

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

CWP No.627 of 2014

Date of Decision:-04.09.2018

Raj Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Ms. Geeta Sharma, Advocate
for the petitioner.

Ms. Harsimrat Rai, DAG Punjab.

JITENDRA CHAUHAN J.(Oral)

The petitioner seeks quashing the impugned order dated 22.10.2013 (Annexure P-11) passed by respondent No.4 vide which his claim for regularisation of service had been rejected. Further prayer is for direction to the respondents to regularise the work charge service w.e.f. 23.2.2001 his juniors as mentioned in seniority list (Annexure P-14) from serial Nos.150 to 176 had been regularised in the respondent Department. Petitioner has also prayed for direction to the respondents to sanction the proficiency step up after completion of 8/18 years of work charge service due on 12.5.1995 and 12.5.2005 respectively and refix his pay accordingly.

Brief facts of the case are that the petitioner was appointed as Driver on work charge basis in Punjab Irrigation Department in Construction Division, SYL Canal Project, Patiala and joined service on 12.5.1987. Thereafter the petitioner remained posted in various Divisions of Punjab Irrigation Department and on closing down of SYL Project, the petitioner was transferred to the office of XEN, Intensive Investigation Division, Hoshiarpur and joined there on 1.9.2010 (FN) and retired from Government service w.e.f. 31.12.2011 (AN) after attaining age of superannuation. The Punjab Government vide notification dated 23.1.2001 (Annexure P-1) had reviewed policy of regularization of work charge/daily wager and other categories of workers in various departments of the State Government and the petitioner fulfilled all the conditions viz. Matric pass, possessing Driving License etc. and completed 13 years and 08 months service as against 10 years service is required for regularization. The petitioner made a representation (Annexure P-2) to the respondent Department claiming regularization of service on 05.2.2001. Thereafter, Punjab Government vide notification dated 15.12.2006 (Annexure P-3) again directed all the Departments to regularise the services of work-charge employees and on this date, the petitioner had completed 19 years and 07 months service. The petitioner fulfilled all the qualifications/conditions for regularization of services. This time the claim of the petitioner was again ignored by the respondent Department though his name exists at Sr. No.149 along with his date of appointment as Driver i.e. 12.5.1987, in the seniority list of Drivers. The services of the following junior Drivers to the petitioner

were regularized by ignoring the claim of the petitioner :-

Sr. No.	Name of the Driver	Seniority Number	Date of appointment as work charge Driver
1	Sh. Prem Singh	151	21/06/1987
2	Sh. Ravinder Singh	166	06/07/83
3	Sh.Rajesh Kumar	--	01/12/98
4	Sh. Hardeep Singh	--	10/09/09
5	Sh. Raghbir Singh	--	10/09/09

Learned counsel for the petitioner has referred to (i) **CWP No.2371 of 2010**, titled '**Harbans Lal vs. State of Punjab and others**, decided on 31.8.2010, (ii) **CWP No.1169 of 2011**, titled '**Balwinder Kaur vs. State of Punjab and others**, decided on 16.12.2014 (Annexure P-18), **CWP No.2802 of 2003**, titled '**Smt. Sukhminder Kaur and others vs. State of Punjab and others**', decided on 08.2.2013 (Annexure P-17), **LPA No.1122 of 2013**, titled '**State of Punjab vs. Smt. Sukhminder Kaur and others**, decided on 02.7.2013 and **SLP No.23578 of 2012** and **Review Petition(C) No.2038 of 2013**, titled **State of Punjab and others vs. Harbans Lal and others** decided on 04.11.2015, to contend that the similar relief as prayed in the present petition has been granted in these cases.

Further contention is that one of the work charge drivers Sohan Singh appointed in Punjab Irrigation Department on 27.4.1984, retired on 31.3.2009 (A.N.) on attaining the age of superannuation after rendering 25 years service. He filed CWP No.4860 of 2009 for regularization of his services as per policy dated 15.12.2006. This Court allowed the said petition vide judgment dated 25.5.2010 (Annexure P-13) and directed that the services of Sohan Singh Driver be regularized w.e.f. 10.4.2006 as per

policy dated 15.12.2006 (Annexure P-3) and further ordered that he may be granted retiral benefits alongwith consequentialbenefits including pension etc. along with interest @7% per annum from the date of retirement till the actual payment is made. The case of the petitioner is similar in nature.

It is further submitted that no proficiency step up after completion of 8/18 years services was given to the petitioner which was due on 12.5.1995 and 12.5.2005 respectively. The proficiency step up is admissible to the work charge employees as per award passed by Labour Court in favour of employees union on 10.8.2005 (Annexure P-9) in case titled '**Sh. Natha Singh President Thein Dam Workers Union vs. Principal Secretary, Irrigation Department, Punjab Chandigarh**'. As the work charge employees working on Thein Dam are Punjab Government employees and the proficiency step up has been given to all work charge employees as per award dated 10.08.2005 and as per instructions issued by the Chief Engineer/R.S.D. Irrigation Works, Punjab, Chandigarh letter No.1492-1522/G-140 dated 27.4.2012. The petitioner is entitled for counting of workcharge service pension and all other pensionary benefits in pursuance of notification No.1013 dated 06.2.1991 and consequently pay of the petitioner is liable to be re-fixed after grant of 8/18 years proficiency step up and after revision of pay scale w.e.f. 01.01.1996 and 01.01.2006.

