

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(230)

CWP No. 27047 of 2019
Date of Decision : 27.04.2022

Amarjit Kaur and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Arora, Advocate for the petitioners.

Ms. Kanica Sachdeva, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

The present petition has been filed challenging the order dated 04.02.2019 (Annexure P-24) by which, the prayer of the petitioners for the grant of pensionary benefits by treating the husband of petitioner No. 1 as a regular employee, has been declined. Further prayer of the petitioners is that late husband of petitioner No. 1, namely, Amrik Singh Mal be treated as a regular employee for all intents and purposes and the petitioners be granted the pensionary benefits in respect of the service rendered by the late husband of petitioner No. 1. The facts mentioned in the petition are as under :-

Husband of petitioner No. 1, namely, Amrik Singh Mal joined as a Pump Operator on daily wage basis with the respondent-department on

01.02.1998. While performing the duties on the said post, his services were

terminated in the year 2001, which action was challenged by the late husband of the petitioner by raising an industrial dispute. Vide an Award dated 24.10.2005 (Annexure P-4), the said industrial dispute was decided as have been settled amicably between the parties, wherein, the services of the late husband of petitioner No. 1 were to be regularized and he was to be granted continuity of service from the initial date of appointment but without back wages. It was further agreed that till the regularization of the services of the husband of petitioner No. 1, his services will not be terminated.

After the said Award, the husband of petitioner No. 1 was re-instated in service. After the re-instatement, the husband of petitioner No. 1 filed representation with the respondents that as employees junior to him have already been regularized in service keeping in view the Regularization Policy dated 23.01.2001 (Annexure P-2), therefore, his services should also be regularized and he should be granted the minimum of the regular pay scale along with the dearness allowance. As the benefits were not being extended, he filed a Writ Petition being CWP No. 15596 of 2008 claiming the regular pay scale, which was allowed to him on 09.07.2009, which order of the Co-ordinate Bench was upheld in LPA No. 553 of 2009.

Again in the year 2010, the late husband of petitioner No. 1 requested for regularization of his services and also grant of promotion but the said matter was kept pending by the respondents and before any action could be taken by the respondents, the husband of petitioner No. 1, unfortunately, died on 27.03.2017 while in service. After the death, the petitioners filed a Writ Petition being CWP No. 23801 of 2018 (Annexure

P-23), which was disposed of by this Court with a direction to the respondents to decide their claim in pursuance to which, the impugned order dated 04.02.2019 (Annexure P-24) was passed rejecting the claim of the petitioners on the ground that her late husband was working on work-charge basis and hence, since he was not on regular establishment, no service benefit can be granted, which order dated 04.02.2019 (Annexure P-24) is under challenge in the present petition.

After the notice of motion, the respondents have filed the reply, wherein, they have stated that as the services of the late husband of petitioner No. 1 could not be regularized either under the Policy dated 23.01.2001 (Annexure P-2) or the Policy issued in December, 2006 as he was ineligible, no benefit of the service rendered by the late husband of petitioner No. 1 on work-charge basis can be allowed in favour of the petitioners.

Learned counsel for the respondents argues that as the late husband of petitioner No. 1 was ineligible for the grant of benefit for regularization either under the Policy dated 23.01.2001 (Annexure P-2) or Policy issued in December, 2006, the claim of the petitioners in the present petition may kindly be rejected.

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

It is a matter of fact that the husband of petitioner No. 1 had served the respondents for 19 years before he, unfortunately, died awaiting the regularization of his services. It is also a matter of fact that in the year 2001, the services of the husband of petitioner No. 1 were terminated by the

respondents and upon amicable settlement, he was re-instated in service. In the amicable settlement, the respondents had undertaken to regularize the services of the late husband of petitioner No. 1 and as the said settlement has taken place in the year 2005, the Policy dated 23.01.2001 (Annexure P-2) was in operation at the relevant time. The question is whether, the claim of the late husband of petitioner No. 1 for regularization of his services is covered by the said Instructions or not. As per petitioner No. 1, her late husband will become entitled for the regularization of his services on completion of three years of service, whereas, as per the respondents, three years period is to be seen on the date of the issuance of the Policy dated 23.01.2001 (Annexure P-2) and not thereafter. To adjudicate upon the said question, the provisions of the Regularization Policy needs to be interpreted in correct light. Clause-(ii) of the Policy, which is material for adjudicating the said aspect is as under :

“(ii) Each department may prepare a list of workcharged, daily wage and other categories of workers who have completed 3 years service and these lists may be updated from time to time. The lists should be prepared strictly as per seniority.”

A bare perusal of the above would show that a list is to be prepared of the work-charge/daily wage and other categories of workers, who have completed 3 years of service and the said list is to be updated from time to time, meaning thereby that as and when an employee completes a period of 3 years and the Regularization Policy still remains in operation, an employee is to be treated eligible for the grant of benefit of regularization of the services.

The contention of the respondents that 3 years period is to be seen on the date of issuance of the Policy and not thereafter, is not correct interpretation of the clause of the Policy reproduced hereinbefore, keeping in view the wording of the said clause.

Not only this, even the respondents construed the said Policy in the same manner for the reason that while amicably settling the issue in the year 2005, they had assured the late husband of petitioner No. 1 of regularizing his services. In case, the respondents were not sure that the case of late husband of petitioner No. 1 was not covered under the Policy dated 23.01.2001 (Annexure P-2) for regularization, they would not have offered for regularization of the services of late husband of petitioner No. 1 upon re-instating him, therefore, the stand which has been taken by the respondents now that three years period to become eligible for regularization of the services is to be taken only on the date of promulgation of the Policy i.e. 23.01.2001 (Annexure P-2) and not thereafter, is not a correct interpretation of the said policy.

