

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

1. LPA-1896-2017(O&M)

Punjab School Education Board and another ... Appellants

Vs.

Avtar Singh and others ... Respondents

2. LPA-1898-2017 (O&M)

Punjab School Education Board ... Appellant

Vs.

Paramjit Kaur ... Respondent

3. LPA-1899-2017 (O&M)

Punjab School Education Board and another ... Appellants

Vs.

Kamaljit Singh and others ... Respondents

4. LPA-1900-2017 (O&M)

Punjab School Education Board and another ... Appellants

Vs.

Sanjay and others ... Respondents

5. LPA-1901-2017 (O&M)

Punjab School Education Board ... Appellant

Vs.

Amarjit Singh and others ... Respondents

6. LPA-1902-2017 (O&M)

Punjab School Education Board and another ... Appellants

Vs.

Satnam Singh and others ... Respondents

7. LPA-1903-2017 (O&M)

Punjab School Education Board ... Appellant

Vs.

Shingara Singh and others ... Respondents

Date of Decision:14.01.2020

CORAM : HON'BLE MR. JUSTICE JASWANT SINGH

HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Ashish Bansal, Advocate for the appellant (s).

Mr. B.S. Jaswal, Advocate and
Mr. J.S. Maanipur, Advocate
for the respondent (s).

SANT PARKASH, J.

C.M. No.4111-LPA of 2017 in LPA-1896-2017

In view of the averments made in the application, which is duly supported by an affidavit, delay of 165 days in filing of the appeal stands condoned.

The application is, accordingly, allowed.

C.M. No.4119-LPA of 2017 in LPA-1898-2017

In view of the averments made in the application, which is duly supported by an affidavit, delay of 166 days in filing of the appeal stands condoned.

The application is, accordingly, allowed.

C.M. No.4121-LPA of 2017 in LPA-1899-2017

In view of the averments made in the application, which is duly supported by an affidavit, delay of 165 days in filing of the appeal stands condoned.

The application is, accordingly, allowed.

C.M. No.4123-LPA of 2017 in LPA-1900-2017

In view of the averments made in the application, which is duly supported by an affidavit, delay of 165 days in filing of the appeal stands condoned.

The application is, accordingly, allowed.

C.M. No.4125-LPA of 2017 in LPA-1901-2017

In view of the averments made in the application, which is duly supported by an affidavit, delay of 153 days in filing of the appeal stands condoned.

The application is, accordingly, allowed.

C.M. No.4127-LPA of 2017 in LPA-1902-2017

In view of the averments made in the application, which is duly supported by an affidavit, delay of 153 days in filing of the appeal stands condoned.

The application is, accordingly, allowed.

C.M. No.4129-LPA of 2017 in LPA-1903-2017

In view of the averments made in the application, which is duly supported by an affidavit, delay of 166 days in filing of the appeal stands condoned.

The application is, accordingly, allowed.

Main Appeals

This judgment shall dispose of all the aforementioned Letters Patent Appeals, as similar questions of facts and law are involved.

All the appeals have been filed against the judgment dated 13.02.2017 passed by the learned Single Bench whereby writ petitions filed by the respondent (s) were allowed.

Factual matrix of the case is that the respondent(s) were appointed on contract/*ad-hoc*/daily wages/ work charge basis in the years between 1993 to 1996. They filed writ petition i.e. CWP No.10047 of 2003 for regularization of their services against the State of Punjab and Punjab School Education Board (for short “Board”). The respondent (s) and other employees, who had been working with the Board prior to 1998, were regularized on the basis of Punjab Government's notification dated 23.01.2001 which was duly adopted by the Board on 13.07.2004 and were given regular pay scales w.e.f August, 2004 and consequently, the aforesaid

writ petition was withdrawn on 06.08.2004. The respondent (s), thereafter, prayed for granting the benefit of pension which matter was referred to the Government and the same was declined vide letter dated 09.12.2011. Aggrieved against the same, the respondent(s) filed writ petitions claiming as under:

“(i) Their services on the basis of contract/ ad hoc/ daily wages/ work charge prior to their regularization, should be treated as a qualifying service for grant of retiral benefits.

