



CWP-2951 of 2023

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

228

CWP-2951 of 2023

Date of Decision:14.08.2024

Mithlesh Kumari and others

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

\*\*\*\*

Present: Mr. Himanshu Sharma, Advocate,  
for the petitioners.

Mr. Dushyant Saharan, AAG, Haryana

\*\*\*\*

AMAN CHAUDHARY, J. (Oral)

1. Prayer made in the present writ petition is for grant of retiral benefits i.e. the pension and pensionary benefits to the petitioners after having been found in the select list on recommendations who were appointed though on *ad hoc* basis initially between 1978 to 1985 however they were regularized vide order dated 24.03.1982 and thereafter retired on attaining the age of superannuation on dates as mentioned in para No.3 of the writ petition. Learned counsel submits that the case of the petitioners is squarely covered in **Kamla Devi versus State of Haryana and others**, CWP No.5913 of 2023 and other connected cases, decided on 28.05.2024, the relevant part thereof reads thus:-



“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.”*



CWP-2951 of 2023

5

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."

2. Learned State counsel despite his best efforts, has been unable to controvert the submissions made on behalf of the petitioner and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.
3. In wake of the above, the present petition is disposed of in terms of the judgment passed in **Kamla Devi** (supra).

(AMAN CHAUDHARY)  
JUDGE

August 14, 2024  
dinesh

Whether speaking : Yes/No

Whether reportable : Yes/No