

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23311-2017 (O&M)
Date of Decision:21.07.2023

RAM LAL

..... Petitioner

Versus

BHAKRA BEAS MANAGEMENT BOARD AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. H.S. Saini, Advocate
for the petitioner.

Mr. Sachin Mittal, Advocate with
Ms. Seemantika Jindal, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of order dated 04.04.2016 (Annexure P-7), 13.05.2016 (Annexure P-8 colly), order dated 19.07.2017 read with order dated 07/14.06.2017 (Annexure P-10 colly) whereby claim of the petitioner seeking regularization has been rejected.

2. The brief facts of the case which are necessary for adjudication of present case are that the petitioner on 01.12.1980 was appointed as T-mate with Beas Construction Board which was part of Bhakra Beas Management Board (for short 'BBMB'). The petitioner w.e.f 25.11.1985 was promoted as work charge Lineman. The services of the petitioner came to be retrenched on 29.08.1993, however, he was re-employed on the very next day i.e. 30.08.1993 as work charge Lineman. On 08.10.1994, the respondent notified BBMB Class-III and Class IV employee's (Recruitment and Conditions of Service) Regulations, 1994 (for short '1994 Regulations'). As per 1994 Regulations, the petitioner had option to seek

regular appointment as Assistant Lineman, however, he did not opt for regularization as Assistant Lineman because he was of the opinion that petitioner is discharging duty of Lineman, thus, he cannot be asked to work as Assistant Lineman.

Hon'ble Supreme Court in *State of Karnataka Vs. Uma Devi (2006) 4 SCC 1* delivered a land mark judgment holding that State cannot regularize contractual or ad hoc employee who have not been appointed following the procedure for the appointment of regular employees. The Hon'ble Court further observed that one time relaxation may be granted to those employees who without interruption are in service for last 10 years. In view of judgment of Hon'ble Supreme Court in *Uma Devi* (supra), respondent formulated regularization policy dated 11.05.2012, wherein it was provided that employees who are in service for 10 years or more as on 31.12.2006 and still working without any bar as one time measure would be regularized. The petitioner made various representations seeking his regularization. He claimed that he be regularized as linemen whereas respondent was of the opinion that petitioner can be regularized as Assistant Lineman and not Lineman. The petitioner on 30.04.2021 attained age of superannuation, accordingly, he was retired from service. The petitioner was paid pension and other benefits considering as work charge Lineman.

3. Learned counsel for the petitioner *inter alia* contends that petitioner in terms of policy dated 11.05.2012 was entitled for regularization. The respondent ignoring its own policy kept on insisting the petitioner to accept regular post of Assistant Lineman whereas petitioner was eligible to be regularized as Lineman.

4. Per contra, learned counsel for the respondents *inter alia* submits that petitioner did not avail option as provided by 1994

Regularization, thus, he was not regularized as Lineman from 1994 to 2012 and thereafter, he was not regularized as Lineman because policy of 2012 was required to be read with 1994 Regulations and in view of 2012 policy read with 1994 Regulations, the petitioner could be regularized as Assistant Lineman.

5. I have heard the arguments of both sides and with the able assistance of learned counsel have perused the record.

6. The conceded position emerging from record is that the petitioner joined office of respondent as T-Mate on 01.12.1980. He was promoted to the post of Lineman w.e.f 25.11.1985. The services of the petitioner came to be retrenched on 29.08.1993, however, he was re-employed on the very next day i.e. 30.08.1993 as work charge Lineman. The petitioner retired during the pendency of present petition and till the date of his retirement, he worked as Lineman. The petitioner as per 1994 Regulations was entitled to regular appointment as Assistant Lineman, however, he did not avail option of regularization as Assistant Lineman. The respondent vide circular dated 11.05.2012 formulated policy of regularization. As per policy, employees who were in service for 10 years or more as on 31.12.2006 and working on the date of formulation of policy were entitled for regular post. The petitioner was not regularized. The claim of the petitioner since introduction of 1994 Regulation was that he is working since 1985 as Lineman, thus, he while regularizing cannot be appointed as Assistant Lineman. The claim of the petitioner was that he should be regularized as Lineman whereas respondent was of the opinion that as per 1994 Regulations, he can be regularized as Assistant Lineman. The policy of 2012 which was based upon judgment of Hon'ble Supreme Court in Uma Devi (Supra) as well Government of Punjab policy dated

2012 Policy

Subject :- Regularization of daily rated/work charged workers on roll in BBMB as on 31.12.2010 against vacant posts.

