reason as to why appellant-defendants are not considering respondent-plaintiff for regularization as per instructions dated 27.3.2006 and 4.7.2006 and to grant him all the consequential benefits considering thereon and unblemished service record of respondent-plaintiff. Hence the civil suit was filed for declaration.

(4). Before the trial court, the following issues were framed based on the pleadings of the parties:-

1. Whether the plaintiff is entitled to declaration as prayed for?

OPP

2. Whether the suit is not maintainable in the present form? OPD
3. Whether the suit is barred by limitation? OPD.
4. Relief.

(5). While dealing with issue No.1, the trial court placed reliance on the letter dated 13.11.2009 Ex.D3 which clarified that the service of the work charge employee working as Lift Attendant was to be regularized on “as is where is” basis against vacancy. The trial court decreed the suit in favour of the respondent-plaintiff with the following finding:-

“11. Further defendants placed on record attested copy of letter bearing Memo No. 27630/28929 dated 10.3.2006 Ex D1/A whereby cut off date for regularization of service for work charge basis was extended up to 31.12.1996 on the basis of "as is where is" Then deputy Chief Engineer, GGSSTP Ropar wrote letter to the Secretary, Personal section, PSEU Patiala dated 21.10.2008 which is EX D.2 whereby he stated that instructions were issued for regularisation of work charged employees on "as is where is" basis against vacancies. But there are certain categories of employees such as lift attendant among others who fulfilled eligibility criteria of cut off date but they could not be regularized as there is no regular category. As there is no regular category, no change of vacancies arises. As such through aforesaid letter clarification was sought whether to regularize service of work charged employees for whom no regular category exists. Then as per letter dated 13.11.2009 Ex. D.3 it was clarified that service of work charged employees, working as lift attendant was to be regularized on "as is where is basis against vacancy. But there were employees who fulfilled eligibility criteria but their services could not be regularized as there was no vacancy. AS such it was requested to create vacancies. Then as per letter dated 1.10.2010 Ex D.4. PSPCL Patiala created some posts in GGSSTP Ropar, and post of lift attendant was one of them on a condition that regularization of service of work charged workers will be "as is where is basis" by creating extra posts. Ex D.B is the office order dated 3.2.2004

whereby it was decided to regularize the service of work charged workers having service of 12 years. Cut off date for regularization was made on 31.12.1992 vide memo NO. 1623 dated 22.1.2009 Ex D.7. As per office order No. 77 dated 16.8.2005 it was decided that services of work charged employees will be regularized who have been in service of board ending 31.12.1992 and having minimum 12 years of service on "as is where is basis" against vacancies and all the existing positions against which work charged workers have been working shall stand abolished. Vide memo No. 16325 dated 26.8.2009 EX D.10 same posts were abolished and some posts were created and post of lift attendant (W) was one of the post which was created. Then plaintiff was offered appointment letter bearing memo No. 3851 dated 15.3.2011 Ex D.1.

12. After appraisal of entire oral as well as documentary evidence placed on record by the parties it goes to show that at the time when defendant had issued a policy to regularize service of employees who have joined the service of Board up to 31.12.1994 and have been in service for 12 years, the plaintiff was eligible for getting his post regularized. He was in service of board and had completed 12 years of service. Then same fact has been admitted by DW.1 Gurnam Singh in his cross examination. The counsel for defendant took plea that as per policy of defendant, service was to be regularized on "as is where is basis, against vacancy. No doubt plaintiff was eligible but at that time there was no vacancy available for regular post of lift attendant. Then defendants took administrative decision to create post of Lift Attendant in order to regularize service of those employees who fulfill eligibility but whose service could not be regularized for want of vacancy. After creating the post, plaintiff was offered appointment, letter which he accepted without protest and his service was regularized as per policy. Now the claim of the plaintiff is that his service was ought to be regularized w.e.f. year 2006 when the policy was made. No doubt that the defendants made an effort to regularize the service of plaintiff which is appreciable and there has been no lapse on the part of defendants in doing so. But in the process, plaintiff suffered a loss of service benefits which he could have got,

had there been a vacancy at the time of policy decision was taken. Although defendants regularized the service of plaintiff but they did not take any step to compensate the loss of service benefit caused to plaintiff in taking long time to create vacancy. At best defendants could have regularized the service of plaintiff retrospectively w.e.f. the date of policy. As such, in view of the foregoing plaintiff is entitled to declaration to the effect that he is entitled to regularization as per letter dated 12.3.2006 and 4.7.2006. Accordingly issue No.1 stands decided in favour of the plaintiff and against the defendants.”

