

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1363-2021
DECIDED ON: 07.12.2023

RAJO DEVI

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Wazir Singh, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG Haryan.

Mr. Tanvir Singh Attariwala, Advocate
for respondents No.5 and 6.

SANDEEP MOUDGIL, J.

(1). The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked by the petitioner seeking a writ in the nature of *certiorari* for quashing of the impugned reply dated 26.05.2020 (Annexure P-6) of the legal notice vide which the claim of the petitioner has been rejected with further prayer for issuance of a writ in the nature of *Mandamus* to grant the family pension and other service benefits/financial assistance admissible to the petitioner being dependent of Balbir Singh (since deceased) under 'Family Pension Scheme 1964'/Haryana Compassionate Assistance Rules, 2006, Haryana Municipal Employees Pension and General Provident Fund Rules, 1993' (hereinafter referred as 'Rules 1993) and the

Instruction No. ½ (11)-80-2FR-II, dated 31.01.1984 (Annexure P-10). Further prayer has been made to regularize the service of the husband of the petitioner from the date he was entitled for regularization as per regularization policy 1993, 2003, 2007 or from the date when the services of the junior or similar situated employees were regularized way back as per regularized policy and grant all monetary/notionally service benefit (including Gratuity, leave encashment, arrear of pension, contributed/deposited GPF amount etc.) and also to release the payment of medical bills by considering regular service of the husband of the petitioner.

(2). The husband of the petitioner was appointed a Fireman on adhoc basis against regular post on being sponsored through Employment Exchange, Panipat on 16.10.1987 and retired from service on attaining the age of superannuation from the office of Municipal Committee, Samalkha on 31.05.2018. The husband of the petitioner expired due to illness on 13.08.2019, thereafter, she had applied for family pension, arrears of pension, medical reimbursement, deposited/contributed GPF and other service benefits but the claim of the petitioner has been rejected on the ground that her husband was appointed on ad-hoc service and the said service is not countable towards pension benefits unless the same is regularized. The husband of the petitioner served the respondents' department for a period of more than thirty years without any kind of break and was regularly paid annual increments time to time, contribution to his GPF account is deducted from his salary and department also made monthly contribution in Pension Fund for his pension as per rule 7 of Rules 1993 (ANNEXURE P-2). The husband of the petitioner had applied for grant of retiral service benefits but

the same was not granted till date by the respondents department without any specific reason. Meantime, he expired due to critical illness on 13.08.2019 in hospital. Thereafter, the petitioner served an advance legal notice cum-representation dated 30.04.2020 through her advocate mentioning all her grievances and claimed for family pension alongwith all other service benefits, GPF, medical reimbursement, arrears of pension but vide impugned reply dated 26.05.2020 (Annexure P-6), respondent authorities has rejected the claim of the petitioner simply on the ground that the service of husband of the petitioner was adhoc service as he was not regularized. However, the claim with regard to leave encashment and gratuity payment has already been granted during his lifetime and so far as the final payment of GPF is to be made issue after PPO order as still has not been issued. Because of this, she is not entitled for family pension of Sh. Balbir Singh (Since deceased) as adhoc services is not countable towards pensions unless the same is regularized. The original medical bills of petitioner's husband duly complete in all respect alongwith discharge summary/Lama summary, death summary, emergency certificate and fully filed up essentiality certificates for medical reimbursement all duly medically attested by concerned doctors/hospitals had been submitted within time in the office of respondent No.6 by the petitioner after the death of her husband but the respondents has not given any positive response so far in this regard except delaying the matter. After a long time and delay, the petitioner was told through Action taken report (ATR) dated 12.12.2020 received from CM Window, Haryana that since her husband was not regular, hence she is not entitled for family pension, medical

reimbursement etc, however, no written order was passed / issued and conveyed to the petitioner till date. Hence, the present petition.

(3). Learned counsel for the petitioners contended that the services of the similarly-situated employees have already been regularized but the petitioners have been left out for the reasons best known to the respondents. It is urged that the action of the respondent in rejecting the claim of the petitioner simply on the ground that the service of the husband of the petitioner was adhoc service and that service is not countable towards pension benefits unless the same is regularized vide impugned reply dated 26.05.2020 (Annexure P-6) is most arbitrary and is in violation of the well settled proposition of law. The ground of rejection of petitioners' claim for grant of family pension and other service benefits is that the service of the petitioner was not regularized whereas the respondents have adopted pick and choose policy and have discriminatorily granted the same relief to other similarly situated employees.

