

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

205

CWP-24428-2014 (O&M)
Date of Decision :14.12.2022

Satya Parkash

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Abhivrat Arya, Advocate for
Ms. Alka Chatrath, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the prayer of the petitioner is that he is entitled for regularization of his service under the regularization Policy dated 01.10.2003 as the petitioner had already completed 03 years of service upto 30.09.2003. Further prayer of the petitioner is that he is entitled for grant of benefit of counting of service as extended to the similarly situated employees namely, Des Raj and Harpinder Kaur.

Facts as stated in the writ petition are that an advertisement was issued on 19.08.1997 by the respondents inviting applications for various posts including the post of JBT teachers to be filled on 89 days basis on a consolidated salary, which appointment was offered against the posts, which were lying vacant and were to be filled till the regular selection is made. The petitioner alongwith other similarly situated candidates applied for the said post and got selected as JBT teacher on consolidated salary on 02.01.1998.

The petitioner continued working on 89 days basis as contract was renewed repeatedly. The petitioner and the other similarly situated employees requested the respondents to adjust them on regular basis as they were working on the regular sanctioned posts. On 10.03.1999 petitioner was relieved from service along with other similarly situated teachers, who were also working on the same terms and conditions. Teachers, who were relieved from service, filed representations with the respondents with the request that as the posts of JBT teachers in a particular district are lying vacant, they be allowed to continue. Said request of the petitioner and the other similarly situated employees remained pending consideration with the respondent-department for a long time but ultimately, they were again appointed/re-appointed on various posts starting from January, 2004 onwards. Petitioner was re-appointed as JBT teacher on 30.10.2005 on the same terms and conditions on which he was initially appointed. Two candidates with whom the petitioner is claiming parity namely, Des Raj and Harpinder Kaur, were appointed again on contractual basis on 30.01.2004 and 01.07.2004 respectively.

After being re-appointed, as the respondents had issued regularization policy in the meantime i.e. in the year 2003, the teachers working on 89 days basis requested the respondents for treating the period for which they remained out of service as duty period but on notional basis. Vide order dated 24.08.2006, similarly situated employees namely, Des Raj and Harpinder Kaur, who were reappointed in the year 2004, were granted benefit of continuity in service from the initial date of their appointment but the same prayer of the petitioner was rejected.

After granting the benefit of continuity in service to the similarly situated employees on 17.07.2006, services of those employees namely, Des Raj and Harpinder Kaur, were regularized under the Policy dated 01.10.2003 on the ground that by the grant of continuity in service from the initial date of appointment, Des Raj and Harpinder Kaur had 03 years of service to their credit as on 30.09.2003. The said benefit was not being extended to the petitioner, for which, the petitioner has approached this Court.

Prayer of the petitioner is that he be given benefit of regularization of service under the Policy dated 01.10.2003 as extended to the similarly situated employees namely, Des Raj and Harpinder Kaur especially, when the petitioner had already rendered more than 02 decades of service and is still in service.

After notice of motion, the respondents have filed reply wherein, it has been mentioned that though, the petitioner was selected in the year 1998 but his services were terminated in the year 1999 though, he was re-appointed in the year 2005 but as the said break period has been treated as 'no work no pay' and the petitioner has undertaken that he will not claim the benefit of wages for the said break period, petitioner cannot be granted the benefit of the period, for which, he remained out of service. In respect of the similarly situated employees, the respondents have stated that they were re-appointed in the year 2004 and they were granted continuity in service and by the grant of said benefit of continuity in service from the initial date of their appointment, those similarly situated employees namely, Des Raj and Harpinder Kaur were granted the benefit of regularization of

their service as they were deemed to be in service as on 30.09.2003 so as to become eligible for consideration for the grant of benefit of regularization of their service under Policy dated 01.10.2003.

During the pendency of the petition, the respondents were directed to file a specific affidavit to point out the differences between the case of Des Raj and Harpinder Kaur with that of the petitioner, who have been granted benefit of continuity in service so that the claim of the petitioner for grant of continuity in service and regularization of his services could be adjudicated on the basis of the said objections, which the respondents are taking.

Respondents have filed an affidavit dated 09.12.2022 wherein, they have mentioned that Des Raj and Harpinder Kaur were appointed afresh in January, 2004 and July, 2004 respectively hence, they were granted continuity in service and consequent regularization of their service, keeping in view the terms and conditions of the regularization Policy dated 01.10.2003 whereas, as the petitioner was re-appointed in the year 2005, hence the said benefit was not extended to him especially, keeping in view the terms and conditions of re-appointment as per which the petitioner was not be given salary for the intervening period on the basis of 'no work no pay'.

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

The facts which have been stated hereinbefore are not in dispute. On the basis of the facts stated hereinbefore, this Court is required to adjudicate whether the petitioner is similarly situated as the other two

employees namely, Des Raj and Harpinder Kaur in order to get the benefit of continuity in service and consequent consideration under the regularization Policy dated 01.10.2003.

