

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

Date of decision: 22.04.2016

CWP No.3927 of 2014 (O&M)

Neeta Rani

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

Mr. Vaibhav Sharma, DAG, 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)

Heard at some length the arguments addressed by Mr. J.S.Maanipur appearing for the petitioner and Mr. Vaibhav Sharma, learned DAG, Punjab for the respondents.

The brief facts which make up this case are that the petitioner's husband served continuously as a Pump Operator from 01.10.1993 on daily wage basis in the respondent department. He had served for more than 18 years, when the Punjab Government issued policy letter dated 18.03.2011 (Annex P-2), declaring its policy on regularization. This policy was formulated in view of the directions issued by the Supreme Court in paragraph 53 of the judgment in Secretary, State of Karnataka & others Vs. Umadevi & others, (2006) 4 SCC 1, which permitted the State Governments to formulate policies on regularization as one-time measure available for those employees who had served for 10 years prior to 01.12.2006.

The case of the petitioner's husband was covered by the policy and his rights for permanency accrued on 18.03.2011 when the policy came into force. Unfortunately, he passed away on 28.03.2011 leaving behind his widow and family. The widowed – petitioner made a request to Government to grant her family pension and other monetary benefits, which would have accrued to her late husband had he been alive and regularized in service. The claim has neither been accepted nor rejected falling on deaf ears. In these circumstances she has approached this Court for directions to the respondents to treat her husband as a regular employee by the deeming fiction of the law and to grant her the financial benefits of such declaration.

Mr. Maanipur, learned counsel appearing for the petitioner is quite right in relying on the decision of the Division Bench of this Court in LPA No.1364 of 2012 titled 'The State of Punjab & others Vs. Baljit Kaur & others' decided on 05.02.2013 along with other connected appeals. The operative part of the order dated 05.02.2013 on which Mr. Maanipur places reliance which he has read out in Court is as follows:

“Insofar as LPA No.1364 of 2012 is concerned, we are not remitting this case back because of the peculiar facts of this case which clinch the matter in favour of the writ petitioner Smt.Baljit Kaur (respondent No.1 in the LPA No.1364 of 2012 (O&M). We find from the record that in this case, regularization order of the husband of Baljit Kaur was specifically issued vide No.188 dated 24.5. 2011 in pursuance of letter No.11/8/2009/-4PP3/397 dated 18.3.2011. Insofar as husband of Baljit Kaur is concerned, his turn had matured on 18.3.2011 for regularization and the case was processed and ultimately order came to be issued on 24.5.2011. However, the only reason for rejecting the case was that in the meantime, he died on 18.5.2011 and therefore, he could not be subjected to medical report and police verification. This cannot be a valid ground for rejecting the case. It is clearly covered by a judgment of this Court in the case of Smt. Chameli Vs. The State of Haryana and others 1999 (2) R.S.J

688. Therefore, insofar as this appeal is concerned, it stands rejected. Other appeals are allowed and the order of learned Single Judge is set aside. Since we have not gone into the merits of the controversy, it would be open to the learned Single Judge to go into the questions raised in the writ petitions and decide the admissibility of family pensions to these writ petitioners.”

In *Baljit Kaur's* case, the death of the Government servant/husband occurred on 18.05.2011, but by then the letter of regularization had been issued. If it is not disputed that the case of the deceased is covered by the terms of the policy then it would ripen on the date of the policy coming into force, the issuance of a formal order of regularization becomes merely a ministerial act and fortuitous circumstance.

From this fact situation, Mr. Vaibhav Sharma tries to carve out an exception by persuading the Court to hold that in the case relied upon is distinguishable on facts since the order of regularization had been issued, but it was not in this case and therefore no right accrued in favour of the petitioner since the rights, if any, of the husband were in a state of flux. Though the argument seems attractive in momentary view, but on due reflection this Court does not feel persuaded by the contention as it would unfairly deprive the petitioner of her accrued and vested right to pecuniary and non-pecuniary benefits arising on the death of her husband in the face of the policy.

The date of operation of the regularization policy is defined and fixed. The rights accrued on the date when the policy was put in operation for benefit of those employees who became eligible in terms of the recitals in the policy instructions. Issuing letters of regularization was a ministerial act whether issued or not they would relate back to the policy. It is inherent that some time would be taken in following office procedure and screening cases. By applying the principle of relation back, the Division Bench culled out the

relief in the judgment relied on, and I cannot find my way to distinguishing in principle the ruling. Merely because the petitioner died 10 days after the policy came into existence is no ground to deny him posthumously the status of a regular employee and bring the fruit of family pension etc. to his wife etc. I would, therefore, not accept the argument as one which can be considered to be operating principle of law to negate the case of the petitioner. That would be a travesty of justice if the argument is accepted. The date of death becomes immaterial in the facts and circumstances so long it occurred after the policy came into existence. It would be open to serious debate in a case where employee dies before the policy comes into existence, but is otherwise eligible. That issue is left open to consider in a case where the situation arises and no opinion is expressed thereon.

The other contention of Mr. Sharma is that in a similar matter where against the decision of the learned Single Judge in CWP No.1169 of 2011 titled 'Balwinder Kaur Vs. The State of Punjab & others' and other connected cases rendered on 16.12.2014, letters patent appeals have been carried before the Division Bench in LPA No.679 of 2015 titled 'The State of Punjab & others Vs. Balwinder Kaur' and LPA No.798 of 2015 titled 'The State of Punjab & others Vs. Gurmeet Kaur' by the State Government, which have been entertained and the operation of the impugned judgment has been stayed. For this reason, Mr. Sharma submits that pending final orders the result of the aforesaid two appeals be awaited by granting an adjournment sine die.

I would not follow this path in view of the clear Division Bench judgment in *Baljit Kaur's case*, which lays down the law and the ratio of which judgment binds learned Single Judge. Besides, it is pointed out by Mr. Maanipur that Special Leave Petition No.23878 of 2013 carried by the State of Punjab against the judgment of the Division Bench has been dismissed on 04.11.2015. This fact puts paid to the argument and the request.

For the above reasons, this petition is allowed. A writ of mandamus is issued to the State to consider treating the husband of the petitioner as a regular hand in terms of the policy instructions dated March 18, 2011 and to grant consequential pecuniary benefits including family pension to the petitioner being non-disputed widow of the deceased “government servant” which status the late husband would deem to acquire with effect from the date of policy and not from the date when office orders were passed in individual cases, provided the late employee fulfils all the other requirements outlined in the policy instructions.

The petitioner may apply for non-pecuniary benefits to the competent authority as may be available to her in law which, if submitted would be decided by passing a speaking order after notice and proper hearing. The exercise is directed to be carried out within six weeks from the date of receipt of certified copy of this order.

22.04.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE