

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

**C.W.P No. 18323 of 2013
Date of decision : 27.01.2020**

Shimla Devi

....Petitioner

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. J.S. Maanipur, Advocate
for the petitioner.

Mr. Randhir Singh, Advocate
for State of Haryana

RITU BAHRI, J.

In the present petition, petitioner is seeking issuance of a writ in the nature of certiorari for quashing the impugned order dated 25.07.2013 (P-8) passed by respondent No. 3 rejecting the claim of the petitioner for family pension after regularizing the services of the husband of the petitioner in terms of prevalent instructions dated 28.07.1994 (P-4) issued by the then Transport Commissioner (now Director General, State Transport), Haryana.

Brief facts of the case are that the husband of the petitioner (late Ashwani Kumar) joined on the post of Driver on contract basis in the respondent-department. He was allotted Driver No. 19-Spl in Haryana Roadways, Chandigarh on 14.09.1998 through proper procedure on a consolidated salary of Rs.2076/-, as per certificate dated 17.05.2001 issued by Accounts Officer, Haryana Roadways, Chandigarh (P-1). The husband of the petitioner was appointed against a sanctioned vacant post of driver. The husband of the petitioner was also medically examined before joining the duty by the Principal Medical Officer, General Hospital, Yamuna Nagar vide

letter dated 07.09.1998 (P-2). Unfortunately the husband of the petitioner died in road accident on 20.01.2001 leaving behind petitioner. A legal notice dated 06.08.2012 has been given by the petitioner to the respondents for grant of family pension by treating the husband of the petitioner to be a regular employee with all consequential benefits along with interest @ 9% per annum. But no action was taken on the legal notice of the petitioner and she filed CWP No. 24656-2012 which was disposed of on 12.12.2012 (P-7) with a direction to the respondents to consider the legal notice dated 06.08.2012 and grant her benefit within a period of two months. But the claim of the petitioner was rejected on 25.07.2013 (P-8) on the ground that the husband of the petitioner has not completed four years of service.

Learned counsel for the petitioner has pointed to the instructions of Haryana Government dated 28.07.1994 (Annexure P-4), to submit that Drivers and Conductors in the Department of Transport, Government of Haryana, who completed two years service on contractual basis, were to be regularized “against vacancy”.

He then points to the communication Annexure P-2, endorsed on 07.01.1998 (erroneously typed as as 07.0.1998), to submit that on the appointment of the petitioners' husband as a Driver on contractual basis (though in fact the aforesaid communication does not even say that it was on contractual basis), he was ordered to be medically examined on first entry into the Government service, and as such, the recruitment was by proper process.

Learned counsel for the petitioner is further relying upon order dated 13.10.2011 (P-10) whereby services of Shri Narender Singh, Driver was regularized along with other drivers and conductors on completion of

two years of service, as he was appointed on 03.07.1996 and regularized on 02.07.1998.

Learned counsel for the petitioner submits that the Old Rules are applicable in the case of the husband of the petitioner wherein the requirement was of two years of satisfactory service. The husband of petitioner died on 20.01.2001 and his case was covered under the Old Rules,. The Rules of 2003 were not in existence and the instructions dated 28.07.1994 were in force at that time. Reference has been made to notification dated 04.08.2003 (P-9) wherein also two years of regular service was required for regularization of service of Drivers.

Reference has then been made to the judgment of ***Chameli Devi vs. HPGCL and another, passed in CWP No. 11530-2003, decided on 21.03.2012 (P-11)*** wherein the petitioner challenged the order whereby she was denied family pension on the ground that the petitioner was receiving pension from Provident Fund Authorities. But this Court disposed of the writ and held that when policy was in existence and the employee died, thereafter, he is entitled to be regularized by deeming fiction and it has been further held that on the eligibility date, the employee was in service and after his death he may also be considered deemed to be regularized.

