

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

**Date of Decision : 17.05.2017**

**1. CWP No.24119 of 2015 (O&M)**

Smt. Prem Kumari

..... Petitioner

versus

State of Haryana and others

..... Respondents

**2. CWP No.25395 of 2015 (O&M)**

Bala Devi

..... Petitioner

versus

State of Haryana and others

..... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI**

**\*\*\***

Present : Mr. Yash Paal Malik, Advocate  
for the petitioner (s).

Mr. Harish Rathee, Sr. DAG, Haryana.

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**AJAY TEWARI, J.(ORAL)**

These are two writ petitions and both are decided by common order since the issues involved are same. For the sake of convenience the facts are being taken from CWP No.24119 of 2015.

By these petitions both the petitioners claim regularization.

The petition bearing ***CWP No.24119 of 2015*** has been filed by the

petitioner-Smt.Prem Kumari for quashing the office memo. Dated 07.03.2014 whereby the action to be taken on the claim of the petitioner has been declined arbitrarily and that of mandamus, directing the respondents to treat her a regular employee in view of the fact that not only she has been granted continuity in service w.e.f. the date of her initial appointment i.e. 15.01.1997 but has also been granted regular pay scale and all notional benefits, attached to the post.

The petition bearing ***CWP No.25395 of 2015*** has been filed by the petitioner-Bala Devi for directing the respondents to treat her a regular employee in view of the fact that not only she has been granted continuity in service w.e.f. the date of her initial appointment i.e. 15.01.1997 but has also been granted regular pay scale and all notional benefits, attached to the post.

The admitted facts are that the petitioners were appointed admittedly through Employment Exchange on contractual basis on 15.01.1997.

The services of the petitioner-Smt. Prem Kumari were terminated. She filed various representations and then approached this Court vide CWP No.13478 of 2003 which was disposed of by order (Annexure P-2) directing the respondents to consider her representation. Pursuant to that an order dated 27.11.2003 was passed (Annexure P-3) whereby she was again appointed on contractual basis and it was specifically mentioned that she would not demand any benefit of the break period. Thereafter the petitioner filed CWP No.904 of 2004 praying for a mandamus directing the respondents to grant her benefit of continuity of service though without back wages. That writ petition was disposed of by

judgment and order dated 20.01.2004 (Annexure P-4) with a direction to the respondents to consider the representation. The representation was considered and by order (Annexure P-5) the District Education Officer, Hisar granted the petitioner continuity of service from the date of her initial termination of her service till the date of her reinstatement. A copy of this order was forwarded to the Director, Secondary Education. By an order (Annexure P-6) dated 14.09.2009 her pay was re-fixed after giving her the notional benefit of continuity of service. It is not disputed that till date she is continuing and is getting all the other benefits. It is in these circumstances the present petition has been filed.

Learned counsel for the petitioner(s) has relied upon the case of one Rajesh Kumar, who had also been appointed on contractual basis like the petitioner through Employment Exchange and his services were terminated on the period of the initial contract. There again he was reinstated like the petitioner and subsequently was given the benefit of continuity of service like the petitioner. He thereafter filed ***CWP No.24279 of 2012*** claiming regularization by judgment and order dated 05.05.2015 (Annexure P-19). The respondents were directed to regularize his services. The respondents filed LPA No.741 of 2016. During this interregnum that person was given the benefit of regularization of services subject to the outcome of the appeal. That appeal was dismissed by judgment and order dated 26.07.2016 (Annexure P-26). As per learned counsel for the petitioner (s) once the appeal was rejected he continues to have the benefit of the regularization of service w.e.f. 01.10.2003.

The contention of the learned Senior DAG is that the order of granting continuity of service to the petitioner was passed by the District Education Officer who had no authority to do so. As per him even the subsequent order of fixation of pay after granting notional benefit of continuity of service was illegal. He, however, does not deny that till today neither those orders have been set aside nor has any notice ever been given to the petitioner about the same. In the circumstances, it is hard to resist the argument that the cases of the petitioner (s) and of Rajesh Kumar are not similar in nature. Once the respondents have regularized the services of Rajesh Kumar who was also initially appointed like the petitioner (s) on contract basis and whose services had also been terminated like those of the petitioner (s) and who had also been re-instated like the petitioner (s) and who had also subsequently been given continuity of service like the petitioner (s) then they can not now turn around and take a different plea as regards the petitioner (s).

Consequently, both the petitions are allowed in the same terms as *CWP No.24279 of 2012*.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

( AJAY TEWARI )  
JUDGE

17.05.2017  
*pooja sharma-I*

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No