

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18064-2010 (O&M)
Date of decision: 04.11.2016

Sheela Devi

.....Petitioner

versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.A.P.Bhandari, Advocate for the petitioner
Mr.Namit Kumar, Advocate for respondent nos.1 to 4
Mr.R.Kartikya, Advocate for the respondent no.5

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Balwan Singh late husband of the petitioner, was appointed as part time Mali at Charkhi Dadri in 1993 at DC rates for five hours daily in the erstwhile Haryana State Electricity Board, which was later on bifurcated into two entities i.e. DHBVNL and HVPNL. Late Balwan Singh came under the control of DHBVNL. It is claimed that Balwan Singh was a Mali and job of Clerk was also being taken from him and also full wages were paid to him though he was working as part time Mali for five hours. Balwan Singh worked from 14.1.1993 to 27.2.2010. He died on 27.2.2010. Last wages of Balwan Singh were approximately Rs.4250/- per month and the death occurred during the course of employment.

Sheela Devi wife of Balwan Singh has filed the present petition praying that her husband should be treated as full time worker and not part time worker and his services should be regularized. It is further

stated that provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 were applicable to the deceased. Petitioner has challenged the impugned order dated 26.7.2010 (Annexure P5), passed by the respondent No.4- Executive Engineer, Operation Division, DHBVN, Charkhi Dadri, vide which, her claim for gratuity, leave encashment, pension etc. and compassionate appointment has been declined. It is stated that Balwan Singh worked for 17 years and he is entitled to all these benefits.

Respondent Nos.1 to 5 in the reply, have admitted that the deceased Balwan Singh worked as part time Mali from 14.1.1993 to 27.2.2010 at DC rates. His services were extended from time to time after one day break and then extended for another 89 days with one day break after every 89 days. It was denied that he served as Clerk. He worked only for five hours in a day and used to leave his duty at about 2.00 p.m. He did not work full time. It is stated that part time workers are neither covered under the Pension Scheme 1995 nor other benefits are admissible. His services also cannot be regularized on the ground that he was part time worker. He is not entitled to pension, gratuity, ex-gratia, provident fund and other statutory benefits.

In the additional affidavit of Executive Engineer, Operation Division, DHBVN, Charkhi Dadri it is stated that no person junior to the husband of the petitioner was ever regularized. Letters Annexure P7 and P8 produced by the petitioner pertain to HVPNL, which is separate entity. It was stated that regularization policy has been withdrawn vide letter dated 4.6.2007. Balwan Singh expired on 27.2.2010 whereas the policy was withdrawn in June 2007.

I have heard learned counsel for the parties and have also

carefully gone through the file.

First of all, I will take up the case of the petitioner regarding regularization. Facts on record shows that the deceased was working as part time Mali for five hours a day though he served for 17 years with notional break, which are to be ignored. Now, a question would arise as to whether, a part time worker can be regularized? Admittedly, vide Annexure R4/3 dated 4.6.2007, the policy of regularization, issued in the year 1997, 1999, 2003 and 2004 was withdrawn during life time of Balwan Singh and therefore, he was not considered for regularization. Further the list produced by the petitioner as Annexure P7 pertains to HVPNL, which is a separate entity and cannot be applied to the case of the employees of DHBVN. The letter dated 31.10.2006 (Annexure P6) shows that the case of the petitioner was recommended for regularization on 24.11.2006 but apparently, in view of the withdrawal of the policy in June 2007, Balwan Singh was not regularized. Therefore, in the absence of policy, Balwan Singh could not be regularized. Moreover, in Secretary to Government, School Education Department, Chennai vs. Thiru R. Govindaswamy and others, 2014(2) S.C.T. 221, the Hon'ble Apex Court held that part time employee cannot be regularized.

Learned counsel for the petitioner has relied upon the authority of this Court in the case of Prem Singh vs. Harayna Vidyut Prasaran Nigam Limited, 2003 (2) RSJ 653, which pertains to the regularization of part time employees of Haryana Vidyut Prasaran Nigam Limited. However, as the said body has been divided into two entities, the rules of new entity are applicable in the present case. Similarly authority in the case of Sukhpal son of Shri Sunehra Singh vs. State of Haryana and others (CWP No.1381 of 2011) decided on 7.1.2013 pertains to a daily wage worker of State of

Haryana and not of part time worker. It being so, services of Balwan Singh, who was part time Mali, cannot be ordered to be regularized. Hence, relief in this regard is declined.

Now, I will deal the case of the petitioner regarding grant of gratuity, leave encashment, pension etc.

Learned counsel for the petitioner has claimed that the deceased is entitled to gratuity, compensation under the Workmen's Compensation Act and benefits of Employees Provident Fund and Miscellaneous Provisions Act, 1952 and that he is also entitled to pension under the said Act. He is also entitled to ESI. I am of the view that for gratuity, compensation to the workmen, EPF, pension and ESI different authorities have been prescribed under the Acts applicable in each case and the matter has to be decided by the authorities appointed under the said Acts and cannot be decided in writ jurisdiction. Therefore, for claiming said benefits, the petitioner shall be at liberty to approach the appropriate authorities under the relevant Act.

It being so, the present writ petition stands partly dismissed and partly disposed of.

04.11.2016

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No