

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.218

CWP No.17258 of 2016

Date of Decision: 23.08.2022

Randhir Singh and others

.... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.S.Patwalia, Sr. Advocate with
Mr. Kannan Malik, Advocate
for the petitioners.

Mr. R.S.Budhwar, Addl. A.G.Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

The prayer of the petitioners in the present petition is for the grant of benefit of regularization of their services on the post of Teaching Master/Mistress keeping in view the regularization policy of the State of Haryana dated 01.10.2003 as well as in view of the fact that similarly situated employee namely Rajesh Kumar, who had also raised the same grievance before this Court in **CWP No.24279 of 2012**, has already been allowed same benefit by this Court, which order has been upheld by Hon'ble Division Bench in **LPA No.741 of 2016**.

The factual averments which have been made in the petition are that in the year 1997, the respondents appointed Teaching Masters/Mistresses on contractual basis so as to impart education as Social Studies/Science Masters. The said appointments were made after candidates underwent a process of selection. After the petitioners were appointed in the year 1997, they continued working briefly whereafter the services of the

contractual employee including the petitioners was terminated in the same year itself. The petitioners raised the plea before the respondents that they were entitled to continue in service and after due consideration, an order was passed in May, 2005 to reinstate them in service but prospectively and for the period they remained out of service, they were not to be paid any arrears on account of no work no pay. Keeping in view the said decision, the petitioners were reinstated in service in the year 2005 and are still continuing in service.

After the reinstatement in service, petitioners along with similarly situated employees made a request to the respondents that once they have been reinstated in service, though they have not been granted monetary benefit for the period they remained out of service, but they should be granted the benefit of continuity of service from their initial date of appointment from the year 1997 onwards, so that they can get certain benefits which they are entitled for. The State Government considered the said request and in August, 2011, by order dated 08.08.2011 (Annexure P-5), the petitioners were granted the benefit of continuity of service from their initial date of appointment for all the benefits except monetary benefits for the period they remained out of service.

A similarly situated employee to that of the petitioners namely Rajesh Kumar who was also initially appointed in the year 1997 and whose services were terminated and was also reinstated in the year 2006, approached this Court by filing **CWP No.24279 of 2012** claiming the benefit of regularization of services keeping in view the regularization policy dated 01.10.2003. The respondents took an objection to the said prayer of Rajesh Kumar that when the policy dated 01.10.2003 was enforced, Rajesh Kumar

was not in service and as per the regularization policy dated 01.10.2003, an employee has to have minimum three years of service and should have been in service as on 30.09.2003 and hence, the benefit of regularization of service can not be extended to Rajesh Kumar. This Court after considering all the objections, allowed the plea of Rajesh Kumar vide order dated 05.05.2015 (Annexure P-9) and directed the respondents to grant Rajesh Kumar the benefit of regularization. Being aggrieved against the said judgment, the State preferred Letters Patent Appeal being **LPA No.741 of 2016**, which came to be dismissed on 26.07.2016.

As the benefit claimed by Rajesh Kumar was extended to him only and not to the similarly situated employees, the petitioners have approached this Court claiming the same benefit by way of present petition being similarly situated.

After notice of motion, the respondents have filed reply and in the reply, again the same objection, which was taken by the respondents in the case of above said Rajesh Kumar, has been taken that the petitioners did not had three years of service as on 30.09.2003 and were not in service at that point of time and therefore, the benefit of the regularization policy dated 01.10.2003 can not be extended to them. The further objection is that after 2014, since a new regularization policy was issued, no benefit can be given to the petitioners under the policy of the year 2003.

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

It is a conceded position before this Court that a similarly situated employee namely Rajesh Kumar has already been extended the similar benefit as being claimed by the petitioners in the present petition.

