

CWP No. 5913 of 2023 and
other connected matters

2024:PHHC:076520



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 241)

- (1)

CWP No. 5913 of 2023
Date of Decision : 28.05.2024
- Kamla Devi

...Petitioner
- Versus
- State of Haryana and others

...Respondents
- (2)

CWP No. 6723 of 2023
- Bimla Devi

...Petitioner
- Versus
- State of Haryana and others

...Respondents
- (3)

CWP No. 8992 of 2023
- Nirmala Devi

...Petitioner
- Versus
- State of Haryana and others

...Respondents
- (4)

CWP No. 14583 of 2023
- Satyawanti @ Satyawati

...Petitioner
- Versus
- State of Haryana and others

...Respondents

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other connected matters

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(5) CWP No. 8225 of 2023

Maya Devi
...Petitioner

Versus

State of Haryana and others
...Respondents

(6) CWP No. 11782 of 2023

Laxmi Devi
...Petitioner

Versus

State of Haryana and others
...Respondents

(7) CWP No. 11973 of 2023

Santosh Kumari
...Petitioner

Versus

State of Haryana and others
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. V.B. Aggarwal, Advocate for the petitioner(s).
Mr. Pankaj Middha, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

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



In the present bunch of petitions, the grievance being raised by the petitioner(s) is that they are not being paid the retiral benefits on the ground that the petitioners were working on post of a Craft Teacher working in the Panchayat Samiti is not entitled for the grant of retiral benefits as the said post is not covered under the rules governing the service.

Learned counsel for the petitioner(s) argues that this is not the first time that the benefit of pension and other pensionary benefits is being denied to a Craft Teacher working in the Panchayat Samiti in the State of Haryana. Learned counsel for the petitioner(s) further argues that the question of the grant of pensionary benefits to the employees of the Panchayat Samiti was raised in CWP No. 7778 of 2013 titled as ***Hanuman Vs. State of Haryana and others***, decided on 16.01.2020, wherein, the pensionary benefits were extended to the petitioner therein along with interest. Learned counsel for the petitioner(s) submits that the said judgment was not appealed and was accepted by the State of Haryana and benefits as extended by the Court, were extended in favour of the petitioner therein, namely, Hanuman.

Thereafter, one Sunder Devi approached this Court claiming the said benefits by filing CWP No. 20123 of 2014 titled as ***Sunder Devi and another Vs. State of Haryana and others***, decided on 18.10.2019, to whom also, all the pensionary benefits were extended, who was also



working on the post of a Craft Teacher in the Panchayat Samiti. The said Sunder Devi has also been extended all the retiral benefits.

Learned counsel for the petitioner(s) submits that another Craft Teacher, namely, Saroj Bala was also extended all the pensionary benefits upon her retirement on 28.02.2011 hence, to contend that the post of a Craft Teacher is not a pensionable post, cannot be accepted.

Learned counsel for the petitioner(s) further submits that recently while deciding CWP No. 8306 of 2015 titled as ***Daya Rani Vs. State of Haryana and others***, decided on 07.03.2024, by placing reliance upon the benefits granted by this Court in ***Sunder Devi's case (supra)***, ***Hanuman's case (supra)*** as well as in the case of ***Saroj Bala's case (supra)***, the retiral benefits have already been allowed in favour of the similarly situated employees hence, the benefits, which are being claimed by the petitioner(s) in the present petitions have already been extended by this Court to the similarly situated employees in the cases mentioned here-in-before and the claim of the petitioner(s) be also allowed in the same terms.

Learned counsel for the respondents, on the other hand, submits that the judgment in ***Hanuman's case (supra)***, cannot be made applicable as the said judgment is not correct, though, it is conceded that the said judgment was not appealed and the same have already been implemented. Learned counsel for the respondents further submits that the post of a Craft Teacher is not envisaged under the rules governing the



service and hence, no benefit of the rules, which envisaged pensionary benefits can be made applicable upon the post of Craft Teacher. Learned counsel of the respondents also places reliance upon an order passed by a Co-ordinate Bench of this Court in RSA No. 2054 of 2001.

