

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1792-1999 (O&M)
Reserved on : 20.07.2022
Pronounced on : 08.08.2022

Smt. Lado Devi

...Petitioner

V/S

The State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Mohit, Advocate
for Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. R.D. Sharma, D.A.G., Haryana.

ARUN MONGA, J.

Petitioner herein, *inter-alia*, seeks issuance of a writ in the nature of certiorari for quashing order 22.12.1998 (Annexure P-2) whereby claim of the petitioner for regularization w.e.f. 30.09.1988 was rejected.

2. Succinct facts first. Petitioner joined on the post of S.S. Mistress on adhoc basis on 14.12.1981 and worked as such till 20.05.1983. She again joined the Haryana Education Department as S.S. Mistress on 29.12.1986 on adhoc basis and worked uninterruptedly and was regularized as such by the respondent department w.e.f. 01.01.1991. The written statement and reply to the petitioner's replication as filed by the respondent

– department read together reveal that services of the petitioner for the period from 14.12.1981 to 20.05.1983 were though counted towards annual increment under the provisions of Rule 4.9 of Punjab Civil Service Rules, but not for the purpose of regularization. Govt. instructions dated 28.04.1997 lay down the policy for regularization of adhoc Class-III employees who had completed two years adhoc service on 30.09.1988. The petitioner approached the respondent department for regularization w.e.f. 30.09.1988 as per the instructions dated 28.04.1997. However, her claim was rejected vide impugned order dated 22.12.1998 (Annexure P-2). Hence, the present petition.

3. Learned counsel for the petitioner argues that since the case in hand is covered by instructions dated 28.04.1997 (Annexure P-1), the petitioner fulfilled all the conditions thereof, she should be regularized w.e.f. 30.09.1988 instead of 01.01.1991 by counting her earlier adhoc service rendered in the respondent department from 14.12.1981 to 20.05.1983. He further submits that the sole ground of rejection of the claim of the petitioner in the impugned order was that there was no provision in the said instructions to condone the long break. However, as per the learned counsel for the petitioner, there was no clause in the said instructions regarding the break and the respondents are wrongly reading/adding the word ‘continuous’ in the said instructions. To substantiate his arguments, learned counsel for the petitioner relies upon catena of judgments, one of which is the Full Bench judgment of this Court in *Jagdish Lal and others vs. State of Punjab and others*, AIR 1988 (P&H) 272, whereby it was held that minimum continuous period of service of one year need not necessarily be

4. During the pendency of the said S.L.P. Haryana Government issued another policy vide its notification No. GSR II/Const. dated 28.2.91 for regularization of the services of adhoc class III employees with effect from 31.12.90 subject to the fulfilling conditions enunciated therein. The policy framed mentioned above submitted to the apex court was not issued.

5. This matter has also been considered in the light of pertaining judgments and Government has now decided that all these adhoc employees who had completed two years of service should be regularized in accordance with draft policy of State Government mentioned above.

XXXX XXXX”

6. Combined reading of paras 3 and 4 of instructions Annexure P-1 shows that the policy frame bearing No. 6/4/90-2GSI dated nil for regularizing the adhoc class III employees with effect from 30.9.88 submitted to the Supreme Court in connection with Special Leave Petition State of Haryana vs. Piara Singh and others was not actually issued. No such policy frame has been produced on record, obviously because it was not actually issued. The said policy frame, though referred to in instructions Annexure P-1, but was not actually issued, therefore, cannot be relied upon and invoked by the petitioner for regularizing her services with effect from 30.9.88.

7. Further, as noted above, petitioner was re-appointed on 29.12.1986. Her services were regularized from 01.01.1991, obviously pursuant to notification No. GSR II/Const. dated 28.02.91 referred to in instructions Annexure P-1 providing for regularization of the services of adhoc class III employees with effect from 31.12.90. Now her claim is essentially for counting the period of her adhoc service from 14.12.1981 to 20.05.1983 and on that basis to give her the benefit of regularization

from 30.09.1988. There is no provision in instructions Annexure P-1 dated 28.11.1997 to give the benefit of regularization from a date prior to 01.01.1991, which is the date specified in the notification dated 28.02.1991.

8. From an overall reading of instructions Annexure P-1, it seems to me that their real object and purpose is the regularization of adhoc employees from the date specified therein as distinguished from giving benefit of regularization from a date prior to such specified date. In my opinion, doing so and giving benefit of regularization to the petitioner from 30.09.1988, a date prior to 01.01.1991, which is the date specified in the notification dated 28.02.1991, would result in giving her additional benefit of retrospective seniority over her seniors. Obviously, during the period from 30.9.88 upto 1.1.1991, quite a good number of other persons would have been appointed to the cadre on regular basis. Such appointees would naturally rank senior to the petitioner, whose services were regularized from 01.01.1991. Retrospective regularization of the petitioner from 30.09.1988 as claimed, would mean giving her seniority over all those persons who were appointed to the cadre on regular basis from 30.9.88 upto 01.01.1991, rank senior to the petitioner and who would thus be adversely affected by retrospective regularization of the petitioner from 30.09.1988. None of them is a party to the lis. It would be unfair and unjust to them all, more so at their back, if the petitioner is given the benefit of regularization from 30.09.1988 instead of 01.01.1991. The petitioner's claim is, therefore, liable to be rejected on that ground also.

9. As a result of above discussion, the petition is dismissed.

10. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 08, 2022
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No