

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

**CWP-20510-2013 (O&M)
Date of decision : 29.10.2018**

Soma Wati

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sandeep Bansal, Advocate,
for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

Mr. Kunal Mulwani, Advocate,
for respondent Nos.3 and 4.

Mr. S.C. Patial, Advocate,
for respondent No.5.

JITENDRA CHAUHAN, J.

Prayer in the instant writ petition filed under Articles 226/227 of the Constitution of India is for quashing of order dated 12.08.2013 (Annexure P-3), passed by respondent No.2, whereby, tentative seniority list dated 15.05.2012, had been cancelled and order dated 20.08.2013 (Annexure P-4) passed by respondent No.2, whereby the final seniority list was notified.

It is the case of the petitioner that she was appointed as Clerk-Typist in the Department of Archives on Daily Wages w.e.f. 25.02.1985, however, her services were terminated w.e.f. 11.09.1986. Feeling

aggrieved, the petitioner approached by filing petition before the Labour Court at Chandigarh, which was allowed and the petitioner was ordered to be reinstated in service with continuity of service and other consequential benefits. It was also observed by learned Labour Court that as the petitioner had completed 240 days of service, her case be considered for regularization as per the prevalent policy. However, her services were regularized on 25.10.1994. The petitioner submitted representation dated 09.05.2007, requesting the authorities to grant her regularization w.e.f. 24.10.1985, i.e. on completion of 240 days of service. The request of the petitioner was acceded to and vide order dated 04.03.2011, the petitioner was granted seniority w.e.f. 24.10.1985. However, sanction dated 19.08.2011 was granted for reviewing orders dated 04.03.2011 but it was clarified by the authorities vide order dated 04.01.2012 (Annexure P-1) that there was no ground to review order dated 04.03.2011.

Thereafter, objection were filed against the Tentative Seniority List by some other employees and thus, the Government, vide letter dated 08.04.2013, again ordered to review the matter. After affording opportunity of hearing to the aggrieved persons as also to the petitioner, respondent No.2, vide order dated 12.08.2013 (Annexure P-3), ordered that the services of the petitioner shall be deemed to have been regularized w.e.f. 25.10.1994 instead of 24.10.1985. Still further, vide letter dated 20.08.2013 (Annexure P-4), passed by respondent No.2, a fresh seniority list was issued, without any reference of the previous seniority list as on 17.01.1991.

It is contended that the impugned action of the respondent-authorities is against the dictum of law laid down by Hon'ble the Supreme

Court in *State of Haryana Vs. Piara Singh*, Civil Appeal No.2979 of 1992, decided on 12.08.1992. The petitioner had already completed 240 days of service in the year 1986 and her case was recommended for regularisation of services by the Department as per the policy applicable at the relevant time. On one occasion, the authorities had rightly granted seniority to the petitioner w.e.f. 24.10.1985, which has now been cancelled. The impugned action of the authorities has placed some employees junior to the petitioner above her in the seniority list.

On the other hand, learned State counsel submits that though the petitioner was granted seniority w.e.f. 24.10.1985 vide order dated 04.03.2011 (Annexure P-1), however, objections were filed by other employees against the said action. After considering the objections filed by the other employees, the government issued letter dated 08.04.2013 to review the said orders. After considering the rival versions, respondent No.2 vide order dated 12.08.2013 (Annexure P-3), set aside the tentative seniority list and it was ordered that the services of the petitioner shall be regularised w.e.f. 25.10.1994. Thereafter, final seniority list was issued vide order dated 20.08.2013 (Annexure P-4), wherein, the petitioner is placed at serial No.6.

Learned counsel for respondent No.3 and 4 has vehemently argued that in pursuance of the judgment passed in Piara Singh's case (supra), the government prepared policy vide letter dated 07.05.1993. As per the said policy, service of those employees would be regularized who had completed 10 years of service as on 31.08.1992. Though, the petitioner has not completed 10 years of service on 31.08.1992, but the authorities

took a lenient view and gave her relaxation. Thus, her services were rightly regularised w.e.f. 25.10.1994 and seniority was fixed accordingly.

Heard.

Admittedly, the petitioner was employed in the respondent-department w.e.f. 25.02.1985, on daily wages. In pursuance of the directions issued in Piara Singh's case (supra), the government prepared a policy vide letter dated 07.05.1993 and as per the said policy, services of those employee who had completed 10 years of service as on 31.08.1992 would be regularised. The petitioner, though, had not completed 10 years of service as on 31.08.1992 (her initial appointment on daily-wage basis being on 25.02.1985), but was given relaxation by taking a lenient view and her services were regularised w.e.f. 25.10.1994. It is settled law that regular service is to be counted from the date of joining in a particular cadre. The petitioner joined the services in the year 1985 as an ad hoc employee and her selection was not through any employment exchange or against public notice issued by the department. To the contrary, the private respondents had been directly appointed through a regular selection process.

In ***Bhakra Beas Management Board and others Vs. Hari Chand (P&H)(DB), 2012(2) SLR 404***, it has been laid down as under:-

“4. We have heard learned counsel for the parties at length and perused the paper books of these appeals/petitions with their able assistance. The only question which is involved in these appeals/petitions is whether daily wager employee would be entitled to reckon their service as qualifying service for the

purposes of pension if it is followed by regularisation.

5. *It is undisputed that the controversy in hand has already travelled up to Hon'ble the Supreme Court and the same was remanded back vide order dated 10.12.2009. Pursuant thereto various appeals/petitions including LPA No.189 of 2004 (State of Punjab and others Vs. Mukhtiar Singh decided on 19.4.2011) came to be listed before the Letters Patent Bench of this Court (of which one of us M.M. Kumar, J. was also a member). After noticing the provisions of Rule 3.17-A; substantive difference between a 'work-charged' employee and a 'daily rated' employee; Full Bench judgment of this Court rendered in the case of Kesar Chand (supra) and various other judgments of Hon'ble the Supreme Court the Letters Patent Bench concluded that for the purposes of seniority, promotion or some other benefits the service rendered on work-charge basis, ad hoc basis or daily rate basis may not be countable but the same could be counted as qualifying service for the purpose of pensionary benefits."*

(emphasis supplied)

In view of the above it is patently clearly that the services of the petitioner have rightly been regularized w.e.f. 25.10.1994, and further, her seniority has been fixed after ignoring the period of service spent by her on

ad hoc basis. Thus, no fault can be found in the impugned orders, Annexures P-3 and P-4, which are hereby affirmed.

Dismissed.

29.10.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No