

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.5933 of 2006

Date of Decision: 13.09.2017

Joga Singh

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Gurbachan Singh, Advocate,
for the petitioner.

Dr. Deepa Singh, Addl. AG Punjab.

Amol Rattan Singh, J.

By this petition, the petitioner seeks that his services as a Chowkidar in the respondent Irrigation Department of the Government of Punjab, be regularised w.e.f. 23.01.2001, in terms of the Government instructions of that date, a copy of which has been annexed as Annexure P-2 with the petition. He also seeks consequential benefits of such regularisation of service, including pension and the benefit of additional increments on completion of 8 and 18 years of service, alongwith the interest on the money arrears that would be payable to him on account of the above, with his pension and increments to be counted after giving him the benefit of the service rendered by him in the Army earlier.

It is to be stated at the outset that two petitions, i.e. the present CWP no.5933 of 2006, and CWP no.5852 of 2006, titled Rajinder Singh v. State of Punjab and another, were tagged together, the issue in both the cases being regularisation of the services of the petitioners, in terms of the aforesaid

instructions of the Government. The petitioners in both these petitions, who had been working in a work charged capacity, were not taken back in service, after they attained the age of superannuation, i.e. 60 years, though no orders of retirement/their having superannuated, were passed, their services not having been “regularised”.

2. Whereas the services of the petitioner in CWP no.5852 of 2006 were regularised during the pendency of these petitions, as recorded in the order passed in that petition on 17.02.2016, the services of the petitioner herein, Joga Singh, were not regularised, on the ground that his turn for regularisation, as per the seniority list of work charged employee prepared by the department, did not come up till the date that he reached the age of 60 years, i.e. the age at which he would have otherwise retired had he been a regular government employee.

3. The case of the petitioner is that he had earlier joined Military service during the first emergency, on 23.11.1963, from where he retired as a Havaldar/GD w.e.f. 01.01.1983, as stated in the certificate of service given by the Army, a copy of which has been annexed as Annexure P-1 with the petition.

Thereafter, he joined the respondent Department as a Chowkidar on work charged basis, on 01.01.1987.

He continued working on the said post without any break and as per the petitioner, he “ultimately superannuated from the post of Chowkidar” on 30.11.2005, upon attaining the age of 60 years, his date of birth being 30.11.1945.

It is however admitted in the petition that he was not issued any retirement order but “was superannuated on 30.11.2005”, on the basis of his

date of birth, as recorded in the Discharge Certificate issued by the Army.

4. It is further contended that the Government of Punjab issued instructions for regularisation of services of employees from time to time, the last instructions being those dated 23.01.2001, whereby the employees working on a work charged/daily wage basis, if they had completed three years of service on the date that the instructions were issued, were to be absorbed in regular service.

5. However, as the petitioners' case was alleged to have not been considered, he represented to the Department and eventually served a legal notice on 03.05.2005 (while he was still working in a work charged capacity), seeking that his services be regularised and further that he be given the benefit of additional increments on completion of 8 years of service and 18 years of service, with the service rendered by him in the Army during the emergency, to be counted towards increments and other benefits.

The respondents not having taken any action on the aforesaid legal notice, the petitioner earlier filed CWP no.9952 of 2005, which was disposed of by a Division Bench of this Court on 07.07.2005, with a direction to the respondents to decide his aforesaid legal notice within a period of three months.

Though the respondents are shown to have actually issued a speaking order on that very date itself, i.e. 07.07.2005, the contention of the petitioner first is that the said order was not in compliance of the direction of the Division Bench of this Court, a copy of which has been annexed as Annexure P-4 with the petition. He therefore filed COCP no.183 of 2006, in which notice was issued and at the time of filing of the present writ petition, the said petition was stated to be still pending.

6. Thereafter, it is stated that the order dated 07.07.2005 rejected the prayer of the petitioner for regularisation and other benefits, (even though earlier it is stated that the said order was not in compliance of the directions given by the Division Bench in CWP no.9952 of 2005).

7. COCP no.183 of 2006 is seen to have been disposed of on 16.11.2006, though not stated so in the petition. In fact, it was disposed of as having been rendered infructuous, on a statement to that effect having been made on behalf of the petitioner.

