

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1273)

CWP-8872-2012 (O&M)

Date of Decision : July 15, 2022

Laxmi Devi

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate, with
Mr. Sachmeet Singh Randhawa, Advocate, for the petitioner.

Mr. Sandeep Singh Mann, Additional Advocate General,
Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the grievance of the petitioner is that though the petitioner was fully eligible for regularization of her services as per the regularization policy dated 01.10.2003, but her claim has not been considered in a correct perspective to grant her the relief of regularization of services and hence, the respondents are under an obligation to treat the petitioner as a regular employee w.e.f. 01.10.2003 with all consequential benefits.

As per the facts mentioned in the petition, petitioner was initially appointed as Craft Teacher with the Government of Haryana on 31.05.1983. While working on the said post, in the year 1995, keeping in view the instructions issued by the Government of Haryana, the Craft Teachers, who were fulfilling educational qualification for being appointed

as a Gram Sewak, were to be appointed as such and the petitioner, keeping in view of her qualification, was appointed as a Gram Sewak on 03.05.1995 in a regular pay scale but on adhoc basis. While the petitioner was discharging the duties on the said post, the respondents issued instructions on 01.10.2003 wherein, proposal was made to consider the employees, who were working on adhoc basis or temporary basis for regularization of their services. As per the regularization policy dated 01.10.2003, an employee, who has completed three years service as on 30.09.2003 was to be treated eligible for consideration.

In the present case, the respondents considered the claim of the petitioner for regularization but the same was declined on the ground that two annual confidential reports of the petitioner for the period 10.11.1997 to 31.03.1998 as well as 01.04.1998 to 31.12.1998 were recorded as below average, which reports, according to the petitioner, were never supplied to her at any given point of time through her service career. Thereafter, the petitioner continued working with the respondents on adhoc basis and ultimately attained the age of superannuation on 31.05.2009 in the same status.

After attaining the age of retirement, the petitioner approached the respondents to grant her the benefits in respect of approximately 26 years of service which she had rendered with the respondents but the same was not acceded to on the ground that upto the date when the petitioner attained the age of superannuation, she was not a regular employee so as to get any benefit. The said action of the respondents is under challenge in the present petition where, the petitioner has prayed that she be treated as a regular employee keeping in view the regularization policy dated

01.10.2003 and be granted all the consequential benefits for which she is entitled for.

After notice of motion, the respondents have filed the reply wherein, they have stated that the record of the petitioner was such that though her claim was considered for regularization of her services under the policy dated 01.10.2003 but the benefit of the same was not extended to her keeping in view the adverse report recorded in the ACR for the session 1997-98.

Learned counsel for the respondent submits that the claim of the petitioner could not be considered under the said policy thereafter for the reason that in the year 2007, the regularization policy dated 01.10.2003 was withdrawn and before the said policy was revived on 18.06.2014, the petitioner had already attained the age of superannuation and was no longer in service and therefore, keeping in view the facts mentioned, the prayer of the petitioner may kindly be declined.

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

The only question, which arise is whether, the petitioner is entitled for regularization of services keeping in view the terms and conditions of the regularization policy dated 01.10.2003.

It is a conceded position that for being eligible for the regularization of the service under the policy dated 01.10.2003, an employee needs to have three years service as on 30.09.2003 and should be continuing in service on the said date. It is not disputed by the learned counsel for the parties that the petitioner had three years of service as on 30.09.2003 and was in service. The only reason being given for not

extending the benefit of regularization policy dated 01.10.2003 is the service record of the petitioner for the year 1997-98. The said ground of the respondent is not tenable for the reason that the employee, who had three years of service upto 30.09.2003 was eligible for consideration under the regularization policy. The period of the service record which is being relied upon is of 1997-98, which is much before the relevant period of three years, which was required to be considered for regularization of the service of the employee. As three years service was needed as on 30.09.2003, record upto year 1999-2000 was required to be taken into consideration, hence, the record for the year 1997-98 was wrongly taken into consideration by the respondents so as to deny the benefit of regularization of her service.

It is a conceded position that the record of the petitioner for three years preceeding 30.09.2003 is good. That being so, the petitioner was eligible as per the record, for regularization of her services.

