

CM-15516-CWP-2023 in/and
CWP-14542-2002

2023:PHHC:124313

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 103)

(1) CM-15516-CWP-2023 in/and
CWP-14542-2002
Date of Decision : 21.09.2023

Balwan Singh
...Petitioner

Versus

State of Haryana
...Respondent

(2) CWP-14680-2002

Suresh Kumar
...Petitioner

Versus

State of Haryana and others
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner(s).

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-15516-CWP-2023

Present application has been filed for hearing the main writ petition, which is pending for the last 21 years, especially in view of the fact that the pensionary benefits for which the petitioner(s) are entitled for have not been released to them.

Notice of the application to the counsel opposite.

On the asking of the Court, Mr. Pankaj Middha, learned Additional Advocate General, Haryana, who is present in Court, accepts notice on behalf of the respondent-State and raises no objection for hearing of the main writ petition.

Keeping in view the joint request made by learned counsel for the parties, the main writ petition is taken up for hearing today itself.

CWP-14542-2002 and CWP-14680-2002

By this common order, two writ petitions, the details of which have been given in the heading, are being decided as these petitions involve the same question of law on similar facts.

For the sake of convenience, the facts are being taken from CWP No. 14542 of 2002.

The challenge is to the order by which, the date of the regularization of the services of the petitioner was changed. As per the facts mentioned in the petition, the petitioner was appointed as a Conductor through employment exchange on contract basis on 01.11.1993 and he continued working on the said post without there being any objection from the respondents.

In the year 1994, a regularization policy was issued by the respondents for regularizing the services of the employees, who had already completed 240 days in service. The said policy of the year 1994 was again reiterated on 07.01.1998.

Though, under the Policy of the year 1994, the petitioner claimed the benefit of regularization of his service but before the said benefit under 1994 regularization policy could be granted, his services were terminated on 30.04.1996. The petitioner represented against the said termination to the authorities concerned and the said termination order was withdrawn in the year 1997 and he was reinstated in service and the period for which the petitioner remained out of service was considered as leave of the kind due.

After the reinstatement, in the year 1998, keeping in view the policy dated 07.01.1998, the claim of the petitioner was considered and his services were regularized vide order dated 01.06.2000 (Annexure P-3) w.e.f. 01.04.1998. The petitioner continued working with the respondents when the respondents passed an order dated 17.07.2001 de-regularizing the services of the petitioner. The said order dated 17.07.2001 was challenged by the petitioner and the other similarly situated employees by filing CWP No. 10586 of 2001 and the order de-regularizing the services of the petitioner dated 17.07.2001 was set-aside but with liberty to the department to pass a fresh order and ultimately, again an order has been passed on 08.08.2002 (Annexure P-8) de-regularizing the services of the petitioner, which order is under challenge in the present petitions.

While issuing notice of motion, this Court stayed the operation of the impugned order dated 08.08.2002 and thereafter, the writ petition was admitted and the factual aspect is that the order dated

08.08.2002 was never made operational and it is a matter of fact that the petitioners have already retired from service and during their service career, their date of regularization has been treated as 01.04.1998 for all intents and purposes.

Learned counsel for the petitioner(s) submits that as the petitioners have already retired from service, they are entitled for the pensionary benefits keeping in view the date of regular appointment as 01.04.1998 as the order dated 08.08.2002 was never given effect, hence, now after the petitioners have already retired from their services, they cannot be treated as temporary employees and that too after rendering more than two and a half decades service.

Learned State counsel, on the other hand, contends that once an order has been passed on 08.08.2002 withdrawing the order of regularization of their services, the benefits of regular service cannot be extended to the petitioner(s). Learned State counsel submits that as of now, the petitioner(s) only continued in service due to the interim order passed by this Court and no benefit of the interim order can be made absolute in favour of the petitioner(s).

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 services of the petitioner(s) were regularized in the year 1998 and thereafter, the impugned order was passed in the year 2002 de-regularizing the services of the petitioner(s), which order was stayed by this Court and petitioners continued as regular

employees of the department for all intents and purposes. It is also a matter of fact that subsequent to the passing of the impugned order dated 08.08.2002 various regularization policies came into being from the year 2003 onward in pursuance to which, the claim of various employees was considered and they were regularized but as the petitioners were treated as regular employees keeping in view the interim order passed, their claim was not considered under these policies. Had there been no interim order in favour of the petitioner(s), the petitioner(s)' claim would have been considered under the Policy of the year 2003 but as there was an interim order passed by this Court, the petitioner(s) continued working as regular employee(s) for all intents and purposes, hence, their claim was never considered under the subsequent policies, which came into being after the year 2002 onwards.

That being the factual position coupled with the fact that petitioner(s) have already retired from service and while in service, they had been granted all the benefit by treating them as a regular employee from 01.04.1998, withdrawing the said benefit now so as to treat them as temporary employee, will be too harsh, especially when the petitioners have rendered more than two and half decades of service and and the employees juniors to them have already been regularized in service.

The question of law is kept open but all intents and purposes, as the petitioner(s) have already retired, the impugned order dated 08.08.2002 will not be given effect so as to treat the petitioner(s) as de-regularized. Let the benefits for which the petitioner(s) are entitled after

**CM-15516-CWP-2023 in/and
CWP-14542-2002**

2023:PHHC:124313

6

their retirement be released by treating them as regular employees from 01.04.1998 onwards within a period of eight weeks of the receipt of copy of this order, if not already paid.

Petitions are allowed in above terms.

September 21, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No