(6). The appellant-defendant-PSPCL filed civil appeal against the judgment and decree dated 23.12.2013 passed by the trial court inter alia on the ground that the trial court judgment is not sound on law as the evidence has not been correctly appreciated inasmuch as the appellant-Corporation had regularized the services of work charge employees who completed 12 years of service as on 31.12.1994 and the order was ‘as is where is basis’ and since the respondent was working as Lift Attendant which post was not available at GGSSTP Ropar and therefore, it was only after creation of such post, the services of the respondent was regularized as such w.e.f. 15.3.2011 since earlier there was no post/vacancy available for regular post of Lift Attendant.

(7). The Appellate Court repelled the contention raised by the appellant-defendant and dismissed the appeal filed by the appellant-defendant/Corporation vide judgment and decree dated 29.04.2014 by observing that the trial court has rightly held the respondent-plaintiff entitled to the regularization of his services as he fulfilled the eligibility criteria as per the policy decision dated 10.3.2006 and 4.7.2006 and this fact is stated by DW1 Gurnam Singh admitting as correct that the services of the respondent-plaintiff was regularized w.e.f. 15.3.2011 as earlier he was working on work

charge basis and had already complete the requisite period of service for the purpose of regularization.

(8). Heard learned counsel for the parties.

(9). The contention of learned counsel for the appellant-Corporation that the regularization can be ordered if there is any vacancy and at the time of policy decision, there was no vacancy of lift attendant deserves to be considered rejected. The courts below have rightly observed that at the time when appellant-defendant had issued a policy to regularize service of employees who have joined the service of Board up to 31.12.1994 and have been in service for 12 years, the respondent-plaintiff was eligible for regularization as he was in service of board and had completed 12 years of service. This stands duly corroborated by the cross examination of DW1 Gurnam Singh, Superintendent GrII working in the office of Chief Engineer, PSEB, Ropar in his cross examination.

(10). The courts below have rightly returned a finding that due to lethargic attitude of the appellant-Corporation, the respondent-plaintiff cannot be made to suffer a loss of service benefits which he could have got, had there been a vacancy at the time of policy decision was taken. That apart, the respondent having served the Corporation since 01.01.1989 cannot be put to peril on the ground that though the Corporation was in need of his services but since the post of Lift Attendant was formally created as per letter dated 01.10.2010 Ex D.4 by PSPCL Patiala in GGSSTP Ropar, the respondent-plaintiff is entitled for regularization retrospectively only after creation of such posts i.e. from the date of the policy.

(11). The appellant-Corporation's inaction and lethargic attitude cannot be allowed to prejudice the respondent-plaintiff's legitimate service benefits. The principle of "no work no pay" cannot be invoked in this case, as the respondent has rendered continuous service since January 1, 1989, and the Corporation has benefited from his work. The conclusion drawn by the courts below is based on the doctrine of "approbation and reprobation," where the Corporation cannot approbate and reprobate by denying regularization benefits to the respondent despite utilizing his services for an extended period. Furthermore, the respondent's right to equal treatment and fairness in employment is guaranteed under Article 14 and 16 of the Constitution of India. Denying regularization benefits to the respondent would be violative of these constitutional provisions.

(12). In view of the above discussion, the findings returned by the Courts below holding the respondent-plaintiff entitled to declaration to the effect that he is entitled to regularization as per letter dated 12.3.2006 and 4.7.2006 is based on proper appreciation of facts and law and legally tenable. Having held so, this regular second appeal fails and is dismissed accordingly.

11.07.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No