Even otherwise, it has come on record that the annual confidential reports of the petitioner for the period 10.11.1997 to 31.03.1998 as well as 01.04.1998 to 31.12.1998 which are being treated as adverse so as to deny the petitioner's benefit of regularization of her service, were not served to the petitioner at all for her comments so that, she could have made representation against the comments recorded therein. It is a settled principle of law that annual confidential report which records adverse comments, has to be given to an employee so as to seek comments and to give opportunity to the employee to present her case qua the adverse remark recorded therein, failing which the said report cannot be taken into account for any purpose so as to cause prejudice to the employee concerned.

As per the judgment of the Hon'ble Supreme Court of India in

Civil Appeal No.7631 of 2002 titled as Dev Dutt versus Union of India and others, decided on 12.05.2008, any report which has not been given to an employee, cannot be relied upon for any purpose so as to cause prejudice to the concerned employee. The relevant paragraph of the said judgment is as under:-

“45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of [Article 14](#) of the Constitution.”

A Coordinate Bench of this Court in ***CWP No.22617 of 2010 titled as Dr. Gurdev Singh Bhardwaj versus State of Punjab and others, decided on 16.08.2012***, while relying on the above mentioned judgment of the Hon'ble Supreme Court of India, has held that report having adverse effect, if not communicated, cannot be taken into consideration and has to be ignored while considering the claim of an employee for the grant of a relief. Relevant paragraph of the said judgment is as reproduced as under:-

“12. Following the dictum laid down by the Apex Court, it is clear that the average report relating to the year 2005-06 which clearly had an adverse effect insofar as consideration of the petitioner for purposes of promotion to the higher post of Senior Medical Officer, was required to be conveyed to him. Accordingly, it is held that the ACR for the year 2005-06 having not been communicated to the petitioner was liable to be ignored while determining the bench mark.”

In the present case, nothing has been placed on record that the

annual confidential report from the period 10.11.1997 to 31.03.1998 as well as 01.04.1998 to 31.12.1998, were ever served upon the petitioner for her comments. That being so, even on this account, these reports cannot be taken into consideration.

In case, the annual confidential reports from the above mentioned period, are taken out for consideration, there is nothing adverse against the petitioner in her record so as to decline the benefit of regularization. Hence, in the facts and circumstances of this case, declining of benefit of regularization of service to the petitioner was bad in law as well as on facts.

Another argument being taken by the learned counsel for the respondents is that the regularization policy dated 01.10.2003 was withdrawn subsequently and thereafter superseded by another policy dated 18.06.2014 (Annexure P-11), hence, no benefit of the policy dated 01.10.2003 can be extended to the petitioner now.

The said argument cannot be accepted for the reason that once, the claim of the petitioner was covered under the policy dated 01.10.2003 when the said policy came into operation and was being applied upon all the similarly situated employees and the claim of the petitioner was considered by the respondents under the said policy but petitioner was wrongly denied the benefit of the same, then even if the policy was subsequently withdrawn, said fact cannot take away the right of the petitioner to claim the benefit under policy of 2003, hence, the arguments being raised by the learned counsel for the respondents cannot be accepted.

Even otherwise, the policy dated 01.10.2003 has been revived by the respondents later on vide instructions dated 18.06.2014, a copy of

which has been attached as Annexure P-11. This fact is not disputed by the learned counsel for the respondents. That being so, the petitioner's claim for regularization of services cannot be declined on the basis of the objection being raised by the learned counsel for the respondents that 2003 policy is not in existence as of now.

Keeping in view the above, no valid justification has come on record to decline the benefit of regularization of the services of the petitioner under the policy dated 01.10.2003.

Even otherwise, the claim of the petitioner is covered by the decision of the Hon'ble Supreme Court of India in ***Civil Appeal No.6798 of 2019 titled as Prem Singh versus State of Uttar Pradesh and others, decided on 02.09.2019.***

The Hon'ble Supreme Court of India held that some of the employees, who had worked for 30 to 40 years with a particular institution, their services have not been regularized though they had crossed the age of superannuation, hence, once the employee had 10 years service, the same should have been regularized keeping in view the judgment in ***Secretary, State of Karnataka and others versus Uma Devi and others, AIR 2006 SC 1806*** as a one time measure. In the case before the Hon'ble Supreme Court of India, the Hon'ble Court directed regularization of the services of employees who had rendered more than three decades of service but with the condition that no difference of salary will be paid to them. Relevant paragraph 35 of the judgment in ***Prem Singh's case (supra)*** 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.”

