

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(211)

CWP No. 789 of 2017

Date of Decision : 05.05.2022

Pushpa Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajay Chaudhary, Advocate for the petitioner.

Mr. Raman Kumar Sharma, Addl. Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

The present petition has been filed challenging the order dated 12.01.2017 (Annexure P-11) by which, the claim of the petitioner for regularizing the services of her late husband has been declined. Further prayer of the petitioner is that as the late husband of the petitioner fulfilled all the required conditions as per the Regularization Policy dated 01.10.2003 (Annexure P-2), the services of her late husband should have been deemed to be regular on the date he died and the consequential benefits be paid to the petitioner. The facts leading to the filing of the present petition are as under :-

The late husband of the petitioner, namely, Hari Ram, was employed on daily wage basis as Beldar in December, 1989. He kept on working in the same status till he died on 27.02.2005. After his death, the

petitioner approached the respondents that the case of her late husband was covered under the Regularization Policy dated 01.10.2003 (Annexure P-2) and, therefore, as persons junior to him have been regularized, the said benefit be extended to her late husband as well by deeming fiction and consequential benefits be paid to him. As the prayer of the petitioner was not being accepted or processed by the respondents, the petitioner approached this Court by filing CWP No. 22037 of 2016, which was disposed of by this Court to decide the legal notice served to the respondents, in pursuance to which the impugned order dated 12.01.2017 (Annexure P-11) has been passed, wherein, it has been mentioned that as while in service, the late husband of the petitioner had not completed 240 days of service in a completed year, for a period of 3 years, he does not fulfill the conditions of the Regularization Policy dated 01.10.2003 (Annexure P-2) and the said benefit has been declined. The said order is under challenge in the present petition.

After notice of motion, the respondents have filed the reply and they have again reiterated the same stand that the case of the late husband of the petitioner was not covered under the Regularization Policy dated 01.10.2003 (Annexure P-2) and, therefore, no benefit can be extended.

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

Learned counsel for the petitioner argues that in fact, the claim of the petitioner for regularizing the services of her late husband has been declined by the respondents on incorrect facts. Learned counsel submits that while passing the impugned order, only certain portion of the period of

service has been noticed to show that the late husband of the petitioner did not complete 240 days service in completed years whereas, as per the service record of the late husband of the petitioner starting from 1989 onwards as has been depicted in paragraph 8 of the petition from where it is clear that in the year 1994, 1995, 1996, 1997, 1998, 1999, 2000 and 2001, the late husband of the petitioner had completed more than 240 days service. As per the facts, which have gone un-rebutted in the year when the Regularization Policy was issued i.e. 2003, petitioner had more than 240 days service to his credit, which shows that the claim of the petitioner has wrongly been declined by the respondents on the basis of the incorrect facts.

Learned counsel for the respondents submits that though, the data given by the petitioner in paragraph 8 of the petition, has not been specifically denied but, on the date when the Regularization Policy dated 01.10.2003 (Annexure P-2) came, the late husband of the petitioner was not in service, which fact itself goes against him so as to deny him the benefit. The said assertion has been controverted by learned counsel for the petitioner stating that the Policy was issued in December, 2003 whereas as per the undisputed fact, in the said year, the late husband of the petitioner had worked for 240 days as per the data given in para 8 of the petition and even in the subsequent year in 2004-2005, prior to the death, he had worked for more than 100 days, which shows that the late husband of the petitioner was performing the duties in the year 2003, when the Regularization Policy was issued.

A bare perusal of the above mentioned facts would show that the order, which has been passed by the respondents declining the benefit

dated 12.01.2017 (Annexure P-11) is on incorrect facts. The details show that the late husband of the petitioner was regularly working in every year and in most of the years, he had worked for more than 240 days.

To appreciating the eligibility of the late husband of the petitioner for regularization of his service under 2003 Policy, provision of the said Policy needs to be noticed. The relevant paragraph of the Regularization Policy dated 01.10.2003 (Annexure P-2) is as under :-

“3. DAILY-WAGE EMPLOYEE (GROUP D):-

Only such daily wage employee who have completed three year services on Group D post(s) on 30th September, 2003 and were in service on 30th September, 2003 shall be regularized against their respective Group D posts provided they fulfill the requisite qualification and were originally appointed against vacant posts, provided further that they have worked for a minimum period of 240 days in each year and if the break in service of a daily wage employee (s) has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. However, if the break in service has been caused due to fault of the employee like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days.”

A bare perusal of the above would show that an employee should have 3 years of service to his credit for being considered for regularization of his service and further, he should have 240 days service for 3 years and he should be in service. The facts, which have been enumerated hereinbefore show that up to the year 2003, the late husband of the petitioner had approximately 12 years of service. Out of 12 years, in 10 years, he had worked for more than 240 days. This shows that the late

husband of the petitioner had more than 3 years service in 2003 and in 10 years, out of 12 years service, he had worked for more than 240 days, hence petitioner fulfill the requirement of 3 years service and 240 days in those 3 years.

With regard to the objection of the respondents that the late husband of the petitioner was not in service, is also incorrect for the reason that the Regularization Policy came in October, 2003 and starting from October, 2002 onwards till February, 2005, the late husband of the petitioner had worked and that too for more than 240 days from October, 2003 to September, 2004. This shows that the claim of the late husband of the petitioner was squarely covered by the terms and conditions of the Regularization Policy dated 01.10.2003 (Annexure P-2). The order passed by the respondents is totally against the facts on record and rather the relevant facts have been ignored.

Keeping in view the above, the late husband of the petitioner's case is covered for regularization under the Regularization Policy dated 01.10.2003 (Annexure P-2) and, therefore, he is entitled for being regularized in service under the said Policy. Let the respondents pass an appropriate order regularizing services of the late husband of the petitioner and thereafter, consider the claim of the petitioner for the grant of benefits for which the petitioner becomes entitled for in respect of the service rendered by her late husband. Let, computation of benefits for which the petitioner becomes entitled for as well as for passing the order regularizing the services of the late husband of the petitioner, be done within a period of 03 months from the receipt of copy of this order. The benefits for which the

petitioner is found entitled for, be released to her within a period of one month thereafter.

Petition is allowed in above terms.

May 05, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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