The orders passed by the respondents in favour of the similarly situated employees Des Raj and Harpinder Kaur in the year 2004 have been appended as Annexures R-1 and R-2 with the short reply dated 09.12.2022. In the said orders, it was mentioned that those employees are being appointed afresh and without back wages. When a fresh appointment is offered, no benefit of the earlier service was required to be given to them. But when these two employees raised demand for continuity of service, same was accepted by the respondents and an order dated 24.08.2006 (Annexure P/7) was passed qua them that they will be granted continuity in service from their date of initial appointment but the same will be on notional basis. Relevant order granting the benefit to Des Raj and Harpinder Kaur is as under:-

“According to this office letter No.E-2/04/2126-29 dated 06.12.04, Shri Deshraj, Sanskrit Teacher and according to letter NO.e-2/04/2138-41 dated 06.12.2004, Smt Harpinder Kaur Punjabi Teacher had been treated on continuity period from 13.05.1998 to 30.01.2004 & 01.07.2004. Order issued on 06.12.2004, is now to be amended and now it has been decided that the increment of pay scale of aforesaid should be treated on Notional Basis from the original date of joining of service.

Bare perusal of the above order would show that continuity in service was granted to Des Raj and Harpinder Kaur on notional basis, which

means that they were also not entitled for financial benefit for intervening period.

Case of petitioner was on same footing as he was also re-appointed and same was the condition of the re-appointment of the petitioner that the petitioner will not be granted any financial benefit on the basis of 'no work no pay' for the period he remained out of service. Further, in the case of the petitioner, he was reappointed which means that the earlier service can be taken into account.

That being so, there is no difference with regard to initial appointment of the petitioner as well as Des Raj and Harpinder Kaur and their re-engagement in service in the years 2004/2005. Therefore, the respondents without any valid justification are treating the similarly situated employees differently by creating an artificial difference so as to deny the benefit, which is impermissible.

Once a benefit of continuity in service has been given to the similarly situated employees i.e. Des Raj and Harpinder Kaur, the same benefit should have been extended to the petitioner also. Prayer of the petitioner qua the said aspect is meritorious to be accepted and is accordingly accepted so as to avoid discrimination between the similarly situated employees.

Once the petitioner has been found entitled for the continuity in service from the initial date of appointment, which appointment was made after issuance of advertisement and considering the claim of all eligibles, the question arises whether petitioner is also entitled for the grant of benefit of regularization of service under the regularization policy dated 01.10.2003

or not.

The only requirement under the regularization policy dated 01.10.2003 is that an employee should have rendered 03 years of service as on 30.09.2003 by the grant of continuity in service. The petitioner is similarly situated to that of Des Raj and Harpinder Kaur and has to be given notional assumption that he also had 03 years service as of 30.09.2003 to be considered for regularization of his service. Nothing has been brought to the notice of this Court which disentitles the petitioner for regularization of his services except the fact that the petitioner did not had 03 years service in his credit required for considering his claim for regularization under the regularization policy dated 01.10.2003.

The second objection being taken by the respondents is that the petitioner was not in service on the date when the Policy dated 01.10.2003 was issued.

The said argument cannot be accepted for the reason that Des Raj and Harpinder Kaur were also not in service on 01.10.2003 as they were appointed afresh on January, 2004 and July, 2004 respectively. That being so, the petitioner being similarly situated to that of Des Raj and Harpinder Kaur cannot be treated differently once the said benefit of regularization has already been extended to them by the respondents themselves under the Policy dated 01.10.2003. Denial of the said benefit will amount to discrimination, which cannot be allowed.

Even otherwise, as per the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.6798-2019 Prem Singh vs. State of Uttar Pradesh and others**, an employee who rendered two decades of

service is entitled for regularization of his/her services. Relevant paragraph of the 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.

Keeping in view the facts noticed hereinabove as well as the settled principle of law settled by the Hon'ble Supreme Court of India in **Prem Singh (supra)**, the claim of the petitioner for the grant of regularization of his service under the Policy dated 01/10/2003 is allowed.

Respondents are directed to pass an appropriate order by giving the petitioner benefit of continuity in service from his initial date of appointment as extended to the similarly situated employees i.e. Des Raj and Harpinder Kaur and thereafter grant him the benefit of regularization of his services under the Policy dated 01.10.2003, with effect from the same date as extended to the similarly employees, details of whom have been given in the order with all consequential benefits.

Let an appropriate order upon consideration be passed within a period of 02 months from the receipt of copy of this order. It is made clear that the petitioner will be granted the said benefit from the date required but the arrears will only be admissible to the petitioner from three months prior to the filing of the present petition, which has been filed in the year 2019.

Petition stands allowed in above terms.

CM-3500-CWP-2018 &
CM-12353-CWP-2018

Applications are also disposed of.

December 14, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No