

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 3997 of 2002 (O&M)

Date of Decision: 31.08.2016

Subhash Kumari

.... Appellant

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Raman B. Garg, Advocate with
Ms. Gitanjali, Advocate for the appellant.

Mr. Keshav Gupta, AAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

CM No. 6360-C-2016

This is an application for early hearing moved by learned counsel for the appellant. Heard. CM is allowed in view of the reasons stated in the application as well as in affidavit.

With the consent of counsel for the parties, main matter is taken on Board today.

Main case.

The appellant has questioned the order of the trial Court dated 18.11.2000 and order of the Appellate Court dated 15.01.2002.

2. The appellant is stated to have been appointed as a JBT teacher on *ad hoc* basis on 13.11.1971. On 31.12.2001 as she completed 58 years so her services have been dispensed as if she has retired from service. In the meanwhile, the appellant's grievance relating to regularization for the post of JBT Teacher was not considered by the respondent-department. Consequently, appellant was compelled to approach the Court of law. On 01.10.1996, she filed a suit before the trial Court seeking for regularization of her services with consequential benefits. Her suit was dismissed on 18.11.2000.

3. Feeling aggrieved by the order of the Trial Court dated 18.11.2000, she preferred an appeal before the Appellate Court and her appeal was rejected on 15.01.2002. Thus, she has presented the present appeal.

4. During pendency of the present appeal, appellant Smt. Subhash Kumari died on 01.03.2011. Thus, legal representatives of the appellant have been brought on record.

5. Learned counsel for the appellant submitted that Smt. Subhash Kumari is entitled for regularization in the post of JBT Teacher having regard to the length of service rendered by her from 1971 to 2001 read with policy decision of the State Government dated 05.11.1999 (Annexure A-1). Both the Courts below have held that appellant is not entitled for regularization of her service for lack of prescribed educational qualification. It was submitted by learned counsel for the appellant that from the date of her appointment till dispensing her service i.e. from 13.11.1971 to

31.12.2001, there were no short-comings in discharging her duties of the JBT Teacher. Therefore, lack in qualification to hold the post of JBT Teacher may not be a hurdle. The State has extracted work from the deceased employee for the entire period as a JBT teacher. Therefore, she is entitled for regularization against one of the post of JBT Teacher.

6. As per the policy of the State of Haryana vide Annexure A-1, it is evident that even non-fulfilment of educational qualification are entitled for regularization. Therefore, the trial Court as well as appellate Court failed to appreciate the above facts and circumstances. Thus, the Courts below have erred in holding that deceased employee is not entitled for regularization.

7. Per contra, learned counsel for the respondent resisted the claim of the deceased employee regarding regularization in the post of JBT Teacher for the reasons that she did not fulfil the qualification prescribed for the post. Therefore, there is no infirmity whatsoever in the orders of the trial Court as well as appellate Court.

8. Perusal of the records, admittedly deceased employee was appointed as JBT teacher on 13.11.1971 and she had discharged the duties of the post till 31.12.2001, the date on which she has completed 58 years and the fact that State Government have extracted the work from the deceased employee for the post of JBT Teacher. Therefore, it is not appropriate to deny her regularization to the post of JBT Teacher. It is true that for the purpose of holding a particular post one must have fulfilled the qualification prescribed for the post. Having regard to the conduct of the respondents that

they have allowed the deceased employee to discharge the duties of the post of JBT teacher from 1971 to 2001 knowingly that she did not fulfil the qualification attached to the post of JBT Teacher. Appellant is entitled to regularization and consequential benefits.

9. In view of the decision of the Apex Court in the case reported in 2006(4)SCC1 titled as *Secretary, State of Karnataka and others versus Uma Devi and others*, the respondents are directed to consider the deceased employee's regularization from the date which it was due to her having regard to the policy decision of the State for regularization of *ad hoc* employees. Even assuming that lack of qualification for the post of JBT Teacher is coming in the way but still, work has been extracted for the period from 1971 to 2001. Therefore, the Government can exercise power of relaxation in respect of qualification as a special case if it is permissible under the Rules. If there is no provision of relaxation of qualification then the respondents are directed to regularise her services in a Group C post like a Clerk or equivalent post so as to give benefit of regularization and consequential benefits.

10. The respondents are directed to take the decision relating to the regularization of the deceased-appellant service within a period of 6 months from today. Decision taken by the State Government/Department be communicated to the Legal Representatives, who are on record. If there is a decision in favour of the deceased employee consequently, the State Government/Department are directed to calculate the monetary benefits as if the deceased employee's services have been regularized and to release all

monetary benefits including pay fixation, arrears of salary, pensionary benefits, pension and family pension shall be calculated and disbursed within one year. The legal heirs are entitle to interest on monetary benefits @ 6% per annum.

31.08.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No