On the other hand, learned State counsel has referred to written statement filed by respondent No. 3 and states that an agreement dated 16.05.1994 came in to force in respect of regularization of services of drivers and conductors. As per this agreement, the services of drivers and conductors who completed 02 years of service on contractual basis were to be regularized against vacancies. As per memo dated 23.03.1998 (R-1) issued by respondent No. 2 regarding the agreement of 28.07.1994 came into force

from the date of agreement i.e 16.05.1994 till the revocation of agreement i.e 08.01.1998. Thus, only those who fall and become eligible during period are to be regularized in service to the availability of vacant post in their respective depots.

Reference has been further made to Haryana Transport Department (Group C) Haryana Roadways Service Rules, 1995 now the Haryana Transport Department (Group C) Haryana Roadways Service (Amendment) Rules 2004 and as per clause 2 in Rule 9 in sub rule (1) under heading "Operational Staff" reproduced as under:-

(A) For clause (g) the following clause shall be substituted namely:-

(g) in case of Heavy Vehicle contract basis Driver Class-B by director recruitment

(gg) in case of Heavy Vehicle contract basis Driver Class-B by promotion from amongst Heavy Vehicle contract basis Driver Class-B

(ggg) in case of Driver Grade-II-

(i) By promotion from amongst Heavy Vehicle Contract Basis Driver Class-A or

(ii) By transfer of deputation of an official already in the service of any State Government of India.

As per this Rule, the services of contractual member Class-A shall be regularized on completion of 2 years of satisfactory service", so as per Rules, a driver regularized after the completion of 4 years satisfactory service, 02 years of satisfactory service in Class-B and then 2 years satisfactory service in Class-I Driver. While the service period of the husband of the petitioner is only 02 years 01 month and 21 days.

Learned State counsel further submits that junior Amarjit Singh

was regularized on 08.09.2002, as per order dated 14.05.2004. Thus all the drivers who were appointed along with the husband of the petitioner were regularized in the year 2003 after completing 04 years of service. Further it has been stated that all the drivers along with Darshan who has been shown in Annexure P-10 were appointed before the date i.e 08.01.1998 i.e the date of revocation of the policy dated 28.07.1994, so they were regularized after completion of 02 years of satisfactory service. But the husband of the petitioner was appointed on 09.07.1998 and no policy of regularization of service of contractual drivers was in existence at that time.

Learned counsel for the petitioner has referred to replication filed by the petitioner to the written statement filed on behalf of respondent Nos. 2 and 3 to contend that the husband of the petitioner was appointed on 14.09.1998 and was medically examined prior to his date of joining. It has been stated that as per the amended Rules dated 18.03.2004 (R-2) in the Rules of 1995, clause (g) was substituted "in case of Heavy Vehicle Contract/Daily Wages Basis Driver Class-B" and as per Rule 3, the words and letters were added in Rule 13 (Clause (f) to the effect that "The service of Contractual/Daily wages basis member Class-A shall be regularized on completion of two years satisfactory service.". Therefore, the husband of the petitioner on the date of death i.e 20.01.2001 has more than 2 years service and was entitled for regularization of service.

Learned counsel for the petitioner further contends that the petitioner is also entitled to the Family Pension in terms of Note 1 of Rule of the Family Pension Scheme, 1964, wherein it is provided that even before completion of one year continuous service, the deceased Government employee concerned was examined by the appropriate medical authority and

declared fit by that authority for Government service. In the present case, the husband of the petitioners was medically examined and was allowed to join on 14.09.1998.

Reference has been made to amended Rules dated 18.03.2004 (R-2) wherein as Rule 13 in clause (f), the following words and letters were added at the end namely”-

“The services of contractual/daily wages basis member Class-A shall be regularized on completion of two years satisfactory service.”

Heard learned counsel for the parties at length.

A bare perusal of Annexure R-2 shows that the services of contractual/daily wages basis member Class A has to be regularized on completion of two years satisfactory service. Further as per Annexure R-3, the experience of 04 years has been taken in two slabs of 02-02 years. The case of the husband of the petitioner is fully covered in view of Annexure R-2 as the husband of the petitioner has completed two years of satisfactory service. Moreover, in the present case, the respondents have not denied the order dated 13.10.2011 (P-1) whereby services of Shri Narender Singh, Driver was regularized along with other drivers and conductors on completion of two years of service.

