

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(214)

CWP-20339-2011

Date of Decision : September 20, 2022

Usha Rani

..Petitioner

Versus

State of Haryana and others

..Respondents

(214-A)

CWP-24148-2011 (O&M)

Ish Pati

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Y.P. Malik, Advocate, for the petitioner(s)
in both the petitions.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, two writ petitions, the details of which have been given in the heading of the order, are being disposed of as both the petitions involve the same question of law on similar facts.

The grievance of the petitioner(s) is that they have worked with the respondents on contractual basis for more than one and half decade and despite which fact, their services have not been regularized though the said benefit has been extended to the similarly situated employees and their

services were regularized by the respondents. The prayer of the petitioner(s) is that they should be treated as regular in service for all intent and purposes so that they can avail the pensionary benefits so as to lead a dignified life as they have already attained the age of superannuation.

For the purpose of the present order, the facts are being taken from CWP No.20339 of 2011.

In the present petition, the petitioner applied in pursuance to an advertisement dated 03.09.1997 for appointment of as Art & Craft Teacher on a consolidated salary. The petitioner was interviewed by a duly constituted selection Committee and after considering the claim of all eligible who applied in pursuance to the advertisement, the petitioner was appointed on 23.09.1997 vide Annexure P-1 on a consolidated salary. Petitioner continued working as such, when on 29.07.1998, the petitioner was relieved from service whereas, the persons junior to the petitioner were retained. After representing a number of times, the petitioner filed CWP No.728 of 2004 and CWP No.6277 of 2004 and keeping in view direction given by this Court in CWP No.6277 of 2004, an order was passed on 29.04.2004, a copy of which has been appended as Annexure P-3 by which the petitioner was reinstated in service on 04.02.2004 and was also given the continuity of service till the date of rejoining the service.

As, the petitioner never worked with the respondents from the year 1998 till 2004, the petitioner was not given the benefit of regularization policy which the State has issued on 01.10.2003 according to which, an employee who had rendered three years of service as on 30.09.2003 and was in service, was entitled to be considered for regularization. In pursuance to the said policy, the employees, who though were junior to the petitioner or

were similarly situated but were in service, were regularized, which benefit was not extended to the petitioner on the ground that the petitioner was not in service on 30.09.2003 and had not completed actual service of three years.

After the reinstatement, the petitioner started agitating her claim for the grant of benefit of regularization. The claim of the petitioner was considered by the respondents under a policy which was issued in the year 2011 but the benefit was not extended to the petitioner on the ground that as per the policy of the year 2011, an employee should have ten years service as in April, 2006 so as to qualify for regularization of service and as the petitioner was appointed in January, 1997 and the petitioner was short of ten years as in April, 2006, the benefit was declined.

The petitioner continued working upto the age of 55 years after which date, the petitioner was relieved from service. The petitioner filed the present petition seeking regularization of her services keeping in view the policies which have been issued by the Government of Haryana from time to time during the service career of the petitioner.

After notice of motion, the respondents have filed the reply and the claim of the petitioner is contested on the ground that after the reinstatement of the petitioner in the year 2004, only one policy was issued by the Government of Haryana for regularization of the services of the employees and that was in the year 2011 under which policy, the claim of the petitioner was considered for regularization of her services but as the petitioner failed to clear the terms and conditions of the said policy, the benefit of regularization policy of the year 2011 was not extended to her and therefore, the prayer of the petitioner for treating her as a regular employee

may kindly be declined.

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

It is a conceded fact that the petitioner was appointed after the posts were advertised in the year 1997 and that too after considering the claim of all eligible. Petitioner worked for a period of more than one year after which date she was relieved from service but in February, 2004 the petitioner was reinstated in service keeping in view the order passed by the competent Court of law and by an order dated 29.04.2004, the petitioner was also given the continuity of service from the date of initial appointment. That being so, by a notional fixation, it has to be held that the petitioner continued working after her appointment in the year 1997, in view of the said fact, the petitioner is entitled for consideration of her claim for regularization of her services keeping in view the regularization policy which was issued by the Government of Haryana on 01.10.2003 according to which, there were only two conditions i.e. that an employee should have rendered three years service as on 30.09.2003 and should be in service. These two conditions are fulfilled by the petitioner. The petitioner was appointed in the service in September, 1997 and after being granted continuity of service, she had more than five years service as on 30.09.2003. That being so, the petitioner qualifies the conditions of having three years service as on 30.09.2003.

Further, with regard to the condition that the employee should have been working on the said date, the petitioner has been granted continuity of service by the respondents themselves vide order dated 29.04.2004. The consequence of the said order is that the petitioner has to

be treated in service as on 30.09.2003. Therefore, the petitioner also satisfy the condition of being in service as on 30.09.2003.

The respondents have never considered the claim of the petitioner under the said regularization policy of the year 2003 though similarly situated employees as the petitioner as well as the juniors of the petitioner have already been regularized under the said policy of the year 2003.

Keeping in view the above, once the petitioner has rendered more than 15 years of service and an employee becomes entitled for grant of pensionary benefits after rendering ten years of regular service, it will be too harsh to decline the said benefits to the petitioner when, the claim of the petitioner for treating her regular, as per the policy dated 01.10.2003 is covered in her favour.

Keeping in view the above, as the petitioner fulfils all the requisites of the regularization policy dated 01.10.2003, her claim is allowed. She be treated as a regular employee w.e.f. 01.10.2003 onwards.

Learned counsel for the petitioner submits that though the petitioner is being treated regular from 01.10.2003 but she will not claim arrears of salary upto the date she attained the age of superannuation but the petitioner be extended the retiral benefits after fixing her salary from the date of regularization and she be granted the pensionary benefits along with arrears.

The petitioner has already foregone her arrears, the respondents are directed to treat the petitioner as regular from 01.10.2003 onwards and fix her salary upto the date she attained the age of superannuation and thereafter, on the basis of salary so calculated, her pensionary benefits be

also calculated and be paid to the petitioner. The pension for which the petitioner becomes entitled for, from the date she attained the age of superannuation be also extended to her along with arrears within a period of two months of the receipt of copy of this order.

Both the writ petitions are allowed in above terms.

A photocopy of this order be placed on the file of other connected case.

In CWP No.24148 of 2011 unfortunately, the petitioner has died and the present petition is being pursued by the legal heirs of the petitioner. Though the petitioner will also be entitled for the same relief as being extended to the petitioner in CWP No20339 of 2011, but after her death, it may be ascertained whether, any other member of the family is entitled for the family pension or not.

CM-9911-CWP-2013

As the main case has been allowed, the present application stands disposed of.

September 20, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes