

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(211)

CWP No. 29442 of 2017
Date of Decision : 31.01.2020

Bhupinder Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. K.S. Khehar, Advocate for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

1. The challenge in the present writ petition is to the order dated 26.11.2015 (Annexure P-8) whereby, after the retirement from service in February, 2012, the petitioner has been held not entitled for regularization of his services and the order passed in favour of the petitioner regularizing his services as Canal Patwari was withdrawn, which resulted in the denial of the pensionary benefits to the petitioner, though, the petitioner had rendered 28 years of service up to the time of his retirement in February, 2012. The prayer of the petitioner in the present writ petition is for issuance of a direction to the respondents to grant him the pensionary benefits as admissible to a Canal Patwari at the time of retirement alongwith interest.

2. The pleaded facts are that the petitioner was appointed as a

Mate on work charge basis on 06.10.1984. Thereafter, he was asked to work as a Laboratory Attendant. While the petitioner was working as a Laboratory Attendant, the respondent-State of Punjab had issued Instructions/Regularization Policy dated 23.01.2001 for regularization of the services of the employees, who were working in various departments. Keeping in view the said Regularization Policy dated 23.01.2001, the services of the petitioner were regularized by the respondents on 20.05.2002 (Annexure P-1) as a Canal Patwari in the pay scale of 3120-5160.

3. While the petitioner was working as a Canal Patwari, the respondents issued an order dated 11.06.2004 appended as Annexure R-1 along with the reply whereby the order of regularization of the services of the petitioner as a Canal Patwari (Annexure P-1) was withdrawn and he was reverted to the post of Laboratory Attendant/Wall Operator. The said order was challenged by the petitioner before this Court by filing CWP No. 9536 of 2004 titled as ***Sukhminder Singh and others Vs. State of Punjab and others***. The said writ petition was allowed on 29.08.2006 (Annexure P-3) and the impugned order de-regularizing the services of the petitioner as Canal Patwari dated 11.06.2004 was set-aside. By the said order, respondents were given liberty by this Court to pass appropriate orders afresh after following the principles of natural justice.

4. Thereafter, keeping in view the liberty given by this Court, a show cause notice was served upon the petitioner on 10.10.2006. In the said notice, it was proposed that as the regularization of the services of the petitioner against the post of Canal Patwari was not in accordance with the Instructions dated 23.01.2001, why the said order Annexure P-1 regularizing the service of the petitioner as Canal Patwari be not withdrawn

and petitioner be not posted as a Laboratory Attendant (work charge). Petitioner filed the reply to the said show cause notice on 08.11.2006, which is appended as Annexure P-5 with the writ petition. Thereafter, the respondents passed an order on 06.02.2007 (Annexure P-6) whereby the regularizing the service of the petitioner as Canal Patwari vide order dated 20.05.2002 (Annexure P-1) was again withdrawn and the petitioner was posted as a Laboratory Attendant (work charge).

5. Petitioner again approached this Court by challenging the order dated 06.02.2007 (Annexure P-6) by filing CWP No. 2468 of 2007. While issuing notice of motion, operation of the order dated 06.02.2007 was stayed by this Court and petitioner continued working as a Canal Patwari on regular basis. Thereafter, the said writ petition was admitted.

6. During the pendency of the writ petition i.e. CWP No. 2468 of 2007, petitioner attained the age of superannuation and retired on 29.02.2012. As the respondents had de-regularized the services of the petitioner as a Canal Patwari, which controversy was pending adjudication before this Court, no retiral benefit was released to the petitioner after his retirement.

7. CWP No. 2468 of 2007 came up for hearing before this Court and this Court on 14.10.2015 (Annexure P-7) directed the respondents that as the petitioner has continued working on regular basis as Canal Patwari, the respondents should re-visit the controversy in view of the subsequent facts and pass a fresh order with regard to the withdrawal of the order dated 20.05.2002 by which the services of the petitioner as a Canal Patwari were regularized.

