

*Before Vijender Jain, C.J. & Jaswant Singh, J.*

**TEJINDER KAUR AND OTHERS,—Petitioners**

*versus*

**KAMLESH RANI,—Respondent**

L.P.A. No. 43 of 2006  
in C.O.C.P. No. 962 of 2004  
in CWP No. 10216 of 2003

17th March, 2008

*Constitution of India, 1950—Arts. 226—Part time employees seeking regularization of services—High Court directing to consider claim of employees for regularization—State failing to comply with directions—In review applications filed by State, High Court directing to consider claim for regularization of services as per Govt. Policy—Employees initiating contempt proceedings—Single Judge directing respondents to regularize services without putting forward excuse of quota or quota within quota—Challenge thereto—Maintainability—Whether an appeal against order of Single Judge in contempt is maintainable—Held, yes—State tendering an assurance not to terminate services of part time employees except on grounds of proven misconduct or delinquency or incapacity and regularize services strictly as per seniority and within quota—Appeals allowed, order of Single Judge set aside.*

*Held*, that the Division Bench while disposing of the writ petitions filed by the respondents herein had directed to consider their cases for regularization as per policy. Similar was the view taken by Division Bench in CWP No. 12199 of 2000 decided on 23rd September, 2002. It appears that order dated 29th September, 2006 passed in the Review Petition was not brought to the notice of the Contempt Court.

(Para 12)

*Further held*, that since the State has filed an affidavit that services of the part time employees will be regularized strictly as per

seniority and within quota from time to time and further that the services of the respondents shall not be terminated except on grounds of proven misconduct or delinquency or incapacity and that too after following the proper procedure and after affording an opportunity of hearing to the person(s) concerned at the level of the Competent Authority, the grievances of the respondents does not survive.

(Para 13)

Ms. Charu Tuli, Sr. D.A.G Punjab for the appellants.

Gurbachan Singh, Ashwani Talwar, J.S. Thind, Advocates for the respondents.

***VIJENDER JAIN, CHIEF JUSTICE (ORAL),***

(1) This order shall dispose of L.P.A. Nos. 43, 73, 74, 88, 89, 90, 92 to 97, 100, 102, 104, 105, 110, 111, 113, 149, 160, 161, 163, and 166 of 2006, arising out of the same impugned order and containing facts and questions of law.

(2) These cases have chequered history.

(3) The respondents in these appeals are part time employees. They filed the writ petitions for regularisation of their services. The writ petitions were disposed of on 10th July, 2003 by passing the following order :—

“It is conceded before us that the controversy in the present case is squarely covered on fact and law rendered by a Division Bench of this Court in CWP No. 12199 of 2000 decided on September 23, 2002 titled as Smt. Sukhdev Kaur and another *versus* State of Punjab and others.

In view of the above, we dispose of the writ petition with a direction to the respondents to consider the claim of the petitioner in light of the aforesaid decision within a period of three months from the date a certified copy of this order is brought to their notice. No order as to costs.”

(4) The order passed in Civil Writ Petition No. 12199 of 2000 decided on 23rd September, 2002 was to the following effect :—

“In view of the above, writ petitions are allowed. The impugned orders are set aside. The respondents are directed to consider the claim of the petitioners for regularization of their services. They would be placed in a regular time scale of pay. The consequential reliefs shall also be given to them. The needful shall be done within one month from the date of receipt of a copy of this order.

In the circumstances, we make no order as to costs.”

(5) In the year 2004, the respondents herein filed contempt petitions in this Court for taking action against the appellants herein alleging that they have violated the clear cut order of this court passed in their writ petitions by not considering them for regularization. Those contempt petitions came up for hearing before learned Single Judge on 4th October, 2005 wherein the following orders were passed :—

“In view of the above respondents are *prima facie* held guilty of contempt. The orders have been awaiting implementation at the end of the respondents for the last two years. Even the contempt petitioners are pending since August, 2004. However, on the request made by learned State Counsel and assurance given by Shri M.L. Sharma, Deputy Director who is present in Court, I grant the respondents No. 1 and 2, an opportunity to comply with the directions of this Court issued on 23rd September, 2002 while disposing of CWP No. 12199 of 2003 in letter and spirit. Without putting forward the excuse of quota or quota within quota, let the needful be done on or before the 7th November, 2005. If the needful is not done by that date, then respondents Mrs. Tejinder Kaur, respondent No. 1 and Mr. K.P.S. Sandhu, Director, shall remain present in the Court.”

(6) In the meantime, a review application was filed in the writ petition 36165/2001 and other connected cases on behalf of the State

of Punjab which was disposed of on 20th September, 2006 by passing the following order :—

“Notice to Advocate General, Punjab.