Reference at this stage can be made to case of ***Smt. Chameli Versus State of Haryana and others in CWP No.13059 of 1997, decided on 12.01.1999***, wherein it has been held that the circular issued later would still be applicable if the number of years of service as work-charged employee had been completed during the life time of an employee, who had died prior to the issuance of the circular. The

Division Bench was considering the case of a similar policy statement

issued by the State on 26.10.1983 before which time the employee had died, namely, in July 1983 in that case.

Further this Court in a case of ***Mamtesh vs. State of Haryana and others, 2019 (4) SCT 116*** was considering a case of the petitioner who was denied the benefits accrued to her under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 on the ground that her husband was not a regular employee on the date when he died and under 2006 Rules, only legal heirs of the regular employees are entitled for the benefits under 2006 Rules. This Court allowed the writ petition and in para 14 to 16, it has been observed as under:-

“14. The appointment letter dated 21.6.2008 in respect of the husband of the petitioner has been placed on record at Annexure P1. Undoubtedly, such appointment letter has been captioned as appointment as Heavy Vehicle Driver, Class 'B' on contractual/daily wage basis. A further perusal of such appointment letter would reveal that the husband of the petitioner was appointed on a consolidated salary of Rs. 3,000/- per month and against a temporary post. As per condition No.2 of such letter of appointment, the husband of the petitioner was obligated to serve a one month's notice or salary in lieu thereof in the eventuality of his choosing to resign from the post. The husband of the petitioner had also been called upon to obtain a Medical Fitness Certificate from the Chief Medical Officer concerned as required under Rule 3.1 of the Punjab Civil Service Rules, Volume-I, applicable to the Haryana State. It was further

stated that such appointment could be governed by the Haryana Service Rules, 1995 governing the post of driver. The admitted position of fact is that prior to joining the post of driver, the husband of the petitioner was medically examined and the requisite Medical Certificate of Fitness on first entry into Government service as per Rule 3.1 of the Haryana Civil Service Rules had been issued by the competent Medical Officer/Civil Surgeon, Jind, Annexure P3.

15. The categorical averments made in the petition as regards the posts of Drivers having been duly advertised and the husband of the petitioner having been duly selected and appointed in pursuance to a regular selection process have not been rebutted in the written statement filed on behalf of the State.

16. Upon the petitioner having submitted a representation for grant of financial assistance on the death of her husband, apparently such claim was processed and a clarification in that regard was sought by the General Manager, Haryana Roadways, Jind from the Director General, State Transport, Haryana vide letter dated 16.11.2010, appended as Annexure R2 along with the written statement. Such document would be a clincher in the present case. A perusal of the same would reveal that the husband of the petitioner had been selected and appointed to the post of heavy vehicle driver/bus driver in pursuance to a process of selection conducted by the Haryana Staff Selection Commission. As such, for all intents and purposes, the appointment of the husband of the petitioner would have to

be construed to have been effected on a regular basis even though against a temporary post. It is only on account of the operation of the statutory Rules that the language 'contractual/daily wage' has been implied in the appointment letter. Such language cannot work to the detriment of the present petitioner insofar as her claim for grant of ex-gratia assistance under the 2006 Rules is concerned. The service rendered by the late husband of the petitioner would certainly fall within the scope and ambit of the expression 'temporary service' under the Family Pension Scheme, 1964 which, in turn, would render the petitioner to be eligible for the grant of financial assistance under the 2006 Rules.