8. The petitioners' contention is that the reason given for not regularising his services, is that there was no sanctioned post available to which he could have been regularised, which is a plea not sustainable in terms of the ratio of the judgment of this Court in **Rajesh Kakkar and another v. State of Haryana and another** (CWP no.9397 of 2004, decided on 07.04.2005), a copy of the said judgment being annexed as Annexure P-6 with the petition.

Hence, it is contended that the petitioner having worked for almost 19 years from 01.01.1987 to 30.11.2005, in a work charged capacity, the rejection of his case for regularisation of service, on the ground that there was no sanctioned post available to which he can be appointed, is a wholly untenable ground, the very fact that he continued for so many years, being sufficient evidence of the need for a post to be sanctioned.

It has also been contended that the rejection of the petitioners' case is discriminatory, as the services of 112 work charged employees working in different capacities, were regularised in compliance of an order passed by this Court in CWP no.1287 of 2003, titled as Gurmeet Singh v. State of Punjab, a copy of the order passed by the respondents, on 22.11.2005,

having been annexed as Annexure P-7 with the petition.

9. In the written statement filed on behalf of the respondents, a preliminary objection has been taken that the petition itself is not maintainable in view of the judgment of the Supreme Court that had come about in the meanwhile, in **Secretary, State of Karnataka and others v. Uma Devi (2006) 4 SCC 1**, and as such, the petitioners' services cannot be regularised.

10. Other than the above, it has been stated that various Special Leave Petitions were pending at that stage in the Supreme Court, filed by the State of Punjab, against judgments and orders of this Court, directing regularisation of service of the petitioners in the writ petitions filed before this Court. It has also been stated that the judgments of this Court as have been challenged in the aforesaid special leave petitions, have been stayed by the Supreme Court, though a perusal of the orders of the Supreme Court, annexed with the written statement (the reply having been filed on 11.07.2006), shows that what had actually been stayed at that stage by their Lordships was contempt proceedings pending in this Court, wherein the action of the respondents in not complying with the directions given in the writ petition in question, was in issue. (Eventually, it is seen that the SLPs were disposed of by remitting the matter back to this Court. However, no judgment of this Court regularising the services of those petitioners has been shown to this Court, by counsel on either side).

11. During the course of hearing of this case on various dates, in response to directions issued, the Chief Engineer (Canals), Irrigation Works, Punjab, had filed affidavits stating that as regards the present petitioner, his name was at Sr.no.174 of the seniority list of Class IV employees drawn up on

27.06.2001, and on the date that he “retired from the services on 30.11.2005”, services of work charged Chowkidars upto Sr.no.83 of the seniority list framed, had been regularised.

The affidavit dated 21.09.2015 further stated that no official junior to the petitioner was regularised prior to 30.11.2005 and that in fact, the services of one Malkiat Singh, Chowkidar, who was at Sr. no.168 (6 serial numbers above the petitioner), were regularised in the year 2012, i.e. 7 years after the “date of retirement” of the petitioner. The said services were also stated to have been regularised in terms of the subsequent policy dated 15.12.2006.

Hence, it was contended in the said affidavit, that the petitioners' turn for regularisation not having come up on time, before he reached the age of superannuation, his services could not be regularised.

12. Upon the aforesaid affidavit having been considered, a query thereafter was put by this Court on 05.12.2015, as to whether, even *de hors* regularisation of his services, the petitioner would still be entitled to pension in terms of the Rule 3.17-A of the Punjab Civil Service Rules, Volume-II, in response to which another affidavit of the Chief Engineer was filed, dated 23.12.2015, stating to the effect that even as per the aforesaid rule, pension is payable to only such employees who, after having rendered service in a work charged establishment, were actually regularised in service, in which case the service rendered on work charged basis would be counted to the extent of half the said service, for the purpose of fixing the pension of the employee.

13. During the course of hearing of this case, this Court had also put a query to learned counsel for the respondents and the Chief Engineer, who had been summoned to Court, as to why, if the petitioner was not a “regular

civil servant”, had he been disengaged from service on 30.11.2005, i.e. the date on which he attained the age of 60 years and would have superannuated from service had he been a regular government employee. The said query was put in view of the fact that there was nothing shown at that stage to this Court that a work charged employee was also to be disengaged on attaining the age of 60 years, as is in the case of a government servant working on a Class IV post.

