

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.21694 of 2013
Date of Decision: 26.02.2015**

Dalip Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Sonia G.Singh, Advocate,
for the petitioner.

Mr. Inder Pal Goyat, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The petitioner is a widow of a daily wager who had served in the Forest Department before he died. But before he died in the year 2010 cases of regularization of daily wagers were considered in his department and a list of eligible persons was generated in which the name of the petitioner was included. It is not a disputed fact that 409 daily wage employees received the benefit of the policy of regularization and their services were regularized and they are serving in the Forest Department. However, before the order was implemented, the husband of the petitioner passed away before he could receive the order dated September 29, 2011 issued in terms of the 2006 policy of regularization.

Learned counsel for the petitioner submits that in case the conditions precedent to regularization were satisfied by the decedent

employee before he died, then certain monetary rights, as have not abated, would still accrue in favour of his heirs and legal representatives for a posthumous declaration that the decedent employee was a regular hand by deeming fiction of the law to bring his case on parity with the co-employees who later were regularized. The event of death would not detract from declaration of such antecedent right and the same cannot be negated only because the man died and the final order was passed thereafter.

Learned counsel relies on a Division Bench judgment of this Court delivered in **Smt. Chameli vs. The State of Haryana and others**, 1999(2) RSJ 688, a case of a work-charged Carpenter who fulfilled conditions of regularization as per instructions but died before he was regularized. The case was rejected by the Government on the ground that he could no longer be subjected to medical examination as required by the instructions on account of death. This defence was not accepted as a rational justification from denying the benefit of regularization of service because it was not proved that on the appointed date for regularization that the decedent employee suffered from any disability. Accordingly, directions were issued to regularize the services of the husband of the petitioner in accordance with the instructions and to determine the pensionary benefits arising therefrom etc.

The ratio of the Division Bench decision has a reasonable bearing on this case and no distinction can be made between daily-wager and work-charged employees in the matter of regularization, when both categories are nominated for the benefits of the policy. I would apply those principles to the instant case in moulding relief.

As a result, this petition is allowed and the impugned order dated July 11, 2013 (P-10) is set aside by issuing a writ of certiorari. Consequently, a mandamus is issued to the respondents to regularize the services of the petitioner ex post facto from the appointed date in the policy of regularization even though the benefits of actual regularization were ordered in 2011 qua the 409 successful employees who were colleagues of the husband of the petitioner and had worked with him shoulder to shoulder. This would accord parity of treatment and remove unfair discrimination since no other relevant factor has been taken into consideration which was not available to the petitioner on the appointed day and which was available to the 409 employees who benefited from the decision but the husband of the petitioner did not live to see though his right to equal treatment had matured before his death. Death was a fortuitous circumstance. The respondents will now fix the pay and pension of the late husband of the petitioner at par with his remaining colleagues in terms of this order and to handover the monetary benefits to the petitioning widow as accruing prior to the date of death of her husband and after considering her case for grant of family pension etc. She would also be entitled to all other pensionary benefits which are capable of being granted to the 409 persons to bring the late husband of the petitioner on equal footing with those in regular service. When 409 substantive vacancies existed against which the claims of those who were regularized have been satisfied then the vacancy position be recalculated to locate one post on the assumption that the petitioner had not died and this issue may be examined from the date when the 409 persons were regularized. In case, none is available then a supernumerary post be

created retroactively or one post be deducted from future recruitment in order to satisfy the just claims of the petitioning widow which would enable her to receive all monetary benefits arising therefrom.

(RAJIV NARAIN RAINA)
JUDGE

26.02.2015
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