This issue has been considered by this Court in CWP No. 8183 of 2009 titled as ***Neeraj Yadav and another v. State of Haryana and others, decided on 12.10.2009*** wherein it has been opined that even if the deceased Government employee does not complete one year of continuous service, his dependents are entitled to grant of family pension. The defence of the respondents that the deceased being a contractual employee was not entitled to the relief, is also not tenable in view of judgment of this Court in CWP No. 5593 of 2011 ***Kelo Devi vs State of Haryana and others decided on 7.2.2013***, wherein while considering the case of a driver, it was opined that the manner in which the appointments were made, even if not termed to be regular, they can be treated as temporary and the family is entitled to benefits under the Rules. In para 12 to 14 and 16, it has been observed as under:-

12. As per the relevant clause under the Family Pension

Scheme, 1964 re-produced hereinabove, the benefits are admissible in the case of death while in service of a Government employee who has completed minimum period of one year of continuous service without any break. As per Note-1 appended to para 4, sub clause (i), the term of one year continuous service is inclusive of permanent/temporary service in a pensionable establishment. Still further, a rider has been imposed that such deceased Government employee immediately prior to his recruitment to the service or post was required to be examined by the appropriate Medical Authority and declared fit for Government service.

13. The short issue that arises for consideration in the present case is with regard to the nature of appointment and service rendered by the deceased-husband of the petitioner.

14. The appointment letter dated 21.6.2008 in respect of the husband of the petitioner has been placed on record at Annexure P1. Undoubtedly, such appointment letter has been captioned as appointment as Heavy Vehicle Driver, Class 'B' on contractual/daily wage basis. A further perusal of such appointment letter would reveal that the husband of the petitioner was appointed on a consolidated salary of ₹3,000/- per month and against a temporary post. As per condition No.2 of such letter of appointment, the husband of the petitioner was obligated to serve a one month's notice or salary in lieu thereof in the eventuality of his choosing to resign from the post. The husband of the petitioner had also been called upon to obtain a Medical Fitness Certificate from

the Chief Medical Officer concerned as required under Rule 3.1 of the Punjab Civil Service Rules, Volume-I, applicable to the Haryana State. It was further stated that such appointment could be governed by the Haryana Service Rules, 1995 governing the post of driver. The admitted position of fact is that prior to joining the post of driver, the husband of the petitioner was medically examined and the requisite Medical Certificate of Fitness on first entry into Government service as per Rule 3.1 of the Haryana Civil Service Rules had been issued by the competent Medical Officer/Civil Surgeon, Jind, Annexure P3.

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Learned counsel for the petitioners further while referring to the Division Bench judgment of this Court in CWP No. 22516 of 2012 ***Mohinder Singh and others vs State of Haryana and others decided on 1.4.2013***, submitted that this Court had set aside the Haryana Transport Department (Group-C) Haryana Roadways Service (Amendment), Rules, 2004, providing for contractual appointments to the drivers for the first three years, followed by regular pay scale. It was opined that the drivers so appointed shall be entitled to minimum of the pay scale from the date of their initial appointments. The submission is that in view of the aforesaid judgments, the family of the deceased employee could not be denied the benefits under the Rules.

The judgment of ***Neeraj Yadav*** is directly applicable to the facts of the present case as in that case as well wherein the deceased had joined as Inspector with the police on 7.10.2008 after medical examination and died on 23.3.2009. Despite the service being merely of five months, the family was held entitled to the benefits under the Rules. While dealing with the issue, this Court relied upon earlier judgments of this Court in ***Smt. Savitri Devi vs***

The State of Haryana and others 1996 (2) RSJ 854, Sharmila Devi vs Uttar Haryana Bijli Vitran Nigam Limited 2002 (4) SCT 178 and CWP No. 3515 of 2009 Mahender Kaur vs State of Haryana and others, decided on 5.10.2009. Hence, the petitioner could not be denied benefits under the Rules 2006 on the ground that the deceased employee had not served for minimum four years. The case of the petitioner is squarely covered vide Annexure R-2 and R-3 and the husband of the petitioner has to be regularized.

Applying the ratio of the above mentioned judgments, the present writ petition is allowed and a direction is given to the respondents to regularize the service of the husband of the petitioner from the date he had completed two years of service. The petitioner is also entitled to financial assistance as per the 2006 Rules. The payment be released to the petitioner along with 6% interest. This exercise shall be completed within the period of three months and thereafter, this Court be informed accordingly that the petitioner has been given necessary relief.

(RITU BAHRI)
JUDGE

27.01.2020

G Arora

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