In response thereto, Model Standing Orders annexed in Schedule IB of the Industrial Employment (Standing Orders) Act, 1946, had been produced in Court, wherein it was provided that the “retirement age” would be 60 years. Though, on further query, it has been admitted by learned counsel for the respondents that there is no formal order adopting the aforesaid Model Standing Orders, in the Irrigation Department of the Government, yet, it was contended that as per practice, even work charged employees who attained the age of 60 years, were not re-engaged in service, that being the retiring age for a Class IV Government employee.

14. The question that therefore arises is, as to whether, simply because a “regular post” had not been sanctioned by the Government, to which the petitioner could be appointed right till the time that he was disengaged from service on 30.11.2005, after having served 18 years and 11 months continuously as a Chowkidar with the respondent Government, is he to be denied the benefit of pension, because just by chance, those higher up than him in the seniority list were absorbed in regular service but he was not so absorbed, because he attained the age of 60 years prior those who were regularised even after him?

15. Before that question is examined, it is necessary to look at the

relevant conditions stipulated in the instructions of the Government dated 23.01.2001, by which employes who had completed 3 years of service as on that date, in a work charged or daily wage capacity, were to be regularised, i.e. the instructions of the Government relied upon by the petitioner for absorbing him into regular Government service.

The said instructions, Annexure P-2, are being reproduced hereinafter, in toto:-

“ No.11/34/2000-4PPIII/1301
GOVERNMENT OF PUNJAB
DEPARTMENT OF PERSONNEL
(P.P.III BRANCH)
Dated, Chandigarh, the 23.1.2001

To

All the Heads of Deptts. in the State of Punjab,
Registrar, Punjab & Haryana High Court,
Chandigarh.

All the Commissioners and
Deputy Commissioners,

All the Corporations and
Boards in the State of Punjab.

Subject: Review of the policy of regularization of work-charged/daily wage and other categories of employees.

I am directed to refer to the subject noted above and to convey the following decisions of the State Government after a review of the policy on regularization of work-charged/daily wage and other categories of workers engaged by various departments of the State Government in connection with the ongoing project, works of perennial nature like maintenance works and other contingent works. The decisions shall also apply to Public Sector Undertakings, Corporations, Boards, Local

Authorities and other autonomous bodies in the State of Punjab.

- (i) No new posts are ordinarily to be created to absorb and regularize existing work charged/daily wage and other categories of workers. Wherever the full circumstances of the particular situation warrant that new posts may be created, the case should be thoroughly examined, Finance Department should be consulted and approval of the CMM should be obtained.
- (ii) Each department may prepare a list of work-charged, daily wage and other categories of workers who have completed 3 years service and those lists may be up-dated from time to time. The lists should be prepared strictly as per seniority.
- (iii) Out of the lists prepared thus, workers should be absorbed/regularized only against regular posts existing in each department. In the first instance work charged workers should be regularised in the order of seniority. Only when all eligible persons of this category have been accommodated cases of daily wage and other categories of workers who have completed 3 years of service in the department may be taken up. The basic idea is that workers belonging to a particular department should be considered for regularisation only against available regular vacancies in that department. The claim of work charged/daily wage/other categories of workers for regularisation will extend only against available vacancies in the department to which these workers belong.
- (iv) For accommodating work charges/daily wage/other category workers as per the above policy against the existing vacancies the existing instructions requiring permission of the DOP and FD for filling up the vacancies would not apply. Whenever for the absorption/regularization of workers as per the above policy any department's own recruitment Rules come in the way, such provisions, of the Recruitment Rules will stand relaxed.

2. Attention is also invited to Government letter No.4/64/98-4 PP3/5071 dated 4.5.1999 vide which a complete ban on recruitment of daily wage/work charged workers was imposed. Wherever any person was employed in violation of these instructions the department may take suitable action against the defaulting officer. It shall be the responsibility of the Head of each Deptt. to ensure that no worker employed in violation of the above instructions is allowed to continue.

