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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4461-2012

Date of Decision: 13.02.2024

NARINDER KUMAR SHARMA & ORS

..... Petitioners

Versus

STATE BANK OF PATIALA

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. G.P.S. Bal, Advocate
for the petitioners.

Mr. Anil Kumar Ahuja, Advocate
for the respondent.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondent Bank to count temporary service period of the petitioners for the purpose of retiral benefits.

2. The instant petition has been filed by 5 persons who are retired employees of State Bank of Patiala which is now known as State Bank of India. The petitioners joined respondent-Bank during 1973-1974 as Cashier/Godown Keeper/Clerk. Their appointment was temporary and it was not against any regular post. No procedure prescribed for regular appointment was followed. The petitioners came to be terminated after 1-3 years e.g. petitioner No.1 came to be terminated after 496 days and petitioner No.2 after 750 days. The respondent Bank conducted an exam for the regular appointment of its employees. The petitioners participated in the selection process. They cleared written test as well as interview. On

the basis of marks secured by petitioners, they came to be selected as regular employee w.e.f. date of their joining e.g. petitioner No.1 joined w.e.f. 11.12.1979 and petitioner No.2 w.e.f. 21.12.1977. The petitioners, on attaining age of superannuation, have retired.

3. Mr. G.P.S. Bal, Advocate submits that as per judgments of Hon'ble Supreme Court in *Director General, Doordarshan Prasar Bharti Corporation of India and another vs. Magi H. Desai, 2023 SCC OnLine SC 336, State of Himachal Pradesh and another vs. Sheela Devi 2023 SCC OnLine SC 1272* and *Uday Pratap Thakur and another vs. State of Bihar and others, 2023 SCC OnLine SC 527*, the period during which the petitioners have worked as temporary employees should be counted for the purpose of retiral benefits. The respondent has issued circular dated 15.10.1982 whereby case of all those employees who were terminated has been re-considered. All employees who prior to their termination had worked for minimum 240 days in a year have been paid back wages. The respondent by paying back wages for the period during which employees did not work on account of termination has accepted that period of temporary service should be counted for the purpose of qualifying service for pension as well as other retiral benefits.

4. Per contra, Mr. Anil Kumar Ahuja, Advocate submits that judgments cited by petitioner are applicable whereas an employee is regularized on the basis of his service as temporary employee. The case of the petitioners is entirely different. There was substantial gap between their date of termination as temporary employees and their re-employment as regular employees. The petitioners were not regularized on the basis of their temporary service whereas they were regularized on

the basis of written test followed by interview. They participated in the open selection process and came to be selected. They cannot take advantage of their past service which was rendered as temporary employee.

5. I have heard arguments of both sides and scrutinized the record with their able assistance.

6. The conceded position emerging from the record is that petitioners during 1973-1974 worked with respondent Bank as temporary employees. Their service came to be terminated. They did not challenge their termination order and they participated in the regular selection process. They cleared written test followed by interview and came to be selected as regular employees. There is substantial gap between their date of termination as temporary employees and appointment as regular employees e.g. petitioner No.1 was appointed as regular employee on 11.12.1979 whereas he was terminated as temporary employee on 17.12.1974.

7. From the perusal of afore-cited judgments of Supreme Court especially recent judgment in ***State of Himachal Pradesh and another Vs. Sheela Devi*** (Supra), it is evident that Court has ordered for counting period of temporary service where an employee has been regularized on the basis of temporary service. There is no judgment or statutory provision which provides that despite substantial gap between date of termination as temporary employee and employment as regular employee, the period of temporary service can be counted for the purpose of retiral benefits. The petitioners were not appointed as regular employees on the basis of their temporary service whereas they

participated in open competition and cleared written test followed by interview. The regular appointment had no bearing with temporary service. The petitioners were independently considered and appointed as regular employees. There was a substantial gap between their date of termination as temporary employees and appointment as regular employees. The reliance placed by petitioner on circular dated 15.10.1982 is misplaced. The circular extends benefit of back wages to those employees who have been taken back in the service on the basis of their temporary service of more than 240 days. The case of the petitioners is entirely different. They were not taken back on the basis of their past service whereas they participated in open competition and got selected. The circular further did not provide for counting of temporary service period for pensionary benefits.

8. In the peculiar facts and circumstances, this Court does not find it appropriate to direct respondents to consider temporary service period of the petitioners for the purpose of counting length of service for retiral benefits.

9. In the wake of above discussion and findings, the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)

JUDGE

13.02.2024

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