That being so, late husband of petitioner No. 1, who was appointed on 01.02.1998, completed the relevant period of 3 years on 01.02.2001. As on the said date, he was not in service due to the illegal termination but upon his re-instatement in the year 2005 with continuity of service, the respondents should have offered to regularize his service.

Further more, the petitioners have also relied upon a judgment of this Court in CWP No. 17852 of 1999 titled as ***Beant Kaur Vs. State of Punjab***, decided on 14.05.2001, wherein, a similar question arose for consideration as to whether, the required service of 10 years is to be seen on

the date when the policy is issued or even thereafter. In ***Beant Kaur's case (supra)***, the cut off date was mentioned in the policy, which cut off date was held to be ultra-virus and Division Bench gave direction that as and when an employee completes 10 years though after the cut off date, the employee becomes eligible for regularization of service till the policy remains in force. Paragraphs 5 and 6 of the said judgment are as under :-

“5. The case of the petitioner is that her husband is being deprived of the benefit of regularisation of his services on the basis of the policy dated 7th March, 1993 Annexure R-1 which lays down that before the services could be regularised it was obligatory on the part of the employee to complete 10 years of service on or before the 31st August, 1992. The stand of the respondent- authorities is that since the husband of the petitioner joined his service as fitter coolie on 4th November, 1986 and that he had not completed 10 years of service on 31st August, 1992, rather on 3rd November, 1996, therefore, he was not entitled to be regularised as per the policy dated 7th May, 1993. We are not in a position to accept this contention of the respondents because, in our opinion, the LAW FINDER Submitted By: Hon'ble Mr. Justice Harsimran Singh Sethi PDF downloaded from the online archives of Chawla Publications (P) Ltd. underlying object of the policy letter dated 7th May, 1993 was to regularise the services of those workers who had completed 10 years of service and in order to achieve that object the administration desired that cut off date should be given which was 31st August, 1992. This policy was of one time policy. The State cannot deprive regularisation of services of those temporary workers who had completed 10 years of service after 31st August, 1992. The husband of the petitioner admittedly completed 10 years of service on 3rd November, 1996 but as on that day, there was no other policy declared by

the State Government, therefore, his services could not be regularised. This stand of the respondents, in our opinion, is untenable, as we have stated above that the object of the policy dated 7th May, 1993 was that a worker must have completed 10 years of service. Shri Pritam Singh had completed 10 years of service before his death. So much, so his case at one point of time was sent for regularisation which was not approved for the reason that in the year 1996 no other policy was declared after the policy decision of the year, 1993. Resultantly, we hold that the husband of the petitioner was entitled to be regularised on completion of 10 years service w.e.f. 3rd November, 1996 and we order accordingly.

6. The second point for determination in this writ petition is whether petitioner Smt. Beant Kaur deserves to be considered for appointment on compassionate ground or not. We dispose of this Writ petition by giving directions to the respondents to consider the case of the petitioner for appointment on compassionate ground subject to her eligibility and necessary order shall be passed by respondent No. 4 within two months from the date of receipt of a certified copy of this order. There will be no order as to costs.”

The claim of the petitioners is covered by the said proposition of law, if applied in the present case as well. The benefit of regularization policy was being declined to the petitioners on the ground that husband of petitioner No. 1 was short by 8 days service from completion of 3 years service on the date when Regularization Policy was issued on 23.01.2001 but, keeping in view the provisions of the Regularization Policy, which has been reproduced hereinbefore, three years period is not to be seen on the day of the Policy but the three years period can be seen even subsequently as the direction given in the Policy was to update the list of work charged,

daily wage and other categories of workers as having completed 3 years of service from time to time.

Even otherwise, the late husband of petitioner No. 1 had worked for approximately two decades before he, unfortunately, died while in service. It can be said from the said fact that the work being discharged by the late husband of petitioner No. 1 was not a stop gap arrangement but was required. An employee working on a regular establishment, rendering 10 years of service become eligible for the grant of pensionary benefits, whereas, the late husband of petitioner No. 1, who had worked for 19 years is being denied the said benefit by the respondents. The Hon'ble Supreme Court of India while deciding Civil Appeal No. 6798 of 2019 titled as ***Prem Singh Vs. State of Uttar Pradesh and others***, decided on 02.09.2019 held that being a Welfare State, the employees should not be kept continuously either on part time basis or on work-charge basis, their services should be regularized as one time measure. The 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 formore 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.”

Keeping in view the settled principle of law settled by the Hon'ble Surpeme Court of India, in the present case, as the late husband of petitioner No. 1 had discharged the duties for approximately two decades, he is entitled for consideration for regularization of his services as a one time measure keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Prem Singh's case (supra)***.

Keeping in view the facts and circumstances of this case coupled with the settled principle of law noticed hereinbefore, the claim of the petitioners is liable to be allowed and is allowed accordingly.

Let respondents pass appropriate order regularizing the services of the late husband of petitioner No. 1 keeping in view the Policy dated 23.01.2001 (Annexure P-2) from an appropriate date mentioned in the said Policy and thereafter, consider the claim of the petitioners for the grant of the service benefits in respect of the service rendered by the late husband of petitioner No. 1. Let the order be complied within a period of two months from the receipt of copy of this order and whatever petitioners are found

entitled for with respect to the service rendered by the late husband of petitioner No. 1 after regularizing the same as directed in this order, be released to the petitioners within a period of four weeks thereafter.

The petitioners in case intend to get compassionate appointment thereon, they will be free to apply for the same after appropriate order under this order is passed by the respondents and in case any such application is filed, the respondents will be free to decide the same in accordance with law by passing an appropriate order.

Writ petition is allowed in above terms.

April 27, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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