

CWP-19810-2018 &
CM-20353-CWP-2023 in/&
CWP-12318-2019 (O&M) &
CWP-4534-2020 (O&M)

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2023:PHHC:155754

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214+225

CWP-19810-2018
Date of Decision :-06.12.2023

Dalbir Singh ...Petitioner

Versus

State of Haryana and others ...Respondents

225 (1) CM-20353-CWP-2023 in/&
CWP-12318-2019 (O&M)

Ramesh and others ...Petitioners

Versus

State of Haryana and others ...Respondents

225 (2) CWP-4534-2020 (O&M)

Rishi Pal and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagjeet Beniwal, Advocate for the petitioner
in CWP-19810-2018.

Mr. Yash Paul Malik, Advocate with
Ms. Divya Jyoti, Advocate for the petitioners
in CWP-12318-2019.

Mr. Nonish Kumar, Advocate for the petitioners
in CWP-4534-2020.

Mr. Harish Rathee, Senior DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

CM-20353-CWP-2023

Present application has been filed for amending the writ
petition.

Notice of the application to the counsel opposite.

Mr. Harish Rathee, Senior DAG, Haryana accepts notice on
behalf of the respondent-State and raises no objection for the grant of prayer
as made in the present application.

Learned counsel for the respondents submits that as the only
prayer is to amend the prayer clause, no separate written statement is needed
to be filed by the respondents and the written statement already filed on
behalf of the respondent be taken into account to decide the present petition.

Keeping in view the above, as prayed for, application is
allowed.

Main cases

1. By this common order above mentioned three writ petitions are
being disposed of as all the writ petitions involve the same question of law
on similar facts.

2. For the purpose of this order, facts are being taken from **CWP-
19810-2018 titled as Dalbir Singh vs. State of Haryana and others.**

is entitled for antedated regularization of his services from the year 1996 and the order dated 05.07.2018 (Annexure P/8) passed by the respondents rejecting the claim of the petitioner for retrospective appointment from the date of his initial appointment is bad in law.

4. As per the facts mentioned, during the strike period of the employees of the Transport Department, Haryana in December, 1993, the petitioner was recruited and he worked for a period of 10 days only and thereafter, the services of the petitioner along with other similarly situated employees were terminated. The petitioner filed a writ petition before this Court after a period of 10 years, in which a direction was given by this Court to the respondents to consider the claim of the petitioner for his adjustment in service by passing an appropriate speaking order on the legal notice submitted by the petitioner and the other similarly situated employees. In compliance of the said direction of this Court, the respondents decided to appoint the petitioner on temporary basis from 01.06.2004. The petitioner continued working on temporary basis when his services were regularized in October, 2008. The petitioner raised a claim before the respondents that his services should be regularized from the date he was initially appointed and keeping in view the said request, the services of the petitioner were regularized by the respondents from the date of his initial appointment i.e. 01.06.2004. The petitioner continued working as such without there being any objection and retired on attaining the age of superannuation.

5. After the retirement, the petitioner submitted a representation with the respondents claiming that his services should have been regularized retrospectively i.e. w.e.f. 1996, which claim has been rejected by the

respondents vide impugned order dated 05.07.2018 (Annexure P-8), which is under challenge in the present petition.

6. Learned counsel for the petitioner submits that once the petitioner was initially appointed in the year 1993, the petitioner is entitled for regularization of his service from the said date.

7. Upon notice of motion, the respondents have filed reply wherein, the respondents have stated that the petitioner never raised any objection with regard to his antedated regularization in service during his service career hence, after retirement once, there is no master and servant relationship between the petitioner and respondents, no benefit of antedated regularization in service can be granted to the petitioner especially, when petitioner had only worked for a period of 10 days starting from 08.12.1993 to 18.12.1993 and that too during the strike period.

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

9. It is a conceded fact that the petitioner worked only period for a period of 10 days during the strike and thereafter, he remained out of service and after a period of one decade, he was appointed in the year 2004 and too on temporary basis, which services were regularized by the respondents in the year 2008. It is also a conceded position that on the request of the petitioner, his services were regularized from the date of his initial appointment i.e. 01.06.2004. That being the conceded position, once the petitioner never raised any grievance qua the regularization of his services from the year 1996, no benefit can be given to the petitioner after his retirement.

10. Even otherwise, the benefit of regularization being claimed by the petitioner is not admissible for the reason that petitioner was only appointed for a specific duration during the strike period and he had only worked for a period of 10 days. It cannot be said that the said appointment of 10 days only is to be treated as valid appointment by treating the period of one decade (10 years) as duty period, for which the petitioner remained out of service so as to grant him the benefit of antedated regularization in service. Nothing has come on record that the period for which, the petitioner remained out of service from 1993 to 2004 has ever been treated as duty period hence, the claim of the petitioner that he be granted benefit of antedated regularization in service from the year 1996, when he was not in service, cannot be accepted.

11. At this stage, learned counsel for the petitioners submits that the period of actual service of the petitioners on adhoc basis or even on temporary basis is to be treated as qualifying service for computing the pensionary benefits of the petitioners.

12. Learned counsel for the respondents submits that the respondent-State has no objection in case the period of actual service on adhoc basis or even on temporary basis is to be treated as qualifying service for computing the pensionary benefits of the petitioners.

13. Keeping in view the fact that State has no objection for the grant of benefit of service rendered by the petitioners on adhoc basis or temporary basis is to be treated as qualifying service for the purpose of computing the pensionary benefits of the petitioners, though, the claim of the petitioners for the grant of benefit of antedated regularization in service

is rejected but the respondents are directed that any period for which the petitioners have worked either on adhoc basis or on temporary basis be taken into account as qualifying service for computing their pensionary benefits.

14. Learned counsel for the petitioners further submits that though, the services of the petitioners have been regularized by the respondents w.e.f. 01.01.2004 but benefit of Old Pension Scheme has not been granted to them, which action of the respondents is contrary to the settled principle of law settled by the Division Bench of this Court in **CWP-2371-2010 titled as Harbans Lal vs. State of Punjab and others, decided on 31.10.2010.**

15. Learned counsel for the respondents has not been able to dispute the fact that the petitioners were in service prior to 01.01.2006 though, their services were regularized after 01.01.2006 hence, the case of the petitioners is covered by the judgment of Division Bench of this Court in **Harbans Lal (Supra).**

16. Keeping in view the said fact, respondents are directed that the petitioners be treated under the Old Pension Scheme for the grant of pensionary benefits and the period for which, the petitioners had worked either on adhoc basis or on temporary basis, the said period be treated as qualifying service for only computing the pensionary benefits of the petitioners and not for any other purpose. In case, the petitioners are still in service, the benefit of this judgment be given to them at the time of their retirement and the present order be complied with qua the petitioners, who have already retired, within a period of two months from the date of receipt of copy of this order.

18. Civil miscellaneous application pending, if any, is also disposed of.
19. A photocopy of this order be place on the file of connected cases.

December 06, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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