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

The question of the grant of pensionary benefits has already been decided by this Court in number of cases of the similarly situated employees, who were also working on the post of Craft Teacher as the cases of the petitioner(s) in the present petitions. Once, the benefit of pension has been allowed by this Court to number of other similarly situated employees, which fact has not been rebutted, the benefit of pension to the petitioner(s) cannot be denied. Nothing has been pointed out as to how the case of the petitioner(s) is different than the one of *Sunder Devi(supra)*, *Hanuman(supra)* or *Saroj Bala(supra)*, who have already been extended the pensionary benefits and are enjoying the said benefits as of now. In the absence of differentiating facts, no different decision can be taken so as to avoid discrimination.

The argument of the learned counsel for the respondents is that while passing an order in RSA No. 2054 of 2001, it was mentioned that the post of Craft Teacher was not the part of the rules hence, the benefits cannot be extended qua the pension to the employees working on the said post.



It may be noticed that after the year 2001, the prayer of the petitioner(s) for regularization of their services has been allowed by the department itself. It has been conceded by the State before this Court during the course of hearing that for regularizing the services, the post of Craft Teachers have been created. Once, the post of Craft Teachers were created and those posts were being treated as part and parcel of said rules, then merely the post is not depicted when the rules were framed, does not mean that any post which is created after the promulgation of rules, will also not be governed by the said rules.

Further, in case the post is not envisaged under the rules, nothing has come on record that as to against which post the services of the petitioner(s) have been regularized after the year 2001. The conduct and the procedure which has been undertaken by the respondents to regularize the services of the petitioner(s) as a Craft Teacher clearly show that there exist the post same has to be treated as part of the rules unless any decision to the **contrary** is taken by the competent authority and it is not rebutted that the petitioner(s) were being governed by the same rules. Hence, the judgment in RSA No. 2054 of 2001 cannot be made applicable upon the petitioner(s) keeping in view the decision taken by the respondents themselves after the said judgment by which, the services of the petitioner(s) were regularized on the post of Craft Teacher after creating the posts.



The last argument, which has been raised by the learned counsel for the respondents is that the petitioner(s) have already retired from service and the present petitions were filed much after hence, on the ground of delay, the present petition(s) should be dismissed. Reliance is being placed upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 5027 of 2024 titled as ***Mrinmoy Maity Vs. Chhanda Koley and others***, decided on 18.04.2024. The judgment on which the reliance is being placed deals with the service benefits to be granted while in active service. It is a settled principle of law that the service benefits are different than the pensionary benefits. Any benefit which an employee is entitled to claim during his/her service career, cannot be equated with pensionary benefits, which an employee is only to get after retirement.

Qua the retirement, it has already been held by the Hon'ble Supreme Court of India that the pension is a recurring cause. Once, the claim to the pension is a recurring cause, there cannot be any delay to claim the same. The Hon'ble Supreme Court of India in Civil Appeal No. 4100 of 2022 titled as ***Shri M.L. Patil (Dead) through Lrs Vs. The State of Goa and another***, decided on 20.05.2022 has held that pension is a continuous cause of action and there is no justification in denying the arrears of pension on ground of delay. The relevant paragraph Nos. 3 and 4 of the said judgment are as under :-



“3. Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent – State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original 2 petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1 st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.

4. In view of the above and for the reasons stated above, the present Appeal Succeeds in Part. The impugned judgment and order passed by the High Court to the extent of denying any arrears of pension and holding that the appellant shall be entitled to the pension at the revised rates only from 1st January, 2020 is hereby quashed and set aside. It is held and ordered that the appellant—4 original writ



petitioner shall be entitled to pension at the revised rates from the date he attains the age of 60 years. Now the arrears accordingly shall be paid to the appellant within a period of four weeks from today. Present Appeal is Partly Allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs.

Hence, in the present cases, the judgment in ***M.L. Patil's case (supra)*** will be applicable and not ***Mrinmoy Maity(supra)***.

No other argument has been raised.

Keeping in view the above, the claim of the petitioner(s) for the grant of pension is covered by the decision in ***Sunder Devi(supra)***, ***Hanuman(supra)*** as well as ***Daya Rani (supra)***.

The present petitions are disposed of in terms of ***Daya Rani's case (supra)***. The impugned orders rejecting the claim are set-aside. The petitioner(s) are held entitled to the claimed benefits keeping in view the decision in ***Daya Rani's case (supra)***.

Let the said order be complied with within a period of eight weeks from the date of receipt of copy of this order.

A photocopy of this order be placed on the file of connected cases.

May 28, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No