(4). The further argument advanced on behalf of the petitioner is that though the husband of the petitioner was appointed on adhoc basis but was posted against regular post on being sponsored through Employment Exchange, Karnal). Counsel urged that undeniably, the respondents need the services of the petitioners and that being so, the petitioners deserve pay and allowances and other service benefits as are admissible to a regular employee on the principle of 'equal pay for equal work'.

(5). Notice of motion in this case was issued on 21.01.2021 and thereafter, the respondent No.5 has filed reply on 01.09.2022 whereas, respondent No.3 has filed a short reply on 05.09.2022.

(6). Learned counsel for the respondents have submitted that the husband of the petitioner was engaged on the post of Fireman purely on adhoc basis vide appointment letter dated 16.10.1987 and he joined the duties on 03.03.1988 and adhoc period was extended from time to time. It is further that the service of the petitioner was never regularized against the sanctioned post and the act and conduct of the employee Balbir Singh was not proper and good. In fact he was habitual in absenting himself from the duties and also consuming liquor during working hours and used to remain absent from the duty without sanction of leave. The deceased employee- Balbir Singh was served with charge sheet issued vide memo No. 3008/LFA dated 14.08.1991 under Rule 8 of Haryana Civil Services (Punishment & Appeal) Rules 1987 and thereafter an enquiry was held into the charges leveled against the employee-Balbir Singh and he was found guilty and accordingly the competent authority i.e. Deputy Commissioner, Panipat, vide order bearing memo No. 1554- 55 dated 26.5.1992 (Annexure R-5/1) imposed the penalty of stoppage of two increments with cumulative effects. The employee-Balbir Singh was warned several times, but he did not refrain himself. He was again issued a show cause notice bearing memo No. 3422 dated 9.07.1993 (Annexure R-5/2). The employee-Balbir Singh was also placed under suspension vide order bearing memo No. 6027-28/LFA dated 22.11.1993 (Annexure R-5/3) on account of his misconduct. Again vide order No. 7128/LFA dated 08.12.1993, he was again charge sheeted under Rule 7 of Haryana Civil Services (Punishment & Appeal Rules) 1987 and thereafter the then District Development & Panchayat Officer, Panipat was appointed as Enquiry Officer to inquire into the charges leveled against the delinquent-

Balbir Singh who submitted his report with the conclusion that the charges leveled against the delinquent could not be proved. However, the competent authority did not agree with the findings given by the Enquiry Officer and consequently, vide letter dated 5.4.1994, the Administrator, Municipal Committee Panipat was asked to initiate strict action against the employee Balbir Singh Fireman. The Administrator, Municipal Committee, Panipat submitted his report bearing No. 2135/LFA dated 12.08.1994 (Annexure R-5/4) holding that Fireman Balbir Singh (under suspension) usually consumes liquor during the duty hours and quarrel with other officials and that he is also not taking interest in the office work and is also habitual in absenting himself from the duty and accordingly the Competent Authority agreeing with the findings of the Administrator, Municipal Committee, Panipat, vide order dated 4.11.1994 (Annexure R-5/5), imposed the penalty of stoppage of two annual increments without cumulative effect. It is asserted that the case of the petitioner's husband regarding his regularization was sent for consideration to the Deputy Commissioner, Panipat on various occasions (as reflected in Annexure P-2) however no response was received in this regard since his service record was not upto the mark. In regards to the services of other similarly situated Adhoc Firemen, it is submitted that the services of the said persons were regularized by the Director, Urban Local Bodies Department, Haryana after approval from the Deputy Commissioner, Panipat and not by the answering respondent, however the petitioner's husband cannot be given the same benefit due to major deficiencies in service.

(7). It is submitted on behalf of the respondents that since the service of the petitioner's husband were not satisfactory and he was imposed

the punishment as stated above, therefore, the petitioner is not entitled to the benefits as claimed for. It is further submitted that since employee Balbir Singh was not a regular employee and he was purely on adhoc basis, therefore, the petitioner is not entitled to family pension and medical reimbursement.