Again, while considering a question whether, an employee who had rendered 30 years of service on adhoc basis but is denied pension, is justifiable or not, the Hon'ble Supreme Court of India held that where an employee has rendered 30 years of service continuously, the State cannot be permitted to take a stand that the employee was not regular in service and non-regularization of the services, resulting in denial in pension, is unreasonable. The said order passed by the Hon'ble Supreme Court of India in ***SLP No.1109 of 2022 titled as State of Gujarat and others versus Talsibhai Dhanjibhai Patel, decided on 18.02.2022*** is as under:-

“It is unfortunate that the State continued to take the

services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.

In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service.

Hence, the Special Leave Petition stands dismissed.

Pending application(s), if any, shall stand disposed of.”

In the present case, the petitioner has rendered more than 25 years of service whereas, a regular employee, who has served for 10 years, becomes entitled for the grant of pension. In the facts and circumstances of this case, the declining of the benefit to the petitioner is totally arbitrary and illegal and unjustified not only on the basis of the facts of this case but also on the settled principle of law.

Though, this Court could have asked the respondents to consider the claim of the petitioner once again under 2003 regularization policy but as the petitioner has already attained the age of superannuation as far as back 2009 and is litigating for the last approximately 13 years and keeping in view the facts of this case recorded hereinbefore, where the objections taken to decline the benefit have already been dealt with by this Court and found to be not sustainable, a direction is issued to the respondents to treat the petitioner as a regular employee w.e.f. 01.10.2003,

which benefit has already been extended to not only similarly situated employees but even to the juniors of the petitioner.

Learned senior counsel for the petitioner submits that the petitioner will not claim any arrears w.e.f. 01.10.2003 till the date of her retirement but the petitioner be given notional benefit for which she will be entitled for upto the date of her retirement and the arrears of pension be extended to her from the date she retired i.e. 01.06.2009 onwards.

Learned counsel for the respondents submits that as the petitioner has approached this Court in the year 2012, even the benefits of the arrear of the pension be also declined.

Though the arguments of the learned counsel for the respondents is very attractive but keeping in view the judgment of the Hon'ble Supreme Court of India that arrears of pension cannot be deemed to a pensioner, the same cannot be accepted. The Hon'ble Supreme Court of India in ***Civil Appeal No. 4100 of 2022 titled as Shri M.L Patil (Dead) through LRs versus The State of Goa and another, decided on 20.05.2022***, has held that though arrears of salary can be declined but the arrears of pension, once found entitled for, cannot be declined. Relevant paragraph of the judgment is as under:-

“3. Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent- State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High

Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020. Under the circumstances, the impugned judgement and order passed by the High Court is required to be modified to the aforesaid extent.”

That being so, the petitioner is held entitled for the grant of arrears of pension starting from 01.06.2009 onwards till the date of her retirement.

Learned senior counsel for the petitioner submits that as the petitioner is before this Court for the last 10 years waiting for the pensionary benefits, which claim has been found to be genuine, the arrears of pension be granted to the petitioner along with interest at least from the date when the petitioner approached this Court from the year 2012 onwards and not from 2009 when the petitioner retired.

No further argument is raised.

Keeping in view the facts and circumstances of this case, where, the rejection of the claim of the petitioner for regularization was done in an arbitrary manner on the ground which were not permissible and the petitioner suffered and has been litigating with the State for the last more than 10 years, the petitioner is also entitled for the grant of interest @

6% per annum as the arrears to be paid to her from the date the petitioner file the petition i.e. 08.05.2012. Learned senior counsel for the petitioner has not pressed the grant of interest from the date of retirement and hence, the same is only extended from the date of the filing of the present petition only.

Let the respondents calculate the benefits for which the petitioner is entitled for, under this order and the release the same within a period of two months from the receipt of copy of this order.

The present writ petition is allowed in above terms.

July 15, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No