(ii) They should be governed by the old pension scheme and not by the new 'Defined Contributory Pension Scheme' since their services have been regularized w.e.f. August, 2004.”

The writ petitions filed by the respondent (s) were allowed vide the impugned judgment while holding as under:

“In the circumstances, all the connected petitions are allowed and it is held that the services of the petitioners were regularized w.e.f. 02.08.2004 and that it is not a case of fresh appointment. The services of the petitioners rendered on the basis of contract/ad hoc/daily wages/work charge shall be computed as qualifying service for grant of retiral benefits after ignoring the notional break as per provisions contained in the Punjab Civil Service Rules. For the purpose of application of the pension as per the policy dated 12.12.2006, the petitioners shall fall under Tier II and it will be their discretion whether to join the new defined contributory scheme or opt for the old pension scheme.

Consequently, the respondent-Board shall give an option to the petitioners to opt for the old pension scheme or the new pension scheme within two months from the date of receipt of certified copy of this order and the petitioners shall be governed by the scheme as per their option.”

Dissatisfied with judgment dated 13.02.2017, the appellants-

Board have filed the instant Letters Patent Appeals.

While assailing the judgment of the learned Single Bench, sole argument raised by the learned counsel for the appellants is that neither in the decision of the Constituted Recommending Committee nor in the appointments letters, it was acknowledged/recited that the services of the respondents are to be regularized. Rather it was a clear cut case of offering fresh appointment.

Per contra, learned counsel for the respondents submitted that neither the post held by the respondents were advertised nor any criteria was framed or followed by the Constituted Committee except ensuring the fulfilment of the terms and conditions of regularization of the services as laid down in notification dated 23.01.2001. It is further submitted that from the perusal of the notification, it is crystal clear that on fulfillment of the laid down terms and conditions of completion of three years of service of work charged, daily wage and other categories of workers as on 23.01.2001, the services of the employees concerned were required to be regularized which has factually been done in this case.

We have heard learned counsel for the parties and perused the case file very minutely.

The scope of the instant LPA is limited to the extent whether the judgment under appeal is permissible in law and in consonance with the settled cannons of law. In this case, it has to be seen whether the services rendered by the respondents ought to be regularized and action of the appellant-Board should be negated.

We are of the view that argument raised by the learned counsel for the appellants that it is a case of fresh appointment and not of regularization is not sustainable as the case of only those employees was

considered who were already working on contract/*ad-hoc*/daily wages/work charge basis, with the Board. The appointments were not open to the General Public. Merely mentioning the word “fresh appointment” in the order of appointment does not lead to any inference that it is a case of fresh appointment. No doubt the word “fresh appointment” is used but in fact it is a regularization of services pursuant to the notification dated 23.01.2001.

With respect to the question whether the employees-respondents should be governed by the old pension scheme or new 'Defined Contributory Pension Scheme', it is evident that the new “Defined Contributory Pension Scheme” is mandatory for those employees who are appointed after 1.1.2004 and those employees who have been appointed prior to 01.01.2004 shall have the discretion to opt for Tier II of the said new pension scheme and the service of those employees having been held to be regularized w.e.f. August 2004, therefore, they will fall in Tier II and it will be the discretion of the concerned employees whether to opt for the new pension scheme dated 12.12.2006 or opt for the old pension scheme.

Moreover, this Court in the case of **Harbans Lal v. The State of Punjab and others**; 2012 (3) S.C.T. 362 while dealing with the identical question of law has laid down in para-16 as under:

“16. From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Restructured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be application to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further

amended by issuing clarification/instructions dated 30.05.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Government Services prior to 1.1.2004”

In view of the above discussion, we find no illegality or infirmity in the judgment passed by the learned Single Bench.

Resultantly, all the appeals are dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

14.01.2020
rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No