This Court accepted the plea of Rajesh Kumar by regularizing his service and the said benefit has already been extended by the respondents to the said Rajesh Kumar keeping in view the pronouncement of the Coordinate Bench in **CWP No.24279 of 2012**, which judgment has been upheld by Hon'ble Division Bench in **LPA No.741 of 2016**. Once, by a pronouncement of a Court, a similarly situated employee as compared to the petitioners has been found entitled for a particular benefit, the same benefits can not be declined to the petitioners. Non grant of the same benefit as extended to Rajesh Kumar will amount to discrimination, which can not be allowed.

As per the judgment dated 28.02.2003 rendered by Hon'ble Division Bench of this Court in **CWP No.3384 of 2003** titled as **Satbir Singh versus State of Haryana and others**, being a welfare state, when a question of law is settled by a competent Court of law, the same should be implemented qua all the similarly situated employees rather than forcing each and every employee to the Court to seek the same benefit. Keeping in view the said principle of law, the petitioners are held entitled for the regularization of their services under the policy dated 01.10.2003.

Further, the only objection which has been taken by the respondents is that the petitioners were not in service as on 30.09.2003 and they did not have three years of service as on 30.09.2003. It is a conceded position that vide Annexure P-5, the petitioners have been granted continuity of service from their initial date of appointment. That being so, it is deeming fiction that the petitioners have to be treated in service without there being any break starting from the year 1997. Keeping in view the said deeming fiction, the petitioners are to be deemed to be in service as on 30.09.2003 when the regularization policy came into being for considering the case.

Once, Rajesh Kumar has been found eligible for the grant of benefits being claimed by the petitioners and it is a conceded position that petitioners are similarly situated as Rajesh Kumar, the same benefits have to be extended to the petitioners also including regularization of their services, hence, the objection being taken by the respondents that the petitioners did not had three years of service as on 30.09.2003 or that they were not in service on 30.09.2003 so as to be excluded from the implementation of the regularization policy dated 01.10.2003, can not be accepted.

As far as the objection of the respondents that the regularization policy of 2003 can not be implemented because in the year 2014, a new policy was issued by the State of Haryana, the said policy was set aside by the competent Court of law and the said matter is pending before Hon'ble Supreme Court of India. The order granting benefits to Rajesh Kumar was passed by the Hon'ble Court on 05.05.2015, i.e. after the policy of the year 2014 was issued by the Government of Haryana. Not only this, after the said policy was set aside by this Court, the LPA Bench decided the LPA on 26.07.2016 filed by the State against the order dated 05.05.2015 but no such objection was taken in the case of Rajesh Kumar, hence, the said objection is not maintainable in the case of the petitioners, therefore, the petitioners are found entitled for the grant of the benefit of regularization of their services keeping in view the regularization policy dated 01.10.2003.

Apart from this, as per the judgment dated 02.09.2019 of Hon'ble Supreme Court of India rendered in **Civil Appeal No.6798 of 2019** titled **Prem Singh versus State of Uttar Pradesh and others**, even an employee who has rendered two to three decades of service on adhoc basis, is entitled for the pensionary benefits. The said judgment emphasized that an

employee can not be kept on adhoc basis for long period and by relying upon the judgment of the Hon'ble Supreme Court of India rendered in the case of Secretary, State of Karnataka and others versus Uma Devi, 2006 (4) SCC 1, the Hon'ble Apex Court held that even a person who attained the age of superannuation while working on adhoc basis after rendering two to three decade of service, is entitled for pensionary benefits. Upon applying the said ratio in the present case, the petitioners have rendered the service starting from the year 1997 and are still in service since the last 24 years and therefore, would still be entitled for regularization of their services. The relevant paragraph No.35 of Prem Singh's case (supra) reads as under:-

“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.”

Keeping in view the above, the claim of the petitioners is allowed. The respondents are directed to grant the petitioners the same benefit as being extended to Rajesh Kumar being similarly situated to the petitioners.

Let this order be complied with within a period of two months from the receipt of copy of the same.

(HARSIMRAN SINGH SETHI)
JUDGE

23.08.2022
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes