

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(213)

CWP No. 3173 of 2016
Date of Decision : 25.07.2022

Shri Abhey Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shilak Ram Hooda, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Ms. Suman Rani, Advocate for

Mr. Hitesh Pandit, Advocate for respondents No. 2 to 6.

Harsimran Singh Sethi J. (Oral)

In the present petition, the prayer of the petitioner is that though the petitioner has worked with the respondent-Nigam starting from 01.03.1976 till he attained the age of superannuation on 30.06.2013 but, the petitioner has not been treated as a regular employee by the respondent-department so as to deny him the service benefits including the benefit of ACP Rules as well as the retiral benefits.

Learned counsel for the petitioner submits that though, the prayer of the petitioner has not been stated in clear terms but actually the prayer of the petitioner is that he should be treated regular in service keeping in view the various policies, which have been issued by the State of

Nigam and have been made applicable upon the employees concerned.

As per the facts mentioned in the petition, the petitioner was appointed as Mate on 01.03.1976 on the basic pay of ₹75/-. In the year 1983, the petitioner was promoted as Work Mason on 01.04.1983 and thereafter, as Work Supervisor. In the year 1993, the petitioner was transferred to the office of the Executive Engineer (Grid), Rohtak, wherein, he worked on the post of Assistant Foreman. While working on the said post, petitioner attained the age of superannuation on 30.06.2013. The prayer of the petitioner is that though, he has worked with the respondent-Nigam for approximately 37 years, he has not been granted any benefit in respect of the said service in terms of the grant of Assured Career Progression Scheme (in short 'ACP Scheme') benefits as well as the pensionary benefits after the petitioner attained the age of superannuation. Petitioner raised the said grievance by serving upon the respondents a legal notice on 15.06.2015 (Annexure P-2) but as no relief was granted to the petitioner, the present petition has been filed.

After notice of motion, the respondents have filed the reply, wherein, the respondents submitted that though, petitioner has worked with the respondent-Nigam for a period of 37 years starting from 01.03.1976 till 30.06.2013 on various posts but he was never a regular employee of the respondent-Nigam so as to be granted the benefits of ACP Scheme as well as the retiral benefits. As per the respondents, the petitioner is not entitled for any benefit as he was not a regular employee of the respondent-Nigam.

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

It is a matter of concern that an employee has worked with the department for 37 years but is being denied the service benefits on the ground that there was no occasion with the department to regularize the services of the petitioner so that he can get the pensionary benefits after attaining the age of superannuation. It is a conceded position that while the petitioner was in service, the State of Haryana had issued various regularization policies so as to consider the claim of the eligible employees for regularization of their services, which policies have already been adopted by the respondent-Nigam. It is also a conceded fact before this Court that respondents have regularized the employees working in the Nigam on various posts keeping in view the regularization policies, which have been adopted by the respondent-Nigam. Once, such regularization policy is of the year 2003, which was issued on 01.10.2003, according to which, an employee, who has rendered three years service as on 30.09.2003, is entitled to be considered for regularization of his/her services. The petitioner concededly has discharged the duties since 01.03.1976. As on 30.09.2003, he had rendered approximately 27 years of service with the respondent-Nigam, whereas, only three years service was required for regularizing the services under the Regularization Policy dated 01.10.2003. Nothing has come on record why, the benefit of said policy was not extended to the petitioner despite being eligible.

Further more, as per the settled principle of law settled by 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**, an employee, who has discharged the duties with a department

for 2 to 3 decades, is deemed to be a regular employee so as to make the said employee eligible for the grant of pensionary benefits. The relevant paragraph 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.”

Once, the Hon'ble Supreme Court of India has directed the regularization of the services of an employee, who had completed 2 to 3 decades of service, the case of the petitioner is covered by the said settled principle of law. In the present case, the petitioner has worked for 37 years with the respondent-Nigam.

Further more, even as per 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, an employee, who had rendered 10 years of service, has to be considered for regularization as a one time measure. Nothing has been brought to the notice of this Court that the petitioner does not have 10 years services so as to exclude him from the said consideration.

Keeping in view the above, as per the settled principle of law, coupled with the various policies, which have been issued by the State of Haryana, duly adopted by the respondent-Nigam for regularizing the services of the employees, the petitioner's claim for regularization needs to be allowed.

Learned counsel for the petitioner submits that keeping in view the law laid down in **Prem Singh's case (supra)**, the petitioner does not press his claim for the grant of difference of salary in case, his service is regularized in terms of the Regularization Policy dated 01.10.2003 but, the petitioner be paid the pensionary benefits in accordance with law, as extended by the Hon'ble Supreme Court of India.

The prayer of the petitioner is in accordance with the settled principle of law settled by the Hon'ble Supreme Court of India in **Prem Singh's case (supra)** and, therefore, the respondents are directed to regularize the services of the petitioner under the Regularization Policy dated 01.10.2003 as no impediment qua the claim of the petitioner has been pointed out by the respondents. Petitioner be treated as a regular employee starting from 01.10.2003 i.e. the date of Regularization Policy and his salary be fixed accordingly till the date when the petitioner has attained the age of superannuation and all the pensionary benefits for which a regular employee is entitled for, be extended to him along with arrears. The petitioner will

also be entitled for the grant of arrears of pension from the date he attained the age of superannuation.

Let the present order be complied within a period of two months of the receipt of copy of this order.

Petition is allowed in above terms.

July 25, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No