8. Keeping in view the direction given by this Court in CWP No.

2468 of 2007 on 14.10.2015, respondents passed an order on 26.11.2015 (Annexure P-8) declining the benefit of regularization of services to the petitioner as Canal Patwari by taking a plea that petitioner did not pass the Patwar examination, which was mandatory for appointment as a Canal Patwari and, therefore, the petitioner cannot claim regularization of his services as Canal Patwari and, therefore, order dated 06.02.2007 (Annexure P-6) de-regularizing the services of the petitioner as Canal Patwari is a valid order. It was further mentioned in the order dated 26.11.2015 (Annexure P-8) that there was no regular post of Lab Attendant/Wall Operator available against which the petitioner was working when the Regularization Policy dated 23.01.2001 came into force, hence, regularization the services of the petitioner against the post of Canal Patwari was contrary to the Policy dated 23.01.2001 and, therefore, order dated 20.05.2002 (Annexure P-1), regularizing the services of the petitioner as Canal Patwari was rightly withdrawn. This order dated 26.11.2015 (Annexure P-8) is under challenge in the present writ petition with the prayer that the petitioner be treated as a regular Canal Patwari at the time of his retirement and a direction be issued to the respondents for releasing the pensionary benefits of the petitioner along with arrears and interest.

9. Upon notice of motion, respondents have filed the reply in which the stand as taken in the impugned order dated 26.11.2015 (Annexure P-8) has been reiterated. It has been again stated that the order regularizing the services of the petitioner on 20.05.2002 (Annexure P-1) against the post of Canal Patwari was contrary to the Instructions dated 23.01.2001 and further, while working on the post of Canal Patwari, as the petitioner failed to clear the Patwar examination, his services could not have been

regularized.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.

11. It is not disputed by learned counsel appearing on behalf of the parties that a Regularization Policy was issued on 23.01.2001, according to which, the employees, who were working on temporary/officiating basis at the relevant time and had completed three years of service, were to be regularized. It is further admitted that under the said Policy, the respondents considered the claim of the petitioner and passed the order regularizing his services against the post of Canal Patwari vide order dated 20.05.2002 (Annexure P-1). The said order Annexure P-1 was withdrawn later on by the respondents vide order dated 11.06.2004, which order was set-aside by this Court on 29.08.2006 (Annexure P-3). Again the respondents passed a fresh order dated 06.02.2007 (Annexure P-6) withdrawing the order regularizing the services of the petitioner as Canal Patwari dated 20.05.2002 (Annexure P-1), which order was again stayed by this Court and petitioner continued working as a Canal Patwari on regular basis till he retired from service on attaining the age of superannuation on 28.02.2012.

12. Learned counsel for the respondents, in respect of the order of regularization of the services of the petitioner as a Canal Patwari dated 20.05.2002 (Annexure P-1), argues that the action of the respondents in regularizing the services of the petitioner against the post of Canal Patwari was not covered by the provisions of the Regularization Policy dated 23.01.2001 issued by the Government of Punjab. As per the respondents, petitioner was working as Laboratory Attendant/Wall Operator and,

therefore, he was only entitled for the regularization of his services against the said post on which he was working and not against any other post, which was available in the Department and, therefore, as at the relevant point of time, there was no availability of the post of Lab Attendant/Wall Operator against which the petitioner was working, regularizing the services of the petitioner against the vacant post of Canal Patwari, was beyond the jurisdiction of the respondents.

13. Before proceeding further, the provisions of the Regularization Policy dated 23.01.2001 needs to be noticed, which are as under :

*“Government of Punjab
Department of Personnel
(P.P.-III Branch)*

Dated : Chandigarh, the 23.1.2001

To

*Al the Heads of Deptts., in the State of Punjab
Registrar, Punjab and Haryana High Court,
Chandigarh*

All the Commissioner and Deputy Commissioners

*All the Corporation and Boards in the State of
Punjab.*

*Subject: Review of the policy of regularization of work
charged/daily wage and other categories of
employees.*

- 1. I am directed to refer to the subject noted above and to convey the following decisions of the State Govt. after a review of the policy on regularization of work charged/daily wage and other categories of workers engaged by various department of the State Govt. in connection with the ongoing project, works of perennial nature like maintenance works and other contingent works. The*

decisions shall also apply to public sector undertakings. Corporations, Boards, Local Authorities and other autonomous bodies the State of Punjab.