It is next contended that during pendency of the writ petition, the petitioner had to undergo eye surgery on 18.8.2017 in Global Eye Hospital, Patiala (Annexures P-19 (colly) to P-23) and vide CM No.12017 of 2018 the petitioner has claimed reimbursement of medical expenses

incurred by him for the treatment of his eye. The petitioner is also entitled for reimbursement of his medical bills after regularization of his work charge service.

On the other hand, learned State counsel contends that the services of the work charge employees were regularized w.e.f. 30.4.2012 by the Chief Engineer/IB, Punjab, Chandigarh vide letter No.4913/5/NGE-II/2012 dated 12.4.2012, but the petitioner had already retired from services on 31.12.2011. She further contends that no person junior to the petitioner was regularized as per order of the Chief Secretary, Irrigation, Punjab vide letter No.15/53/2005-4/PP-3/18271 dated 15.12.2006 and No.1633/5NG-2/2009 dated 16.2.2009 and No.2270/5/NG-II/2009 dated 27.2.2009 (Annexures R-2 to R-4 respectively). She submits that as per circular No.7/80/99-5PPI/9395 dated 21.6.2001 (Annexure R-6) and instructions dated 01.12.1998, 12.4.1991, 25.9.1998 and 17.4.2000 (Annexure R-7) no proficiency step up may be given to work charge employee.

I have heard learned counsel for the parties and gone through the case file carefully.

It is an admitted position that the petitioner has served the respondent-Department for a period of 24 years, 07 months and 20 days uninterruptedly and vide letter No.4913/5/NGE-II/2012 dated 12.4.2012 services of the work charge employees were regularized w.e.f. 30.4.2012 and this Court in CWP No.4860 of 2009, decided on 25.5.2010 (Annexure P-13), has ordered to regularize the services of work charge employee w.e.f. 10.4.2006 as per policy dated 15.12.2006 and further ordered that the

petitioner may be granted retiral benefits along with consequential benefits including pension etc. along with interest @ 7% per annum from the date of retirement till the actual payment is made.

In Narender Kumar Tiwari and others vs. State of Jharkhand in Civil Appeal Nos.7423-7429 of 2018, decided on 01.08.2018, Hon'ble Apex Court observed as under :-

“10. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

11. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.

12. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants.

13. The appeals are accordingly disposed of.

14. We may add that that it would be worthwhile for

the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.”

In Saroj Kumari vs. State of Punjab 1998(3) S.C.T. 664 Full

Bench of this Court observed as under :-

“9. After hearing learned Counsel for the parties on this point we are of the view that in case where a person invokes the jurisdiction of this Court under Article 226 of the Constitution of India for fixation of his pay under relevant rules/instructions or even on the basis of a judgment of a competent Court, the question of delay and laches would not come in as it would be a case of a continuing wrong and every month the person is paid the salary which according to him is not in accordance with the relevant rules and instructions a fresh cause of action would arise every month. Such a case is not a case of one time action like the case of termination or dismissal from service. As observed by the Apex Court in M. R. Gupta's case (supra) that the Court while granting relief regarding the payment of arrears may apply law of limitation. Since a Civil Suit would be maintainable for realizing arrears of three years and two months, the writ Court would be justified in restricting the payment of arrears to three years and two months prior to the filing of the writ petition.

10. We do not agree with the submission of the learned Advocate General, Punjab, that the writ Court should decline the relief to a person who is claiming correct fixation of his pay in accordance with the relevant rules and instructions merely because he has

been negligent in approaching the Court. If such a person can file a civil suit for the correct fixation of his pay where he can further claim arrears up to a period of three years and two months prior to the Filing of the civil suit, there is no reason why such relief should be denied by a writ Court. Apart from the above, it may be noticed that in such cases as the present one where only fixation of pay is sought and arrears are claimed, rights of third party do not intervene during the period the person may not have approached the Court. The correct fixation of pay and the payment of arrears do not affect third party's right. This was also so observed by the Division Bench in Rattan Singh's case which has been quoted above, on the basis of which the argument was raised by the learned Advocate General Punjab.

11. For the foregoing reasons we are of the view that in cases where only fixation of pay according the relevant rules/instructions or a judgment is prayed for, the writ petition cannot be dismissed at the threshold on the ground of delay and laches but the payment of arrears can be restricted to a reasonable period. Three years and two months would be considered a reasonable period as that is the period for which a person can ask for the payment of arrears before a Civil Court.”

From the material available on record, it stands established on record that the petitioner has worked continuously as work charge driver for more than two decades and thus, shall be deemed to be on the roll of the establishment of respondents for all intents and purposes

In view of the aforesaid position, the present petition is allowed the order dated 22.10.2013 (Annexure P-11) is quashed and the respondent-

Department is directed to regularize the services of the petitioner w.e.f. 23.2.2001 with all consequential benefits.

September 04, 2018
Vijay Asija

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No