

202 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-26479-2019

Date of Decision: 16.05.2022

Gurmukh Singh

..... Petitioner

Versus

State of Punjab ad others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gagneshwar Walia, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, grievance of the petitioner is that the order passed by the respondents, regarding regularization of his services and the subsequent extension granted to him, has been withdrawn by the respondents and the salary paid to him during the period of said extension is also ordered to be recovered from him, which action of the respondents is totally arbitrary and illegal in nature.

Learned counsel for the petitioner argues that the petitioner initially joined as Hawaldar in the Indian Army. After the petitioner retired from the Army, he applied for the post of Pump Operator with the respondent-Department in the year 1997 and after competing for the said post, the petitioner was selected and appointed on the daily wage basis with the respondent-Department on 09.06.1997.

Learned counsel for the petitioner submits that the petitioner kept on working as a Pump Operator with the respondent-Department and

during the period of service, a number of regularization Policies were framed by the Government of Punjab, starting from the year 2001 till 2011, but claim of the petitioner was not considered under the said Policies by the respondent-Department. Learned counsel further submits that thereafter, the Government of Punjab issued a notification dated 24.12.2016 and promulgated The Punjab *Ad-hoc*, Contractual, Temporary, Work-Charged and Outsourced Employees Welfare Act, 2016 (hereinafter to be referred as '2016 Act'), so as to regularize the services of the employees, who had served not less than three years, in case they are possessing the educational qualification for the post in question and their appointment was made in a transparent manner.

Learned counsel submits that the petitioner, who had already worked for a period of approximately nineteen years by the said date with the respondent-Department, was considered along with 52 other employees, for the grant of approval of the regularization of their services under the 2016 Act. The respondents ultimately concluded the said process and passed an order dated 03.01.2017, regarding regularization of the services of petitioner and after the said regularization of services, he was also granted a benefit of extension in service for a period of two years, which he successfully completed while working with the respondent-Department.

Learned counsel for the petitioner further submits that after the petitioner retired from service, he was surprised to receive an order dated 27.05.2019 (Annexure P-13) from the respondent-Department, wherein it was mentioned that as the Date of Birth of the petitioner was 01.01.1959, therefore, he was supposed to attain the age of superannuation on 31.12.2016, and as the order regularizing his services was passed on

03.01.2017, the said order could not have been passed, hence, the said order dated 03.01.2017 as well as the grant of extension of two years in service given to to the petitioner by the respondent-Department thereafter are reviewed and the said order dated 03.01.2017 is withdrawn and the petitioner is liable to refund the amount of salary, which he had received while working on extension from January, 2017 till January, 2019, to the respondent-Department. The said order dated 27.05.2019 (Annexure P-13) is under challenge in the present petition.

Upon notice of motion, the respondents have filed a short reply stating that though claim of the petitioner for the regularization of his services was pending consideration with the Department concerned and the petitioner's services were also in fact regularized vide order dated 03.01.2017, but the said order was passed ignoring the fact that the petitioner attained the age of superannuation on 31.12.2016, i.e. three days prior to the order dated 03.01.2017 was passed by the respondent-Department.

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

In the present case, the endorsement date of the regularization order (Annexure P-6), i.e. 03.01.2017, is being taken into account by the respondents while passing the impugned order dated 27.05.2019 (Annexure P-13). Nothing has been brought on record to show that the respondents did not take the actual decision to regularize the services of the petitioner prior to 31.12.2016. 03.01.2017 was Tuesday and learned counsel for the petitioner submitted that the actual decision to regularize his services was taken by the competent authority prior to 31.12.2016 and it was

communicated to him on 03.01.2017, therefore, the date of communication will not be an actual date for deciding the case of the petitioner with regard to the regularization of his services, especially when the competent authority had already applied its mind and decided to regularize the services of the petitioner prior to the date when the petitioner attained the age of superannuation, i.e. on 31.12.2016.

Learned State counsel has not been able to point out from the record of paper-book of the present petition that the aforesaid contention is contrary to the facts of this case. Further the Proposal Letter dated 26.12.2016 (Annexure P-4), appended with the present petition, shows that the competent authority had already sent the case for regularization of services of the petitioner for approval to the higher authorities on 26.12.2016 and nothing has come on record that the said approval was granted after 31.12.2016. In the absence of any such document placed on record with regard to the fact that said approval was granted by the competent authority after the date of superannuation of the petitioner, the benefit of the same has to be given to the petitioner, whose services were not only regularized by the respondent-Department, but he had also continued in service on extension for a period of two years, i.e up to 31.12.2018, and thereafter retired from service.

That being so, the impugned order dated 27.05.2019 (Annexure P-13) has been passed without considering the actual facts of the present petition on record and has only been based upon the endorsement to the regularization order (Annexure P-6), having endorsement dated 03.01.2017.

Even otherwise, once the respondents have decided to regularize the services of the petitioner, the said regularization is with

regard to the daily wage services, which the petitioner had rendered with the respondent-Department. As per the respondents, the endorsement of the regularization order (Annexure P-6) is dated 03.01.2017, i.e. two days after the petitioner attained the age of superannuation. In the present case, the main order released on 03.01.2017, regarding regularization of services of the petitioner, has to be co-related to the date when the approval for regularization of services of the petitioner was granted by the competent authority and, as already held that nothing has been placed on record, with regard to the fact that the said approval was given after 31.12.2016, i.e. after the date when the petitioner attained the age of superannuation, by the higher authorities, therefore, no fault can be found in the order (Annexure P-6), having endorsement dated 03.01.2017, regularizing services of the petitioner.

Further even otherwise, no recovery can be made from the petitioner with regard to the service, which he had already rendered on extension period of two years, i.e. from 01.01.2017 till 31.12.2018. Once the petitioner has worked and discharged the duties for the said period, he is entitled for the grant of salary of the said period. It is not a case where the respondents did not permit the petitioner to join and discharge the duties. Once the respondents permitted the petitioner to avail extension of two years and allowed him to discharge the duties for the said period, and he has also been paid the salary for the said period, the said wages cannot be withdrawn later on by the respondents.

Keeping in view the above, impugned order dated 27.05.2019 (Annexure P-13), is contrary to the law as well as the facts of the present case, and therefore, the said order dated 27.05.2019 cannot be sustained and

is accordingly set aside. Further, it is directed that the petitioner will be deemed to be in service as a regular employee on the date when he retired from service of the respondent-Department and all the benefits, for which he is entitled for, be extended to him by the respondent-Department by treating him as a regular employee, as expeditiously as possible, but not later than two months from the date of receipt of the copy of this order.

Allowed in the above terms.

16.05.2022*Apurva***(HARSIMRAN SINGH SETHI)
JUDGE**

1. Whether speaking/reasoned : Yes
2. Whether reportable : No