Mr. D.V. Sharma, Additional Advocate General, Punjab accepts notice.

It is conceded before us that the controversy in the present case is squarely covered on fact and law rendered by a Division Bench of this Court in Civil Writ Petition No. 12199 of 2000 decided on September 23, 2002 titled as **Smt. Sukhdev Kaur and another versus State of Punjab and others.**

In view of the above, we dispose of the writ petition with a direction to the respondents to consider the claim of the petitioners in light of the aforesaid decision within a period of three months as per Government Policy, from the date a certified copy of this order is brought to their notice. No order as to costs.”

(7) Feeling aggrieved of the order, the appellants who were summoned to face the contempt proceedings, have filed the present appeals.

(8) Learned Senior Deputy Advocate General appearing on behalf of the appellants has contended that the Contempt Court does not have the power to modify the directions given by the Division Bench while disposing of the writ petitions filed by the respondents and the order summoning the appellants to face contempt proceedings are liable to be set aside, because the Division Bench while disposing of the writ petitions had only directed to consider the cases for regularization as per policy of the State. She further contends that the policy contains a quota of 25% posts to be regularised from the part time employees and as per seniority list of the part time employees and as per seniority list of the part time employees maintained by the State, they are being regularised. She also contends that Contempt Court has wrongly directed

that the respondents should be regularised without putting forward the excuse of quota or quota within quota. She further contends that State is not terminating the services of any of the part time employees and an affidavit to this effect, *inter alia*, stating that services of the respondents and other similar situated persons working on part time basis as Sweepers in the department of School Education shall not be terminated except on the grounds of proven misconduct or delinquency or incapacity and that too after following the proper procedure and after affording an opportunity of hearing to the person(s) concerned at the level of the Competent Authority.

(9) Ms. Tuli has also tendered an assurance on behalf of the State that in case any grievance is made by any person by filing a representation, who is effected or aggrieved of any action *qua* regularization, his/her representation shall be disposed of by passing a reasoned order after affording him/her an opportunity of hearing.

(10) Shri Ashwani Talwar and Shri J.S. Thind, Advocates appearing on behalf of some of the respondents that their grievance stand resolved if the State as per affidavit dated 4th April, 2007 promises not to terminate the services of the part time employees and regularise their services as and when their turn come as per seniority maintained for the said purpose.

(11) However, at the same time, Mr. Gurbachan Singh, learned counsel appearing on behalf of respondent-contempt petitioner, namely Raj Rani in Civil Writ Petition No. 3354/2003 has contended that these appeals are not maintainable in view of the law laid down by this Court in case **A.S. Chatha, Chief Secretary to Government, Punjab, Civil Sectt. Chandigarh versus Malook Singh and others**, (1).

(12) We have heard learned counsel for the parties and gone through affidavit dated 4th April, 2007 filed by the appellants. It is not in dispute that the Division Bench while disposing of the writ petitions filed by the respondents herein had directed to consider their cases for

regularization as per policy. Similar was the view taken by Division Bench in Civil Writ Petition No. 12199 of 2000 titled as **Sukhdev Kaur and another versus State of Punjab and another**, decided on 23rd September, 2002. It appears that order dated 29th September, 2006 passed in the Review Petition was not brought to the notice of the Contempt Court.

(13) Since the State has filed an affidavit that services of the part time employees will be regularised strictly as per seniority and within quota from time to time and further that the services of the respondents shall not be terminated except on the grounds of proven misconduct or delinquency or incapacity and that too after following the proper procedure and after affording an opportunity of hearing to the person(s) concerned at the level of the Competent Authority, the grievances of the respondents does not survive.

(14) So far as the objection taken by Shri Gurbachan Singh, regarding maintainability of the appeals is concerned, that is no more res integra because Supreme Court in cases **J.S. Parihar versus Ganpat Duggar and others**, (2) and **Midnapore Peoples' Co-operative Bank Ltd. and others versus Chunilal Nanda and others** (3), has already held that intra Court appeal can lie in matter where contempt has been initiated by the learned Single Judge.

(15) In view of the affidavit dated 4th April, 2007 filed by the State and also considering the assurance given to the Court by learned Senior Deputy Advocate General, we allow these appeals and set aside the impugned order. However, it is made clear that if any of the respondents has any grievance with regard to the regularization of his services, he shall be at liberty to make a grievance by filing a representation which shall be disposed of by the State by passing a reasoned order and that too after affording an opportunity of hearing.

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**R.N.R.**

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(2) AIR 1997 S.C. 113  
(3) JT 2006(11) SC 203