3. Services of such workers whose services are no longer required, should be terminated by following due process of law project employees and those employees who were engaged for specific works should also be revealed at the earliest possible on the completion of the Project/work. The employees, who come within the definition of "*Workmen*" under the provisions of Industrial Disputes Act, 1947 shall be dealt with according to the provisions of the Act. They should first be offered appointment in the other Project/Work in the department on the same conditions. If this is not agreed their services should be dispensed with after carefully following the procedure laid down in the Act after granting the retrenchment benefits if admissible.

4. Action to regularize the services of work-charged/daily wage workers as a consequence of above policy may be completed within a period of 4 months.

5. These instructions may please be brought to the notice of all the offices and other bodies working under the Administrative control of your department.

6. These instructions issue with the concurrence of Department of Finance conveyed vide their I.D. No.5/27/98-FPI/SPI. Dated 22.1.2001.

Sd/-

Additional Secretary Personnel.

A copy is forwarded to all the Financial Commissioners, Principal Secretaries and Administrative Secretaries to

Government of Punjab, for information and necessary action.

Sd/-

Additional Secretary Personnel.”

16. Thus, it is seen that though only three years of service in a work charged capacity entitled an employee to be absorbed in regular service of the Government, as per the aforesaid instructions, ordinarily, no new posts were to be created to absorb and regularise existing work charged employees.

As per the instructions, a seniority list was to be drawn up, which in the present case was duly drawn up, as per the affidavit filed by the Chief Engineer of the respondent Department of the Government.

However, what is to be specifically noticed is what is contained in paragraph 3 of the instructions in which it is stated that services of such workers, as were no longer required, should be terminated by following due procedure of law, and that those who are engaged for specific works, are also to be released at the earliest possible, on the completion of the project.

Those who were falling within the definition of a “workman” in terms of the Industrial Disputes Act, 1947, were to be dealt with according to the provisions of the said Act. Specifically, it was stated that there would be an offer of an appointment in other projects/works in the department, and if they did not agree to work elsewhere, their services should be dispensed with after following the procedure laid down in the Act of 1947.

17. Hence, even though the petitioner is stated, in the last affidavit filed by the Chief Engineer, dated 07.09.2016, to have been entrusted with work charged duty relating to work of “surplus work charged staff”, however,

he never having been dis-engaged from service even in terms of clause 3 of the aforesaid instructions, obviously his work was required right till the time that he was dis-engaged after 30.11.2005 and that too, not because his services no longer required, but because he had reached the age of superannuation of a Government employee, which has been the specific stand of the respondents, as noticed in the earlier orders of this Court, passed in this petition.

18. Further, upon dis-engagement of the petitioner w.e.f. 30.11.2005, other than Rs.75,916/- paid to him on account of gratuity of service in a work charged capacity, nothing has been shown by the respondents to the effect that they actually complied with the provisions of the Industrial Disputes Act, in granting any terminal benefits to the petitioner to compensate for the 18 years and 11 months that he worked with them continuously, with no pension also thereafter having been granted to him in any form whatsoever.

It is to be noticed here that obviously the Government is presumed to be fully aware of the fact that work charged employees were to be paid gratuity, but even so, clause 3 of the said instructions, as has been reproduced hereinabove, stipulates that their services be dispensed with only after “carefully following the procedure laid down in the Act after granting the retrenchment benefits if admissible”.

19. Thus, having considered the entire circumstances hereinabove, it is first to be noticed that with the petitioner having continued in service virtually for 19 long years, obviously work was available for him and in such circumstances, a post should have, in fact, been created by the respondents, even in terms of sub-clause (i) of clause 1 of the instructions dated 23.01.2001, which states that no new posts are to be ordinarily created to

absorb and 'regularise' existing work charged/daily wage and other categories of workers, but wherever "the full circumstances of the particular situation warrant that new posts may be created, the case should be thoroughly examined, Finance Department should be consulted and approval of the CMM should be obtained", (CMM being the Council of Ministers).

20. Hence, very correctly the petitioners' case, alongwith all others like him, who had continued in service for almost two decades, should have been sent for consideration to the Finance Department as also the Council for Ministers, for approval of creation of posts for absorption in regular service of the Government, even in terms of the aforesaid instructions.