- (i) No new posts are ordinarily to be created to absorb and regularize existing work charged/daily wage and other categories of workers. Wherever the full circumstances of the particular situation warrants that new posts may be created, the case should be thoroughly examined, finance department should be consulted and approval of the CMM should be obtained.*
- (ii) Such department may prepare, list of work charged, daily wage and other categories of workers who have completed 3 years service and these lists may be updated from time to time. The lists should be prepared strictly as per seniority.*
- (iii) Out of the lists prepared thus, workers should be absorbed/regularized only against regular posts existing in each department. In the first instance work charged workers should be regularized in the order of seniority. Only when all eligible persons of this category have been accommodated cases of daily wage and other categories of workers who have completed 3 years of service in the Department may be taken up. The basic idea is that workers belonging to a particular department should be considered for regularization only against available regular vacancies in that department. The claim of work charged/daily wages other categories of workers for regularization will extend only against available vacancies in the department to which these workers belong.*
- (iv) For accommodating work charged/daily waged/*

other category workers as per the above policy against the existing vacancies the existing instruction requiring permission of the DOP and FD for filling up the vacancies would not apply. Where ever, for the absorption/regularization of workers as per the above policy any department's own Recruitment Rules come in the way, such provisions, of the Recruitment Rules will stand relaxed.

2. *Attention is also invited to Government letter No. 4/64/98-4PP3/5071 dated 4.5.1999 vide which a complete bar, on recruitment of daily wage/work charged workers was imposed. Wherever, any person was employed in violations or these instructions the department may take suitable action against the defaulting officer. It shall be the responsibilities of the head of each department to ensure that no worker employed in violation of the above instructions is allowed to continue.*
3. *Service of such workers whose services are no longer required, should be terminated by following due process of law project employees and those employees who were engaged for specific works should also be relieved at the earliest possible on the completion of the project/work. The employees, who come with the definition of “workman” under the provisions of Industrial Disputes Act, 1947 shall be dealt with according to the provision of the Act. They should first be offered appointment, in the other project/works in the department on the same conditions. If this is not agreed their services should be dispensed with after carefully following the procedure laid down in the Act after granting the retrenchment benefits if admissible.*
4. *Action to regularized the services of work charged/daily wage workers as a consequences of above policy may be*

completed within a period of 4 months.

5. *These instructions may please be brought to the notice of all the officers and other bodies working under the Administrative control for your department.*
6. *These instructions issued with the consequences of department of Finance conveyed vide their I.D. No. 5/27/98-FPI Spl. Dated 22.1.2001.*

*Sd/-xxx
Additional Secretary Personnel”*

14. A bare perusal of the above would show that a daily wage worker, who has completed three years of service, was entitled for regularization of his services. The embargo, which was put upon the department was that no new posts are to be created to regularize the services of the employees, meaning thereby that regularization of the services of an employee could only be done against the existing vacancies of the department. Further, the regularization of services of the employees was to take place in order of seniority and the workers, who belong to a particular department, were only to be considered for regularization of their services against the available regular vacancy in that department only. Learned counsel for the respondents argues that as the petitioner was working against the post of Laboratory Attendant/Wall Operator on the date when the Regularization Policy dated 23.01.2001 was issued, he was only entitled for the absorption against the available vacancy of the post of Laboratory Attendant/Wall Operator and not against other vacancies, which were available in the same department.

15. Though in ordinary circumstances, an employee is entitled for the regularization of the services against the post/cadre in which he is

discharging the duties at the time of consideration of his/her case for regularization of services. Keeping in view the provisions of regularization Policy dated 23.01.2001, the respondents themselves regularized the services of the petitioner as Canal Patwari as the regular post of Lab Attendant was not available but the regular post of Canal Patwari was available at that time. The said action of regularizing the services of the petitioner against the post of Canal Patwari was taken by the respondents with due application of mind to the effect that the petitioner was capable of discharging the duties of said post. An employee cannot raise the claim for regularization of his services against a post in an another cadre but the same does not preclude the respondent-State to grant the said benefit in case, there is no other claimant of the said post lying vacant in another cadre, against which services of an employee is sought to be regularized as well as the concerned employee is capable of discharging the duties of the post against which his/her services are being regularized, keeping in view the qualifications required for the discharge of the duties of the said post. Keeping in view the facts and circumstances of this case, once the respondents had regularized the services of the petitioner as a Canal Patwari and the said order was implemented by the respondents, the order of regularization of the service of the petitioner as Canal Patwari cannot be withdrawn or the benefit of the regularization cannot be taken away from the petitioner after he had already retired from service, especially in view of the fact that during the service, the petitioner had discharged the duties of Canal Patwari on regular basis without there being any grievance in respect of the capability of the petitioner to discharge the duties of the said post till his retirement.

