

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(233)

CWP-6220-2021

Date of Decision : July 08, 2022

Shimla

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Krishan Daaria, Advocate, for
Mr. Surinder Kumar Daaria, Advocate, for the petitioner.

Mr. R.S. Budhwar, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the prayer of the petitioner is for quashing of the order dated 03.07.2020 (Annexure P-5) by which, the claim of the late husband of the petitioner for treating him regular in service upto the date of his death, has been declined by the respondents.

As per the facts mentioned in the writ petition, the late husband of the petitioner was appointed on daily wage basis in the year 1984. He continued working with the respondents and in the year 1996, a policy was issued by the respondents for regularizing the services of the daily wage employees. As per the petitioner, her late husband was eligible under the said policy and the services of the juniors were regularized but the said benefit was not granted to the husband of the petitioner. Thereafter, again the claim of the late husband of the petitioner was considered and an order was passed on 18.10.2005 wherein, the husband of the petitioner was found eligible for regularization of his services but the said order was kept in

abeyance so as to adjudge whether, the benefit of regularization of service can be awarded in favour of the late husband of the petitioner in view of the judgment of the Hon'ble Supreme Court of India in ***Secretary, State of Karnataka and others versus Uma Devi and others, AIR 2006 SC 1806***. Late husband of the petitioner continued working on daily wage basis till the date he unfortunately died, while in service on 09.08.2018, awaiting the benefit of the order dated 18.10.2005.

After the death, the petitioner filed a writ petition being CWP No.3398 of 2020 titled as Smt. Shimla vs. State of Haryana, which was disposed of on 07.02.2020 asking the respondents to decide the claim of the petitioner so as to treat the late husband of the petitioner as regular employee so as to grant her the benefits in respect of the service rendered by her late husband.

By the impugned order dated 03.07.2020 (Annexure P-5), the grant of the said benefit has been declined to the petitioner on the ground that the late husband of the petitioner was not entitled for the regularization of his service keeping in view the judgment in ***Uma Devi's case (supra)*** and also the fact that subsequent regularization policy issued in the year 2014 was set aside by this Court. The said order is under challenge in the present petition.

After notice of motion, the respondents have filed the reply and have again taken a stand that though vide order dated 18.10.2005, which was passed keeping in view the direction given by this Court in CWP No.3287 of 2004, the petitioner was found eligible for regularization of his services but keeping in view the judgment in ***Uma Devi's case (supra)***, the said benefit was not extended and the order dated 18.10.2005 was kept in

abeyance and thereafter, the regularization policy issued by the State of Haryana in the year 2014 has been set aside by this Court while passing order in ***CWP No.17206 of 2014 titled as Yogesh Tyagi and others versus State of Haryana*** and hence, the claim of the petitioner for treating the late husband of the petitioner 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 late husband of the petitioner worked with the respondents starting from the year 1984 onwards till the year 2018 i.e more than three and half decades. After such a long service, still, the services of the late husband of the petitioner were not regularized by the respondents though, at one given point of time, by passing an order dated 18.10.2005, the husband of the petitioner was found eligible for regularization of his services, which order is still kept in abeyance on the ground that whether the said order can be implemented in view of the judgment of the Hon'ble Supreme Court of India in ***Uma Devi's case (supra)***.

The question, which arise is whether, once the late husband of the petitioner was found entitled for the regularization of his service vide speaking order dated 18.10.2005, which was passed in pursuance to the directions given by this Court in CWP No.3287 of 2004, the same can be put on hold in view of the judgment of the Hon'ble Supreme Court of India in ***Uma Devi's case (supra)***.

The said question came up for consideration before 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. The Hon'ble Supreme Court of India held that once the employee had 10 years service, the same should have been regularized keeping in view the judgment in ***Uma Devi's case (supra)*** 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 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.”

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.”

Keeping in view the settled principle of law noticed

hereinbefore, the claim of the petitioner is squarely covered for treating her husband as a regular employee especially when in the reply filed by the respondents the services of the late husband of the petitioner were deemed fit for regularization by the respondents themselves and even order was passed in that regard on 18.10.2005. The relevant paragraph of the reply considering the said fact is as under:-

“CWP-3287-2004: Petitioner's husband filed civil writ challenging order dated 26.04.2002 and sought the regularization of services. This Hon'ble Court disposed the civil writ petition vide order dated 15.07.2005 and directed petitioner's husband to make representation to respondent department and also directed respondent department to pass the reasoned speaking order. In pursuance of the order dated 15.07.2005, the then Divisional Forest Officer, Fatehabad passed the speaking order on 18.10.2005 vide which claim of the petitioner was considered and petitioner was found eligible for regularization of services.”

The said order dated 18.10.2005 was not implemented only due to the judgment in ***Uma Devi's case (supra)***. Once, subsequently, the Hon'ble Supreme Court of India after taking into consideration the judgment in ***Uma Devi's case (supra)***, has held that an employee, who had rendered 10 years service, is entitled to be treated as regular and therefore, the benefit of the speaking order dated 18.10.2005 cannot be denied to the petitioner so as to treat the late husband of the petitioner as a regular employee.

Further, once upto the date of death, the late husband of the petitioner had rendered more than 35 years of service, hence, not giving any benefit to the legal heirs after the death of the employee on the ground that

services of the deceased employee were not regular, is totally unreasonable and contrary to the settled principle of law. The legal heirs of a regular employee, gets family pension even if the deceased employee has rendered less than one year of service but in the present case, no benefit has been extended to the legal heirs of the deceased employee who has rendered 35 years of service, which is totally unreasonable especially, in the facts and circumstances of the present case where, the respondents themselves, vide speaking order dated 18.10.2005 had allowed the claim of regularization in favour of the late husband of the petitioner but the said order was kept in abeyance even upto the date of death of husband of the petitioner.

Keeping in view the above, the respondents are directed to implement the speaking order dated 18.10.2005 wherein, services of the late husband of the petitioner were deemed fit for regularization and grant the petitioner the benefit after the employee died while in service by treating the said employee as regular for all intents and purposes.

Learned counsel for the petitioner has undertaken before this Court that the petitioner will not claim difference of salary from the year 2005 onwards till the date of the death but the petitioner be granted the other benefits such as gratuity, leave encashment and family pension to the legal heirs of the deceased employee for the total benefits of service under the Old Pension Scheme.

Keeping in view the above, the present petition is allowed. The late husband of the petitioner be treated as a regular employee keeping in view the speaking order passed by the respondents themselves dated 18.10.2005 and the petitioner be granted the benefit in respect of the service rendered by the late husband of the petitioner starting from the year 1984

onwards till the date of his death under the Old Pension Scheme keeping in view the settled principle of law in *CWP No.2371 of 2010 titled as Harbans Lal Vs. State of Punjab and others, decided on 31.08.2010.*

It is made clear that the petitioner will also be entitled for the grant of family pension from the death of the date of deceased.

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

July 08, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No