

C.W.P No. 26696 of 2013

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 26696 of 2013

DATE OF DECISION: 29.08.2016

Krishna

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Manish Dadwal, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed for issuance of a writ in the nature of certiorari for quashing of condition No.12 incorporated in the letter of regularization dated 25.8.2004. A further prayer has also been made for issuance of directions to the respondents to count the entire service towards pensionary benefits as well as proficiency step up in view of decision of this Court in **Bimla Kumari Vs. State of Punjab and others** (C.W.P. No. 10936 of 2005 decided on 12.3.2013) as well as **Bimla Devi Vs. State of Punjab and others** (C.W.P. No. 20255 of 2011 decided on

Briefly, the facts of the case as made out in the petition are that the petitioner was initially appointed as Sweeper on 4.1.1990, which is a class-IV post. At the time of appointment, the petitioner was given fixed salary as sanctioned by Deputy Commissioner, Hoshiarpur. Thereafter the petitioner continued to work on daily wage basis and was paid salary as per DC rates. On completion of five years of service, she made a representation to respondent-authorities for grant of regular pay scale and to regularise her services but no action was taken thereupon. Thereafter, the petitioner along with one Bimla Devi filed C.W.P. No. 5435 of 1992 seeking the relief of equal pay for equal work and also to regularize her services. Aforesaid writ petition was admitted by the Division Bench of this Court on 2.9.1992 and interim order was passed in favour of the petitioner. It was also mentioned in the order that the petitioner would be paid salary on old rates i.e. minimum which were fixed earlier by Deputy Commissioner. Subsequently, the petitioner was relieved on 23.12.1996 and she filed C.M. Nos. 1414 of 1997 as well as 1406 of 1997. Said applications were allowed and orders were passed for taking the petitioner back in service forthwith. It was further observed that the petitioner will be entitled for financial benefit even for the period during which she remained out of job on account of order dated 23.12.1996 relieving her from duty. In view of the aforesaid orders, the petitioner was taken back into service and was continuously working.

Learned counsel for the petitioner contends that the petitioner has been working continuously but her services have not been regularized, whereas, the services of similarly situated person, namely, Prem Lata, who was appointed along with the petitioner and filed C.W.P. No. 2156 of 1992 was regularized in view of policy decision. Learned counsel further

contends that the petitioner was also eligible for regularization under the instructions dated 23.1.2001 but still she was not regularized. Learned counsel also submits that the petitioner was regularized vide order dated 25.8.2004 but a condition No.12 was inserted in the order in view of notification dated 12.1.2004 stating therein that the new contributory pension scheme would be applicable to the petitioner. This condition was inserted arbitrarily as the petitioner was to be governed under the Pension Rules and this notification was to be made applicable to the persons who were appointed after 12.1.2004. It is also the argument of learned counsel that the petitioner has completed more than 14 years of service and as such she was entitled for the benefit of proficiency step up on completion of eight years of service but no benefit was granted to her.

Learned State counsel opposes the submissions made by learned counsel for the petitioner and submits that the petitioner has concealed certain material facts from this Court as she was engaged for 89 days purely on temporary basis without following the due process of law. Learned counsel further contends that in pursuance of the notification issued by Central Government, the Government of Punjab had issued notification dated 2.12.2006, whereby, it was mentioned that the employees who were regularized after 1.1.2004 would be entitled for the new scheme i.e. New Defined Contributory Pension Scheme. Aforesaid notification has already been implemented by the Central Government and the same has not been challenged. Learned counsel also submits that similarly situated employees filed C.W.P. No. 19858 of 2012, which was disposed of on 30.10.2013 in terms of decision rendered in case **Harbans Lal Vs. State of Punjab and others** (C.W.P. No. 2371 of 2010 decided on 31.8.2010). The

claim of the petitioners in that case was considered by the competent authority by passing a well reasoned, speaking order and their claim was rejected in view of decision of Hon'ble the Apex court in SLP No. 15975 of 2013.

Heard the arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also gone through the documents available on the file.

The controversy in the case in hand has already been decided by this Court in **Harbans Lal's case (supra)**. The judgment passed in **Harbans Lal's case (supra)** was challenged before Hon'ble the Apex Court by way of filing SLP No. 23578 of 2012, which was dismissed and thereafter review filed by the State was also dismissed. The claim of the petitioner in the present petition is for quashing of condition No.12 in the order of regularization in view of judgment passed by Division Bench of this Court in **Harbans Lal's case (supra)**. The relevant portion of the aforesaid judgment is reproduced as under:-

“From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualified service for the purpose of pension. He will be deemed to be in govt. Service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 1.1.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing

clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services Prior to 1.1.2004.

In view of the above, the writ petition is allowed. Accordingly, respondents are directed to treat the whole period of work charge service as qualified service for pension because according to clarification issued on 30.5.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 1.1.2004 but have been regularized thereafter. Let his pension and arrears be calculated and paid to him expeditiously, preferably within a period of three months from the date of receipt of copy of this order.”

In view of the above, the petitioner being in service prior to 12.1.2004, would be entitled to the benefit given in **Harbans Lal's case (supra)** and as such condition No. 12 of order of regularization dated 25.8.2004 cannot sustain and the same is hereby quashed.

The respondents are directed to consider the case of the petitioner in view of judgment in **Harbans Lal's case (supra)**. The necessary exercise be done within a period of two months from the date of receipt of copy of this order. In case, the case of the petitioner is squarely covered by the decision in **Harbans Lal's case (supra)**, the necessary relief be granted to the petitioner. In case, the petitioner is still aggrieved in any

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manner by the action of the respondents, she is at liberty to avail the appropriate remedy.

The writ petition is disposed of with the aforesaid directions.

August 29, 2016 (DAYA CHAUDHARY)
pooja JUDGE

Whether speaking/reasoned Yes
Whether reportable Yes