



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

225

CWP-5617-2021 (O&M)
Decided on : 15.05.2024

RAJ PAL SINGH

..PETITIONER

Versus

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Shvetanshu Goel, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present petition, the grievance of the petitioner is that though the petitioner is working with the respondents on the post of Water Carrier from the last 29 years, but the claim for regularization of his service has wrongly been rejected by the respondents vide impugned order dated 27.05.2020 (Annexure P-3).

2. As per the averments mentioned in the present writ petition, the petitioner was appointed as a Water Carrier with the respondents-department after the recommendation of his name by the District Employment Officer and an appointment letter for the post in question was issued to him, copy of which has been appended as Annexure P-1. Thereafter, respondents issued a policy dated 29.07.2011 for regularization of services of employees, copy of which has been appended as Annexure P-2, according to which, the seniority list of the employees should be formed and keeping in view the



number of posts available, their services should be regularized as and when the post becomes available.

3. The claim of the petitioner was considered by the respondents under the policy of the year 2011 (Annexure P-2) and the said claim was rejected by the respondents on two grounds i.e. firstly, that name of the petitioner was not recommended from the Employment Exchange and secondly, that there was no post available for regularizing the service of the petitioner.

4. Learned counsel for the petitioner argues that once, the petitioner is working with the respondents from the last 29 years on the post of water carrier, it cannot be said that the work of the petitioner is on part time basis and a deemed post has to be created for regularizing the services of the petitioner and hence, the respondents are under obligation to consider the claim of the petitioner for regularizing his services.

5. Learned counsel for the petitioner further argues that the observation of the respondents-department that the name of the petitioner was not recommended by the Employment Exchange is belied through the appointment letter (Annexure P-1) wherein after appointing the petitioner, the information was sent to the District Employment Officer, which clearly shows that the name of the petitioner was recommended by the District Employment Officer to whom, the information was sent after appointing the petitioner on the post in question, hence, the respondents are under obligation to regularize the services of the petitioner under the policy of the year 2011 (Annexure P-2).

6. Learned counsel for the respondents on the other hand submits



that even if, it is assumed for the sake of arguments that the name of the petitioner was recommended by the employment exchange but still there is no post on which the petitioner is working for regularization of his services, hence, no infirmity is found in the order rejecting the claim of the petitioner for regularization of his services.

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

8. It is conceded fact that the petitioner is working as a water Carrier with the respondents from the last 29 years on part time basis. If a person is working in a particular department for a period of 29 years, it cannot be said that he/she is working on part time basis. Once, there is a requirement of the work being done by the petitioner and the need of work is continued from the last 29 years, it cannot be said that there does not exist any post to regularize the services of the petitioner. There has to be a deemed creation of the post in question keeping in view the nature of the duties to be performed and the duration of the employment.

9. As per the judgment of the Hon'ble Supreme Court of India titled as '**Prem Singh Vs. Uttar Pradesh passed in Civil Appeal No.6798 of 2019 (@Special Leave Peititon (c) No.4371 of 2011)**, decided on 02.09.2019' wherein it has been held that some of the employees, who had worked for 30 to 40 years with a particular institution, their services have not been regularized though they had crossed the age of superannuation, hence, once the employee had rendered 10 years service, the same should have been regularized keeping in view the judgment in **Secretary, State of Karnataka and others versus Uma Devi and others, AIR 2006 SC 1806** as a one time



measure. In the case before the Hon'ble Supreme Court of India, the Hon'ble Court directed regularization of the services of employees who had rendered more than three decades of service but with the condition that no difference of salary will be paid to them. Relevant paragraph 35 of the judgment in ***Prem Singh's case (supra)*** 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 for more 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.”

10. Keeping in view the above judgment, there has to be a presumption that the work of the post on which the petitioner is discharging the duties exists and the same has to be treated as a regular post.

11. Even otherwise, the instructions regarding regularizing the services of the petitioner were issued by the respondents in the year 2011 (Annexure P-2) so as to regularize the service of the part-time employees who had completed the minimum required service.

12. With regard to the argument of the learned counsel for the respondent that at the relevant time there was no post available on which the petitioner was working, it cannot be said that in the next 13 years, no post on which the petitioner is discharging the duties from the last 29 years, came into being for regularizing the service of the petitioner, hence, any post which is vacant or by treating the post on which the petitioner is working from the last 29 years as a deemed regular post created, the respondents should have considered the claim of the petitioner for regularization of his services.

13. It may be noticed that the argument of the learned counsel for the respondents that the name of the petitioner has not been recommended by the Employment Exchange stands clarified keeping in view the appointment letter issued to the petitioner for the post in question (Annexure P-1) that his name was duly sponsored by the Employment Exchange.



14. Keeping in view the facts and circumstances of this case, the **present petition is allowed** and the respondents are directed to pass an appropriate order for regularizing the services of the petitioner under the instructions dated 29.07.2011 (Annexure P-2) within the period of **eight weeks** from the receipt of certified copy of this order.
15. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

15.05.2024

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Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: ~~Yes~~/No