

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(212)

CWP No. 10375 of 2015

Date of Decision : 12.07.2022

Dhanpat Singh (deceased) through his L.R.

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajay Chaudhary, Advocate for the petitioner.

Mr. Kiran Pal Singh, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

In the present petition, the prayer of the petitioner (since deceased) is for regularizing of his services keeping in view the Policy dated 01.10.2003 (Annexure P-2) as well as keeping in view the fact that the employee junior as well as other similarly situated to the petitioner were regularized under the said Policy dated 01.10.2003 (Annexure P-2).

As per the averments made in the petition, the petitioner was appointed as Daily Wage on the post of Sweeper in September, 1999 and his services were terminated on 03.10.2000, which action of the respondent was impugned by the petitioner before the Industrial Tribunal. The said reference was decided in favour of the petitioner vide Award dated 20.10.2006 (Annexure P-1) and the termination of the services of the petitioner was held to be bad and the petitioner was directed to be reinstated

in service with continuity. The said Award attained the finality and keeping in view the said Award, petitioner was reinstated in service. By the time, the petitioner was reinstated in service, the respondents had issued a Policy for regularizing the services of the daily wage employees, which came into operation on 01.10.2003.

As per the said Policy dated 01.10.2003 (Annexure P-2), the employees, who had completed three years of service as on 30.09.2003 and were in service, were entitled to be considered for the grant of benefit of regularization. The colleagues of the petitioner, who were in service on the said date as well as the persons, who were appointed on daily wage basis after the petitioner, were considered under the said Policy and their services were regularized. As the benefit, which was extended to the similarly situated employees as well as the persons, who were junior to the petitioner, but the same was not being extended to the petitioner as he was not in service at the relevant time, the petitioner approached the respondents for the grant of the said benefit keeping in view the Award of the Tribunal dated 20.10.2006 (Annexure P-1), granting him reinstatement in service along with continuity of service. The petitioner had named one of his junior, namely, Karan Singh, whose services were regularized by the respondents w.e.f. 01.10.2003.

As the benefit was not being given to the petitioner, he approached this Court by filing the present petition claiming regularization of his services under the Policy of State of Haryana dated 01.10.2003 (Annexure P-2) along with consequential benefits.

After notice of motion, the respondents have filed the reply,

wherein, they have stated that as the petitioner was appointed after 31.01.1996, he was not entitled for regularization of his services keeping in view the Policy dated 01.10.2003 (Annexure P-2) issued by the respondents. Further objection of the respondents is that as the petitioner was not in service on the required date i.e. 30.09.2003, the benefit of the Policy dated 01.10.2003 (Annexure P-2) cannot be given to him.

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

The only question, which arise to be decided in the present petition is whether the petitioner is entitled for consideration of his case under the Regularization Policy dated 01.10.2003 (Annexure P-2) or not. It is not disputed by learned State counsel that keeping in view the Award passed by the Labour Court, the petitioner was given continuity of service meaning thereby that it is to be deemed that petitioner remained in service starting from the year 1999 onwards. That being so, the petitioner had completed three years of service as on 30.09.2003, which was the requirement of the Policy dated 01.10.2003 (Annexure P-2). In respect of the Clause that the employee has to be in service as on 30.09.2003, the deem in fiction will come into play and as the petitioner was granted the continuity of service by the Award of the Labour Court, which has already attained finality, the petitioner is to be deemed to be in service on the said date i.e. 30.09.2003 to be considered eligible for regularization of his services.

The objection, which has been taken by the respondents that as per the Policy an employee has to be appointed prior to 01.01.1996, to be

considered for regularization of his service, the said objection is no longer available to the respondents keeping in view the order passed by a Co-ordinate Bench of this Court in CWP No. 1582 of 2018 titled as ***Gobind Vs. State of Haryana and others***, dated 13.03.2019. In the said judgment, the Co-ordinate Bench of this Court has held that the Clause that an employee should have been appointed to the service prior to 31.01.1996 to claim regularization is bad in law and the said clause was set-aside. That being so, if an objection being raised by the respondents has already been held to be bad in law by this Court, the same cannot be put into operation by the respondents in the present case as well in order to deny the benefit to the petitioner.

Further more, it has also been conceded by the respondents that the employees, who were similarly situated as the petitioner or who were juniors to the petitioner but were in actual service as on 30.09.2003, their services have been regularized. Once, the said benefit has been extended to the similarly situated employees as well as the juniors of the petitioner, the petitioner gets a right for consideration of his case under the said Policy for regularization of his services.

As far as the argument of learned State counsel that by the date the petitioner representing in the year 2009, the Policy dated 01.10.2003 (Annexure P-2) stood withdrawn. The said argument cannot take away the right of the petitioner. Once, a Policy was in operation even upto the date of reinstatement of the petitioner in the year 2007 and by deeming fiction, keeping in view the Award of the Labour Court dated 20.10.2006 (Annexure P-1), the petitioner gets a right to be considered under the said

Policy on the date of his reinstatement, merely that the Policy was withdrawn subsequently, will not take away the right of the petitioner for being considered under a Policy, which was in fact, operative on the date from which the implementation of the same is being claimed by the petitioner and was implemented qua other similarly situated employees.

As per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 6798 of 2019 titled as ***Prem Singh Vs. State of Uttar Pradesh and others***, decided on 02.09.2019, the employees cannot be kept on ad-hoc basis for years to come so as to deny them the benefit of pension. The relevant paragraph 35 of the said judgment is as under :-

“35. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in [Secretary, State of Karnataka & Ors. v. Uma Devi](#) 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.”

A bare perusal of the above said judgment would show that the

employees, who had rendered more than two decades of service, though attained the age of superannuation while working on ad-hoc basis, were considered as regular employee for the grant of benefit of regularization and consequent pension. The case of the petitioner herein is somewhat similar, who has worked with the respondents starting from the year 1999 till 2018 and died while in service but still is being treated on ad-hoc basis so as to deny the benefits to the family in respect of the service rendered by the petitioner. Therefore, on this account also, the claim of the petitioner is liable to be considered for regularization of his service.

Keeping in view the above, the prayer of the petitioner for consideration of his case for regularization of his services under the Policy dated 01.10.2003 (Annexure P-2) is allowed. A direction is given to the respondents to consider the claim of the petitioner for treating him in service as on 30.09.2003 under the Regularization Policy dated 01.10.2003 (Annexure P-2) and grant him the benefit of same as the same has been extended to not only the similarly situated employees but also to the juniors. Appropriate orders be passed by the respondents within a period of two months from the receipt of copy of this order. Observations of this Court recorded hereinbefore be kept in mind while considering and passing appropriate order on the case of the petitioner for regularization of his service.

In case, the petitioner is found entitled for the benefit, the consequential benefits of fixation of pay etc. be given to the petitioner and the consequential benefits be extended to the legal heir of the petitioner from the date the petitioner is found entitled for regularization of his

services. It is made clear that arrears of salary will only be given to the legal heir of the petitioner for a period of three years and two months prior to the date of filing of the present petition, which was filed on 19.05.2015.

July 12, 2022
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No