(8). Heard learned counsel for the parties and gone through the record.

(9). On examination of the record and after hearing the submissions of respective counsel of the parties, the case of the petitioners evidently has been rejected on the ground that her husband was not regular employee and was purely on adhoc basis. On facts, it can be crystallized that the petitioner was engaged on adhoc basic in the year 1988 by the Deputy Commissioner, Karnal and as such the respondents have availed his services without any notional break

(10). The respondents have primarily defended the claim of petitioners putting heavy reliance on the ratio laid down by the Apex Court in *Secretary, State of Karnataka and others vs. Umadevi and others, 2006(3) SLR 1* to say that all the regularization policies have been withdrawn by the State of Haryana issued prior to 2006 and therefore, the petitioners cannot be regularized in the absence of any policy in existence and as such, no legal right accrues in their favour.

(11). In the light of aforesaid stands, it would be obligatory for this Court to consider the case law in *Uma Devi's and Others (supra)*. The Supreme Court has held therein that no mandamus can be issued to regularize and absorb those in regular service who were engaged on daily wages/adhoc

without following the procedure prescribed by the Rules applicable for recruitment. However, the observations made in paragraph 26 of the said case law, it has been observed as under:-

"26. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment."

(12). A perusal of the said judgment makes it abundantly clear that certain guidelines were issued to regularize the services of those employees, who were taken into job on daily wage/adhoc/contractual basis, but at the same time proceeded on to observe that only in a contingency, an adhoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non available posts should not be taken not for regularization. It has also further says that the cases directing regularization, wherein the employees have been permitted to work for some period should be absorb without really laying down any law to that effect, after discussing the constitutional scheme for public employment. In the instant case, admittedly petitioner is working since 1988 i.e., more than 4 decades as on date, but for one or the other reason taking excuses, the respondent-State has absolved itself from the duty as a

socialistic welfare State, which otherwise tantamounts to unfair labour practice or unfair means on its part to avail the services of such petitioners to their own advantage, who have devoted more than 60 % of life span for a meagre amount, which may not be even sufficient to maintain themselves what to talk of their dependents in the family.

(13). After the judgment of *Uma Devi (supra)*, the Supreme Court in *Union of India and others vs. Vartak Labour Union, 2011(2) SLR 414*, quashed the judgment delivered by a Division Bench of the Gauhati High Court wherein a direction was issued to regularize employees of Union who had put in about 30 years of service with the BRO. However, the Supreme Court gave a directions to the Union of India to consider enacting an appropriate regulation/scheme for absorption and regularization of the services of the casual workers engaged by BRO for execution of its on-going project.

(14). Even a Division Bench of our own High Court in *Union of India and others vs. Surinder Pal and others, 2012(3) SLR 433* affirmed the decision of the Single Bench, who gave direction to the respondents to frame a scheme in terms of the directions issued by Supreme Court in *Vartak Labour Union's* case (supra).

(15). This Court is oblivious of the fact that the husband of the petitioner had served the respondents at least more than 30 years, which is sufficient to the mind of this Court to hold that there is regular need of his services and if the State Government/respondents have failed to make regular appointments in the absence of sanctioned posts, the husband of the petitioner cannot be put to harassment on that account, having no fault of his. The

instant case is a glaring example to demonstrate lethargic and callous approach of State and its instrumentalities, who are satisfied with engagement of the husband of the petitioner on adhoc basis for the obvious fact that the financial liability is minimum as against the responsibility and primary duty bestowed with it under the Constitution of India, as envisaged under Articles 14 & 16 that no action of the State should be arbitrary and it shall also not smell of discrimination and inequality. In fact, such act on the part of State authorities tantamount to unfair labour practice and wrongful means to extract maximum from a poor class-IV category employee and in return giving them the possible minimum under the garb of DC rates. In case, the husband of the petitioner had been regularized in time under the policy dated 01.10.2003, he might have earned not only the promotion, but annual increments and allowances like dearness allowance, medical allowance, house rent allowance etc., of which they are being deprived of, which has resulted into creation of inequality among the regular cadre employees with the husband of the petitioner not only for emoluments and allowances, but for sense of security in service as well.