16. The services of the petitioner were regularized by the respondents on their own as a Canal Patwari on 20.05.2002 (Annexure P-1). The said order dated 20.05.2002 (Annexure P-1) was withdrawn by the respondents on 11.06.2004, which order was set-aside by this Court on 29.08.2006 (Annexure P-3) while deciding CWP No. 9536 of 2004. Thereafter, the respondents passed another order de-regularizing the services of the petitioner as Canal Patwari on 06.02.2007 (Annexure P-6), which order was also stayed by this Court in CWP No. 2468 of 2007 and during the pendency of the writ petition, petitioner attained the age of superannuation and retired on 29.02.2012 while working as Canal Patwari on regular basis. That being so, once the petitioner retired from service from the post of Canal Patwari and that too as a regular employee, subsequent to the date of retirement, passing an order dated 26.11.2015 (Annexure P-8) de-regularizing the services of the petitioner from the post of Canal Patwari is not permissible. Once, the master and servant relationship has already come to an end and till the master and servant relationship existed, the petitioner discharged the duties of the post of Canal Patwari on regular basis and retired as a regular incumbent of the post of Canal Patwari, therefore, the order dated 26.11.2015 (Annexure P-8) passed by the respondents de-regularizing the services of the petitioner from the post of Canal Patwari cannot be sustained in the eyes of law and is accordingly set-aside.

17. Further, the effect of de-regularizing the services of the petitioner as Canal Patwari has resulted into non-grant of the pensionary benefits despite the fact that the petitioner had more than 28 years of service to his credit. It cannot be said that an employee, who has rendered 28 years

of service with the respondents, will go without pensionary benefits, when minimum required service for the grant of pensionary benefits is 10 years. In case, the respondents would not have regularized the services of the petitioner as Canal Patwari on 20.05.2002, petitioner would have been entitled for regularization of his services as Lab Attendant in pursuance to the subsequent policies, which have been issued but the said consideration was not given to the petitioner on the ground that services of the petitioner had already been regularized on the post of Canal Patwari, on which post he was discharging the duties on regular basis. Therefore, the act of the respondents to de-regularize the services of the petitioner as Canal Patwari has caused prejudice to the petitioner and the said act cannot further cause prejudice to the petitioner so as to deny his claim of retiral/pensionary benefits. Once, it is a conceded position that on the date when the petitioner superannuated, he was actually working on regular basis as Canal Patwari, he is entitled for the release of the pensionary benefits by treating him as regular incumbent on the post of Canal Patwari.

18. Learned counsel for the respondents argues that petitioner was required to pass the Patwar examination in order to become a regular Canal Patwari and as the petitioner failed to pass the said examination, petitioner cannot claim himself to be a Regular Canal Patwari. This argument is to be dealt within light of the circumstances of the present case. Ordinarily, when the post of Canal Patwari is being filled by way of direct recruitment, it is incumbent upon the concerned employee appointed as Canal Patwari to clear the Patwar examination in order to become regular. In the present case, learned counsel for the respondents very fairly conceded that at no given point of time after the regularization of the services of the petitioner