However, the petitioner being at Sr. no.174 of the seniority list framed in terms of Clause 1(ii) of the instructions, this Court would refrain from issuing a direction that he be absorbed in service by creating a post, he being only one amongst more than 100 such employees, with such employees also not regularised even for 7 years after the date when the petitioner was dis-engaged from service.

21. In view of the above, in the opinion of this Court, even the 'window' provided by the Constitution Bench in *Uma Devis'* case (supra) (reference paragraph 53, SCC citation), would not come to the rescue of the petitioner, as regularization within six months from the date of the judgment, for those employees who had been working for ten years, was to be made only if they had been appointed against duly sanctioned vacant posts. Thus, the ratio of the judgment of the Division Bench of this Court in *Rajesh Kakkars'* case (supra) would also be of no help to the petitioner, the ratio of that judgment having been effectively overruled by the ratio of the judgment of the Supreme Court. This would be so even though the petitioners' appointment

cannot be stated to be an illegal appointment, he having been appointed initially against specific works, in a work charged capacity.

If, of course, the respondent Government had obtained sanction from its Finance Department, as also the Council of Ministers, in terms of clause 1(i) of the instructions dated 23.01.2001, the matter would have been wholly different. That not having been done, this Court would not be able to direct, in view of the ratio contained in *Uma Devis'* case, that the petitioners' case for regularization be considered even though he had put in 19 years of service in a work charged capacity.

22. Consequently, other than Rs.75,916/- paid by way of gratuity, nothing else having been shown to have been paid to the petitioner, even in terms of the instructions directing that terminal benefits be paid as payable to a workman under the Industrial Disputes Act, it is considered appropriate that this petition be allowed to the extent that the petitioner, for the 18 years and 11 months that he served the respondent Department as a Chowkidar, from 01.01.1987 to 30.11.2005, be paid emoluments as would be payable to a workman upon being relieved from work, as per the relevant provisions of the Industrial Disputes Act, 1947.

23. The respondents would consequently examine as to what the petitioner is to be paid by way of compensation in terms of Section 25-F/Section 25-N of the aforesaid Act, and under any other provision contained therein.

The petitioner would also be entitled to interest on the principal amount to be paid, @ 6% per annum, from 01.11.2005 till the date such compensation is paid to him.

24. If, as per the respondents, there is any ground on which the petitioner is not covered by the terms of the directions contained in clause 3 of

the instructions dated 23.01.2001, specifically directing that compensation, in terms of the Act of 1947, be paid to those who are to be dis-engaged from service, they would be at liberty to file an application in this petition, giving therein cogent reasons as to why the petitioner is not so entitled to receive such compensation.

This liberty is being granted in view of the fact that no specific arguments were addressed on this issue but as the aforesaid directions are contained in the instructions issued by the Government itself, I see no reason why such compensation should not be paid to him.

25. The directions contained hereinabove, to calculate the aforesaid compensation and payment to the petitioner, be carried out within a period of four months from the date of receipt of a certified copy of this order.

26. In paragraphs 18 and 19 of the affidavit of the Chief Engineer, dated 23.12.2015, it is also stated that the petitioner had been a member of the “Employees Provident Fund schedule”, with his account no. being PN 145316 and with his regular subscription having been sent to the Regional Provident Fund Commissioner, Chandigarh, but the petitioner, at least till the date of that affidavit of the Chief Engineer, had not applied for “payment of EPF/pension covered therein”.

In the opinion of this Court, the petitioner being a Class IV employee, he should have, in fact, been provided necessary forms before he was being dis-engaged from work by the respondents, asking him to fill them in so as to enable him to draw EPF/pension as covered by the scheme, as is done in the case of the General Provident Fund, for a retiring “regular employee”.

That not having been done, the respondents are now directed to

get the aforesaid necessary forms signed from the petitioner, even by deputing a conversant official to his home if necessary, he (the petitioner) being a person now not on duty, and thereafter to ensure that his EPF/pension as is payable under the scheme, is paid to him also within the period of 4 months given hereinabove.

27. The petitioner shall also be entitled to costs of Rs.5000/- in this petition.

September 13, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No