(16). The husband of the petitioner is held to be eligible for regularization of service under the policy of 01.10.2003 also for being similarly situated, as the writ petition is squarely covered vide judgment dated 19.12.2019 passed in CWP-17812-2017, which has attained finality and the petitioners therein stand regularized. This very proposition is also settled by a judgment of the Supreme Court in ***Om Prakash Banerjee vs. The State of West Bengal and Ors., passed in Civil Appeal No.4210 of 2023 decided on 19.05.2023***, wherein vide para 26 to 28, it held as under:-

26. The facts of U.P. SEB (supra) are similar to the case at hand. The relevant portion of the said judgment is being reproduced hereunder:

“3. By means of the writ petition, 34 petitioners who were daily wage employees of the Cooperative Electric Supply Society (hereinafter referred to as “the Society”) had prayed for regularisation of their services in the U.P. State Electricity Board (hereinafter referred to as “the Electricity Board”). It appears that the Society had been taken over by the Electricity Board on 3-4-1997. A copy of the minutes of the proceeding dated 3-4-1997 is Annexure P-2 to this appeal. That proceeding was presided over by the Minister of Cooperatives, U.P. Government and there were a large number of senior officers of the State Government present in the proceeding. In the said proceeding, it was mentioned that the daily wage employees of the Society who are being taken over by the Board will start working in the Electricity Board “in the same manner and position”.

4. Pursuant to the said proceeding, the respondents herein were absorbed in the service of the Electricity Board.

5. Earlier, the Electricity Board had taken a decision on 28-11-1996 to regularise the services of its employees working on daily-wage basis from before 4-5-1990 on the existing vacant posts and that an examination for selection would be held for that purpose.

6. The contention of the writ petitioners (the respondents herein) was that since the Society had been taken over by the Electricity Board, the decision dated 28-11-1996 taken by the Electricity Board with regard to its daily wage employees will also be applicable to the employees of the Society who were working from before 4-5-1990 and whose services stood transferred to the Electricity Board and who were working with the Electricity Board on daily-wage basis.

7. The learned Single Judge in his judgment dated 21-9-1998 held that there was no ground for discriminating between two sets of employees who are daily wagers, namely, (i) the original employees of the Electricity Board, and (ii) the employees of the Society, who subsequently became the employees of the Electricity Board when the Society was taken over by the Electricity Board. This view of the learned Single Judge was upheld by the Division Bench of the High Court.

8. We are in agreement with the view taken by the Division Bench and the learned Single Judge.

9. The writ petitioners who were daily wagers in the service of the Society were appointed in the Society before 4-5-1990 and their services were taken over by the Electricity Board “in the same manner and position”. In our opinion, this would mean that their services in the Society cannot be ignored for considering them for the benefit of the order dated 28-11-1996.

19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years’ service and it will surely not be reasonable if their claim for regularisation is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularisation and are made to face the same selection which fresh recruits have to face.”

27. The principles of natural justice, too, demand that the Appellant cannot be denied the benefit of the regularisation of services when his similarly placed fellow employees have been granted the said benefit.

28. Therefore, we do not agree with the view taken in the impugned judgment of the High Court as well as by the learned Single Judge in Writ Petition No. 31399 (W) of 2017. The

Appellant herein, in our considered opinion, is entitled to receive back wages and benefits from 1991, along with an interest of 10%.

(17). Further, once upto the date of death, the late husband of the petitioner had rendered more than 30 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 30 years of service, which is totally unreasonable.

(18). Keeping in view the above, the respondents are directed to grant the petitioner the benefit after the employee died by treating the said employee as regular for all intents and purposes in view of the policy dated 01.10.2003 as amended on 10.02.2004 (amended) issued by the Government of Haryana and to pass necessary orders, within a period of one month from the date of receipt of certified copy of this order

(19). In view of the discussions made hereinabove, the present petition is allowed. The late husband of the petitioner be treated as a regular and the petitioner be granted the benefit in respect of the service rendered by the late husband of the petitioner starting from the year 1987 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.***

- (20). 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.
- (21). Let the above order be complied with by the respondents within a period of two months from the receipt of copy of this order
- (22). All miscellaneous applications also stand disposed of accordingly.
- (23). The petition stands allowed in the aforesaid terms.

07.12.2023
sham

(SANDEEP MOUDGIL)
JUDGE

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |