IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26609 of 2013
Date of Decision: 20.02.2015

Harinder Singh

... Petitioner

Versus

The State of Punjab & ors.

... Respondents

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

Present: Mr. J.S. Maanipur, Advocate, for the petitioner.

Mr. Inder Pal Goyat, Addl.A.G., Punjab.

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

RAJIV NARAIN RAINA, J.(Oral)

The petitioner was appointed in 1987 as a work-charged employee. He retired in 2007 after rendering 20 years of service. In the beginning he was placed in a running pay scale and was given benefit of annual increments till he is retired on reaching the age of superannuation. However, Government failed to regularize his services before retirement on the specious plea that there was no sanctioned post against which his claim could be adjusted. They conveniently forgot that he worked for 20 long years.

Mr. Maanipur relies on a decision of this Court rendered in C.W.P No.4867 of 2000, **Kewal Singh Vs. State of Punjab**, decided on 5th September 2002, and particularly para. 7 of the judgment, which supports his case, which reads as under:-

> *"In the present case, the petitioner has admittedly served the department for more than 15 years. Apparently, there was nothing against him which may disentitle him to get pension. The mere failure of the Government to sanction a regular post should not result in deprivation of the pension at the end of service."*

If the petitioner retired in 2007, then he deserves to be given the advantage of the directions contained in para. 53 of the judgment of the Supreme Court in **Secretary, State of Karnataka & others Vs. Uma Devi & others**, 2006 (4) SCC I, for the reason that initial appointment of the petitioner cannot be said to be illegal but only irregular inasmuch as no confirmation order was passed nor an order of regularization passed. *Uma Devi's case(supra)* was pronounced on 10.4.2006 and the petitioner retired thereafter. Therefore, the philosophy in para. 7 of the judgment in *Kewal Singh's case(supra)* is in conformity with the retrospective relaxation granted in para. 53 of *Uma Devi,* which came to be delivered later on. In *Kewal Singh's case* a direction was issued that Kewal Singh's case for regularization prior to the date of retirement would be considered, and thereafter, his claim for pension shall be re-examined and whatever was found due, shall be paid to him. Two months' time was given to do the needful.

Mr. Maanipur would submit that Kewal Singh was granted pension as per the directions of the Division Bench and his grievance was redressed. The petitioner is similarly situated and must, therefore, be entitled to the benefit of both the judgments in *Kewal Singh's case(supra)* and in *Uma Devi's case(supra)*, which latter constitutional bench ruling requires 10 years service prior to 2006, which makes the petitioner fall within the zone of the benefit made available in *Uma Devi's case(supra)*.

When the Government continues to employ a person on work-charged basis for years together, a presumption arises that such engagement is against a post which is not limited by tenure and continues, and if it does till the vital event of superannuation, that too, brought out by an order of retirement and not by operation of mere flux of time, then it ought to be deemed to be a sanctioned post when the encumbent holder of post has served throughout in a pay scale and grade pay with annual grade increments accruing. If the end of the service is recognized as a legal parting of the relationship of employer and employee, the legal fiction flowing from continued employment for many years will go in favour of the petitioner and that he was working on a budgeted post otherwise the long continuance would be illegal and liable to such a declaration by court.

Consequently, this petition is allowed. The impugned order is set aside. Direction is issued to the respondents to fix the petitioner's pension in terms of the last pay drawn (LPC) even though last pay certificate has or has not been issued to him and to pay him pension. The stand of the State that the petitioner was not entitled to pension is not a correct one in law or in fact. The arrears be calculated and paid to the petitioner within two months from the date of receipt of a certified copy of this order, together with admissible pensionary benefits in accordance with law.

20.02.2015 **(RAJIV NARAIN RAINA)**
monika **JUDGE**