The subject cited matter was put up before the board in its 209th meeting held on 3.2.2012 vide Item No. 209.02 and considering the directions dated 10.4.2006 of Hon'ble Supreme court of India in Civil appeal No. 3595/3612 of 1999 titled secretary state of Karnataka vs. Uma Devi other and Punjab Government policy on regularization of daily rated workers dated 21.11.2011. It was decided to regularize the services of 162 Nos (155 No, workers in the Office of CE/Bhakra Dam & 7 No workers working in the office of CE/Beas Dam) daily rated/workcharged workers from amongst the working in BBMB) (as per information supplied by CE's (IW) under captioned reference, subject to actual verification of records by o/o CE concerned) identified as per the seniority being maintained at CE/Division wise, who had been continuing to work for 10 years or more as on 31st December, 2006 and were still working without any bar on number of days worked. This is a onetime measure as per above Apex Court's order, subject to following conditions:-

- (i) The cadre wise inter-se seniority of these workers shall be maintained and they shall be put at the tail of the existing respective cadre(s).*
- (ii) They shall be on probation for a period of two years.*
- (iii) Before joining on probation, except for age, usual terms & conditions of appointment to BBMB regular service shall be observed.*
- (iv) In the first year of probation they shall be entitled to 80% of gross emoluments to be calculated on the initial pay of their applicable pay scale plus grade pay.*
- (v) In the 2nd year, they shall be entitled to 90% of the gross emoluments to be calculated on the initial pay of their applicable pay scale plus grade pay provided they satisfactorily complete their probation for the first year.*
- (vi) After they satisfactorily complete the probation period of*

two years, they shall be entitled to full pay based on their applicable pay scale plus grade pay.

(vii) During the probation period, they shall be entitled to other facilities such as BBMB accommodation, medical, TA/DA as per available to the regular employees.

8. From the perusal of policy, it comes out that policy did not lay down that regularization would be subject to 1994 Regulations. The policy provided conditions in terms of judgment of Hon'ble Supreme Court in Uma Devi (supra) and Punjab Government Policy dated 21.11.2011. The workers working on daily rate or work charge basis were supposed to be put at the tail of the existing respective cadre. The petitioner since 1985 was working as Lineman. The service of the petitioner was interrupted for one day i.e. 29.08.1993 to 30.08.1993 because petitioner was retrenched on 29.08.1993 and was re-employed on 30.08.1993. The petitioner w.e.f 25.11.1985 was promoted as work charge Lineman and since then he was working as Lineman. On the date of introduction of 1994 Regulations as well as 2012 policy, the petitioner was working as Lineman. As per 1994 Regulations, he could be regularized as Assistant Lineman, however, there was no such stipulation in 2012 policy. The 1994 Regulations were not one time arrangement whereas 2012 policy was one time arrangement. The policy of 2012 was introduced in view of judgment of Hon'ble Supreme Court in Uma Devi (supra) as well as State Government policy 21.11.2011. The policy did not lay down that regularization would be subject to 1994 Regulations, thus, contention of the respondent that petitioner was not regularized as Lineman because he was entitled to be regularized as Assistant Lineman, is misconceived. In the absence of any condition in the 2012 policy, the respondent could not invoke conditions laid down in 1994 Regulations. The petitioner has been wrongly denied benefit of regularization and he was duly eligible for regular post in terms of 2012

policy.

8. In view of aforesaid facts and findings, this Court is of the considered opinion that petitioner was entitled to be regularized as Lineman in terms of 2012 policy. Accordingly, respondents are directed to treat the petitioner as regular Lineman w.e.f 11.05.2012 i.e. date of introduction of Regularization Policy. The petitioner shall be entitled to all consequential benefits.

9. The petition stands disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

21.07.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>