

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11424-2015 (O&M)
Date of Decision:-05.12.2018.

Raghubir Singh

.....Petitioner

Versus

State of Haryana through Financial Commissioner-cum-Principal Secretary,
Department of Education, Haryana, Haryana Civil Secretariat, Chandigarh and
another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Balraj Gujjar, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. K.K. Gupta, Advocate for respondent No.2.

ARUN MONGA, J. (Oral)

1.) The petitioner joined the service of Haryana School Education Board/respondent No.2 on *ad hoc* basis as Clerk on 01.03.1984 but after having rendered a year of service, he was retrenched on 03.03.1985. The petitioner challenged the said retrenchment and vide an Award dated 05.04.1994 rendered by the Labour Court was granted full back wages and reinstatement in service with continuity. In compliance thereof, he was taken back in service on 15.01.1996 on the same post with the same status. Even though the Board had assailed the Award by way of a writ petition in this Court but only back wages therein were stayed and ultimately the said writ petition was dismissed and the back wages were also awarded to the petitioner. Petitioner having rendered more than 14 years of service after reinstatement started representing to the Board for regularization of his service.

2.) Both the learned counsels for the parties are *ad idem* that for the

purpose of regularization of the service of the petitioner as a Clerk, the qualifying condition is matriculation with second division as per the Board of School Education Haryana, Bhiwani (Employees Service) Regulations, 1990. It is pointed out that as per Regulation 31, Board is empowered to relax the said condition. The Regulation *ibid* provides that where the Board is of the opinion that it is necessary or expedient to do so, it may order so for the reasons to be recorded in writing and relax any of the provisions of the said Regulations with respect to any class or category of employees.

3.) Learned counsel for the petitioner contends that vide order dated 10.09.2009 Annexure P-3, the then Chairman of the Board after due consideration of the matter, recommended that in view of the fact that the petitioner had been working continuously in service of the Board for the last 21 years as a Clerk and there was no complaint against him and, therefore, it was a fit case for granting relaxation in the condition of being matric with second division. Accordingly, it was recommended that his case be placed before the Board of Directors for consideration and appropriate decision thereof. Pursuant to the recommendations of the Chairman of the Board, the agenda item qua regularization of the petitioner was put up before the Board in its meeting held on 17.11.2009 and after consideration thereof, the Board decided that the matter be referred to the Chief Secretary, Haryana for advice. The Director of School Education, Haryana conveyed to the Board vide letter dated 26.08.2010 that as per the instruction issued by the Chief Secretary to Government of Haryana, the Notification dated 01.10.2003 on which the petitioner was seeking regularization was not in existence any more and as such, the petitioner could not be considered for regularization of his *ad hoc* service. Assailing the said decision, the present writ petition was filed seeking a *mandamus* for grant of the benefit of regularization to the petitioner, having rendered 31 years of service with unblemished service record. Learned

up/representing the Board from time to time for his regularization. Notwithstanding, the said benefit has been declined as reflected from the order dated 26.08.2010. He yet again represented vide representation dated 01.07.2014 and the same was rejected vide Annexure R/2 dated 13.08.2014 followed by order dated 15.01.2015 Annexure R/3. Bereft of any other choice, the present writ petition.

4.) Learned counsel for respondent No.2 contends that the benefit of relaxation cannot be granted to the petitioner alone. States that it has to be granted to certain class of employees as mentioned in the relaxation clause. Contends that giving it to the petitioner alone would amount to hand-picking certain employees and will be hit with favoritism. The said argument of the learned counsel for the respondent No.2 lacks merit in view of the fact that this Court in a judgment titled as **Subhash Kumari Vs. State of Haryana and others** reported in **2017 (1) S.C.T. 380** in para 8 and 9 has observed as below:-

“8. *Perusal of the records, admittedly deceased employee was appointed as JBT teacher on 13.11.1971 and she had discharged the duties of the post till 13.12.2001, the date on which she has completed 58 years and the fact that State Government have extracted the work from the deceased employee for the post of JBT Teacher. Therefore, it is not appropriate to deny her regularization to the post of JBT Teacher. It is true that for the purpose of holding a particular post one must have fulfilled the qualification prescribed for the post. Having regard to the conduct of the respondents that 3 of 5 they have allowed the deceased employee to discharge the duties of the post of JBT teacher from 1971 to 2001 knowingly that she did not fulfil the qualification attached to the post of JBT Teacher. Appellant is entitled to regularization and consequential benefits.*

9. *In view of the decision of the Apex Court in the case reported in 2006(4)SCC1 titled as Secretary, State of Karnataka and others versus Uma Devi and others, the*

respondents are directed to consider the deceased employee's regularization from the date which it was due to her having regard to the policy decision of the State for regularization of ad hoc employees. Even assuming that lack of qualification for the post of JBT Teacher is coming in the way but still, work has been extracted for the period from 1971 to 2001. Therefore, the Government can exercise power of relaxation in respect of qualification as a special case if it is permissible under the Rules. If there is no provision of relaxation of qualification then the respondents are directed to regularise her services in a Group C post like a Clerk or equivalent post so as to give benefit of regularization and consequential benefits.”

Furthermore, the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Uma Devi and others** reported in **2006 (4) SCC 1** has held that employees who have rendered 10 years of continuous service are entitled to regularization of service as a one time measure subject to certain parameters as laid down in the said judgment.

5.) Having heard the rival contentions of both the learned counsels and in view of the fact that the case of the petitioner was recommended by the then Chairman, I am of the view that the petitioner having rendered 31 years of unblemished service cannot be denied the benefit of regularization. It is not in dispute that the Board has extracted the work from the employee on the same very post to which he has been throughout seeking regularization. It is too late now in view of the judgments *ibid* for the Board to contend that the petitioner does not fulfill the qualifications as he does not have matriculation with second division, though it is not in dispute that he is a matriculate. Even if the petitioner is a simple Matriculate, at this belated stage, he cannot be denied the benefit of regularization on the ground that he does not have a second division in Matriculation, it being settled law that once he has been working on the said post, in the present case for

qualification. Therefore, it is a fit case where the Board ought to have exercised its power of relaxation in respect of qualification as a special case as is reflected from Regulation 31 of their own Regulations, *ibid*. Admittedly, the petitioner is a matriculate and in view of the judgments cited above he is entitled to be considered for regularization. In view thereof, the respondents are directed to consider the case of the petitioner for regularization by relaxing the condition of matriculation with second division. However, the consequential benefits of regularization are restricted to 3 years prior to filing of the writ petition.

6.) Accordingly, the present writ petition is allowed in the above terms.

(ARUN MONGA)
JUDGE

December 05, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.