as Canal Patwari on 20.05.2002 (Annexure P-1), petitioner was ever asked to appear in the Patwar examination. The additional affidavit filed by the respondents, clearly states that no condition of passing of the Patwar examination was ever imposed in the order regularizing the services of the petitioner as Canal Patwari dated 20.05.2002 (Annexure P-1). It is further admitted by the respondents that no opportunity was given to the petitioner to appear in the Patwar examination during his service career. That being so, once the petitioner was never asked to appear in the Patwar examination and no such condition was imposed in the order by which the services of the petitioner was regularized as a Canal Patwari dated 20.05.2002 (Annexure P-1) taking shelter behind the said objection to de-regularizing the services of the petitioner from the post of Canal Patwari, is totally arbitrary and illegal and cannot be permitted. In case, according to the respondents, petitioner was required to pass Patwar examination before being appointed as a permanent Canal Patwari, the respondents should have imposed the condition of passing the Patwar examination in the order dated 20.05.2002 (Annexure P-1), by which the services of the petitioner were regularized as a Canal Patwari. It is conceded by learned counsel for the respondents during the course of hearing that till 29.02.2012, upto the date the petitioner retired on attaining the age of superannuation, no letter asking the petitioner to clear the Patwar examination, was written to him. Under these circumstances, non-clearance of Patwar examination, cannot be made a ground to withdraw the order regularizing the services of the petitioner dated 20.05.2002 (Annexure P-1) and, therefore, in view of the peculiar facts and circumstances of the case, non-passing of the Patwar examination cannot come in the way of the petitioner to continue as a Canal Patwari on

regular basis on which post, petitioner actually worked till he retired on attaining the age of superannuation on 29.02.2012.

19. Further, on 14.10.2015 while hearing of CWP No. 2468 of 2007 filed by the petitioner, an opportunity was given to the respondents to re-consider the order dated 06.02.2007 (Annexure P-6) by which the services of the petitioner were de-regularized as Canal Patwari, especially, in view the subsequent events that the said order de-regularizing the services of the petitioner as Canal Patwari dated 06.02.2007 (Annexure P-6) was stayed by this Court and petitioner continued in service as a regular Canal Patwari upto the date he attained the age of superannuation on 29.02.2012. The said order was construed by the respondents as a direction to pass a fresh order declining the claim of the petitioner on new grounds, which was never the intention of this Court while passing the order dated 14.10.2015. While de-regularizing the services of the petitioner as Canal Patwari initially on 06.02.2007, the respondents had not taken the objection of the non-passing the Patwar examination by the petitioner. That being so, in the fresh order, the said ground could not have been taken by the respondents and that too without giving any opportunity of hearing to the petitioner, to the said objection. Rather, keeping in view the order passed by this Court dated 14.10.2015 (Annexure P-7) respondents were to consider as to whether, keeping in view the fact that petitioner continued on regular basis as Canal Patwari upto the date of his superannuation, the order dated 06.02.2007 (Annexure P-6) needs re-consideration as the same had already lost its significance. By totally misinterpreting the order passed by this Court dated 14.10.2015 (Annexure P-7), the respondents, after the retirement of the petitioner, again passed an order dated 26.11.2015 (Annexure P-8) declining

to re-consider the order by which the services of the petitioner as a Canal Patwari was de-regularized, on the fresh grounds and that too without giving him any opportunity of hearing to rebut those fresh grounds. This action of the respondents is not permissible in the eyes of law, especially, in the facts and circumstances of this case.

20. Keeping in view the facts and circumstances noted here-in-before, the claim of the petitioner is allowed. Though the order dated 06.02.2007 (Annexure P-16) has merged in the subsequent order dated 26.11.2015 (Annexure P-8), still both the orders are set-aside. It is held that in the peculiar facts and circumstances of this case, the respondents will treat the petitioner as a regular Canal Patwari on the date of his superannuation and release all his pensionary benefits for which he becomes entitled for alongwith arrears.

21. As the petitioner had retired in the year 2012 and on the said date, he was working as a Canal Patwari on regular basis but still the respondents are withheld his pensionary benefits and that too without any valid justification. Rather petitioner was forced to litigate again for the release of his pensionary benefits after his retirement and he has been deprived of his legitimate claim for a period of approximately 8 years, petitioner is also held entitled for the interest on the amount, which will be released to him under this order @ 6% per annum from the date the amount became due till the actual payments are released. Let the exercise of the computation of the pensionary benefits and interest under this order be completed within a period of two months from the date of receipt of certified copy of this order and the amount so computed be released to the petitioner within a period of one month thereafter.

22. Present writ petition stands allowed in the above terms.

January 31, 2020
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*