

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

LPA-890-2019 (O&M)

Date of decision:- 10.02.2020

Soma Wati

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present:- Mr. Sandeep Bansal, Advocate,
for the appellant.

Ms. Lavanya Paul, Assistant Advocate General, Punjab.

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RAVI SHANKER JHA, C.J. (ORAL)

CM-493-LPA-2020

Leave is granted to place on record the reply filed by the appellant to the affidavit of the respondent - State of Punjab dated 16.09.2019 and the application is allowed.

LPA-890-2019

With the consent of learned counsel for the parties, the appeal is heard and decided finally.

This appeal has been filed against an order dated 29.10.2018 passed by the learned Single Judge dismissing the writ petition being CWP-20510-2013 filed by the petitioner (appellant herein) praying for quashing the order dated 12.08.2013 cancelling the tentative seniority list dated 15.05.2012 and the order dated 20.08.2013 notifying the final seniority list.

Learned counsel appearing for the appellant submits that the appellant was initially appointed as Clerk-Typist on daily wages in the establishment of the respondent - State of

Punjab on 25.02.1985. It is stated that subsequently on 11.09.1986, the services of appellant were terminated, whereupon she approached the Labour Court, which by award dated 26.04.1990 directed re-instatement of the appellant with 80% back-wages and other consequential benefits. The respondent - State of Punjab filed a petition being CWP-1250-1991 assailing the award of the Labour Court and pursuant to an order dated 27.05.1992 passed by this Court, a fresh award had been passed by the Labour Court on 19.03.1993 reiterating its initial award with a modification that the back-wages were reduced to 70%.

The appellant was ultimately regularized on 25.10.1994. On a representation being submitted by the appellant, the respondents passed an order dated 04.03.2011 granting regularization in service to the appellant with retrospective effect from 24.10.1985. It is stated that certain other persons had filed a writ petition being CWP-13533-2012 before this Court for review of the seniority list, wherein this Court vide order dated 20.07.2012 directed the authorities to review the aforesaid seniority list as well as the order of regularization. It is informed that certain other persons had also filed complaints/objections against the regularization of the appellant w.e.f. 24.10.1985. It is submitted that thereafter the authorities by the impugned order dated 12.08.2013 cancelled the tentative seniority list granting regularization and seniority to the appellant from 24.10.1985 and thereafter issued the impugned final seniority list dated 20.08.2013 granting regularization to the appellant w.e.f. 25.10.1994. The appellant being aggrieved filed the writ petition before this Court, wherein the impugned order dated 29.10.2018 has been passed.

Learned counsel for the appellant submits that the

appellant was directed to be reinstated by the Labour Court by

its award dated 19.03.1993 and in such circumstances the respondent - State of Punjab ought to have taken into consideration the fact that the appellant was deemed to be in service continuously from 25.02.1985 without any break in service. It is further submitted that the appellant was granted benefit of regularization taking into consideration the provisions of the old policy dated 28.03.1985, whereas the authorities by the impugned order have now applied the policy dated 07.05.1993 which has no applicability to the present case as the appellant was deemed to be in service pursuant to the award of the Labour Court from 25.02.1985 itself. It is further submitted that several other persons named by the appellant in the writ petition have been granted the benefit of regularization from the dates prior to that of the appellant, even though they were engaged subsequent to the appellant. It is submitted that in such circumstances the authorities were bound to adopt the same yardstick with the appellant and confer the benefit of regularization to the appellant w.e.f. 24.10.1985 i.e. the date on which the appellant had completed 240 days in service.

In view of the averments set out in the grounds of appeal as also the arguments raised by learned counsel for the appellant before this Court, this Court by an order dated 11.07.2019 had directed the State of Punjab to file an affidavit clarifying the aforesaid aspects pursuant to which the respondent-State of Punjab has filed an affidavit dated 16.09.2019 clarifying the fact that the appellant was ordered to be reinstated in 1993 by the Labour Court and was in fact reinstated thereafter; that as the appellant was reinstated after 1993, therefore, her case was considered as per the prevailing policy of regularization dated 07.05.1993 and was granted regularization w.e.f. 25.10.1994; that the case of several other persons with whom the appellant has claimed

parity, namely, Smt. Parminder Kaur, Shri Rajender Singh and Shri Rajender Prasad is distinct and different from that of the appellant as they had been engaged against the vacant sanctioned posts and that the authorities on complaints/objections as well as the directions issued by this Court in CWP-13533-2012 regarding re-examining the seniority list had re-examined the matter and granted regularization to the appellant w.e.f. 25.10.1994 which was in accordance with law.

We have heard learned counsel for the appellant as well as the respondent - State of Punjab at length. We have also considered the reply to the affidavit filed by the appellant vide CM-493-LPA-2020, wherein the appellant has refuted and rebutted the averments made by the respondent-State of Punjab in its affidavit dated 16.09.2019 regarding difference between the case of the appellant and others.

Having heard learned counsel for the parties and perused the record, it is evident that the appellant was engaged on daily wages w.e.f. 25.02.1985 and thereafter her services were terminated w.e.f. 11.09.1986. Thereafter, the appellant was directed to be re-instated by the Labour Court vide its award dated 19.03.1993, whereupon the appellant was re-instated.

As far as the issue of regularization is concerned, in view of the law laid down by a Full Bench of the Supreme Court in the case of **Secretary, State of Karnataka and others Vs Uma Devi and others (2006) 4 SCC 1**, as the appellant was admittedly not engaged against a vacant sanctioned post and as no procedure etc. for selection was followed by the authorities while engaging the appellant on daily wages, meaning thereby that the appellant was a backdoor entry, the claim for regularization of the appellant could not have been considered,

held that regularization as a mode of appointment is not recognized in law and the same cannot be resorted to by issuing policies/administrative orders under Article 162 of the Constitution of India.

Quite apart from the above, in view of the law laid down by the Supreme Court in the case of **Official Liquidator Vs Dayanand and others (2008) 10 SCC 1**, the concept of parity or violation of Article 14 of the Constitution of India on the basis of the fact that the same set of persons have been regularized also cannot be claimed by the appellant.

In view of the aforesaid admitted and undisputed facts, as the engagement of the appellant on daily wages to the post of Clerk-Typist itself was illegal inspite of which the authorities by relaxing the requirement of 10 years' continuous service contained in the policy dated 07.05.1993 have regularized the same and granted the benefit of regularization to the appellant w.e.f. 25.10.1994, we do not find any illegality or perversity either in the orders dated 12.08.2013 and 20.08.2013 passed by the respondent - State of Punjab or in the order of the learned Single Judge dated 29.10.2018 dismissing the writ petition.

The appeal filed by the appellant being meritless is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

10.02.2020
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No