



CWP-6632-2017 (O&M)
Date of Decision : 29-08-2024

.....Petitioner

VERSUS

PUNJAB SCHOOL EDUCATION BOARD & ANR

.....Respondent(s)

Present: Mr. Harinder Sharma, Advocate for the petitioner.

Mr. Satnampreet Singh, DAG Punjab.

Mr. Ranjit Singh Kalra, Advocate and
Ms. Mona Yadav, Advocate
for respondent No.2.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance being raised by the petitioner is that the petitioner is working with the respondents since 2001 though, for some period her services were terminated but from the year 2007 onwards, the petitioner is continuously working on the post of JBT Teacher but her services have not been regularised though employees, who were recruited on contract basis after the petitioner, have already been granted the benefit of regularisation of their services under the Policy dated 18.03.2011.

Learned counsel for the petitioner submits that the petitioner was initially appointed as a JBT Teacher in pursuance to the advertisement dated 14.08.2001. The petitioner continued working on the said post when she was relieved from service on 14.05.2003. Thereafter, the petitioner was again appointed on the same post on 02.07.2007 and the petitioner is continuing in service for the post in question even as of now.

Learned counsel for the petitioner submits that the petitioner is being paid lumpsum salary whereas, the employees, who were appointed after the petitioner on contract basis, their services have been regularised under the Instructions dated 18.03.2011 according to which, an employee having rendered 3 years of service as on 01.04.2011, was eligible to be considered for regularisation of his/her services. Hence, even if the services of the petitioner are to be considered from 02.07.2007, the petitioner had more than 3 years of service to her credit as on 01.04.2011 entitling the petitioner the benefit of regularisation of her service.

Upon notice of motion, the respondent have filed reply. In the reply, the respondents have not disputed the fact that the petitioner was initially appointed after the post was advertised and thereafter, once again the petitioner was appointed on the same post on 02.07.2007, which appointment is continuing even as of now.

Learned counsel for the respondents rebut the claim of the petitioner on the ground that though, the petitioner had completed 3 years of service as on 01.04.2011 but the petitioner was not appointed against the regular sanctioned post. Learned counsel for the respondent further submits that the petitioner has raised the claim for regularisation against the Policy of the year 2011 i.e. after a period of 6 years, which is not permissible as the services of the employees were to be regularised under the Instructions dated 18.03.2011 within a period of 6 months of the issuance of the said instructions.

Controverting the said averment, learned counsel for the petitioner submits that in Para 8 of the petition, it has been duly mentioned

by the petitioner, which fact has gone unrebutted that the petitioner was appointed against the post which was vacated by one Surjit Singh, JBT Teacher upon his promotion as Master in English on 23.03.2006.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

The only objection which is being taken by the respondents to deny the claim of the petitioner for regularisation of her services is that the petitioner was not appointed against the regular sanctioned post. It may be noticed that the post in question was advertised in the 2001 when the petitioner was initially appointed. The petitioner continued working on the said post upto the year 2003. Thereafter, it is the categoric submission of the petitioner that one post in the JBT Cadre became available upon promotion of one Surjit Singh in the 2006, which was offered to her and the petitioner was again appointed as JBT Teacher. That averment has gone unrebutted hence, it cannot be said that the petitioner is not working against a regular sanctioned post.

Even otherwise, it is not the case that the petitioner is not working for the last 17 years continuously and there is no post of JBT which has come into existence for regularisation of her services. Once, the petitioner has rendered service with the respondents for more than 17 years, it cannot be said that in those 17 years, there was no regular post which had become available for the grant of benefit of regularisation so as to accommodate the petitioner.

Further, with regard to the objection of the respondents that the grant of benefit of regularisation of service is to be considered in case the

regular post is available, it may be noticed that it is not the case of the respondents that post was not available rather the only objection taken by the respondents is that when the petitioner was appointed, there was no regular sanctioned post available at that time, which ground cannot be accepted to deny the claim of regularisation and regular post should be available to regularise the service and fact that after the petitioner was appointed, there existed enough posts of JBT Teacher so as to regularise the services of the petitioner, has gone unrebutted.

Another fact which is glaring in the present case is that some of the JBT Teacher who were appointed after the petitioner, their services have already been regularised under the Instructions 18.03.2011. The said fact has also gone unrebutted by the respondents. Once, the services of the employees who were appointed after the petitioner, have been regularised under the Instructions dated 18.03.2011, the said benefit of regularisation of services of the petitioner cannot be denied as she had more length of service as compared to the employees, whose services have been regularised by the respondents.

As per the settled principle of law settled by the Hon'ble Supreme Court of India in SLP No.6427 of 2019 titled "***Ushaben Joshi Vs. Union of India***", decided on 02.08.2024, wherein it was held that when a similarly situated employee has been granted a benefit, the said benefit cannot be denied to the others. In the present case, not only the similarly situated employees even, the employees who have been appointed after the petitioner, their services have been regularised under the Policy dated 18.03.2011 hence, as per the judgment of the Hon'ble Supreme Court of India in ***Ushaben Joshi's case (supra)***, the respondents are under obligation

to grant the petitioner the benefit of regularisation of her services w.e.f. the date employees junior to her in the cadre of JBT Teacher were regularised.

The relevant paragraphs of the judgment have been detailed as under:

“17. The respondents have not indicated anything in the affidavit filed in pursuance of the order dated 27th February, 2024, that the nature of duties or the hours of work being performed by Smt. K.M. Vaghela were any different from that of the appellant. Thus, the defence taken by the respondents for their decision not to confirm the appellant in services that she was only performing duties as a contingency worker(water woman) for four hours a day is not substantiated from any acceptable material on record. Indisputably, the appellant continuously served the Department for more than three decades as a contingency ‘water woman’. Keeping in view the fact that an employee similarly placed but inducted in service after nearly six years from the date of employment of the appellant with the respondent-Department has been conferred the benefits of confirmation in service by way of appointment to the post of MTS, the appellant is entitled to claim the same benefits.”

Not only this, as per the judgment of the Hon’ble Supreme Court of India in Civil Appeal No.6798 of 2019 titled **“Prem Singh Vs. State of Uttar Pradesh and ors.”** decided on 02.09.2019, where an employee has worked for two decades, their services needs to be regularised and the same cannot be denied on the ground that the said employee was not appointed against a regular post.

The relevant paragraphs of the judgment have been detailed 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.

36. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed.”

The last argument which has been raised by the learned counsel for the respondent is that there is a delay in raising the claim by the petitioner as the Instructions dated 18.03.2011 as the said instructions were to be complied with within a period of six months whereas, the claim has been raised by the petitioner after a period of 6 years.

It may be noticed that the petitioner is still in service. The employees junior to the petitioner in the cadre of JBT have already been regularised in service. It was incumbent upon the respondents to grant the

petitioner the relief under the Instructions dated 18.03.2011 rather than forcing her to approach this Court to claim the said relief. Once, the respondents failed to grant the benefit of regularisation to the petitioner despite being eligible as no clause of the Instructions dated 18.03.2011 has been pointed out so as to declare the petitioner ineligible to get the relief of regularisation of her services, the claim of the petitioner for regularisation of her services cannot be declined.

Keeping in view the above, the respondents are directed to consider the claim of the petitioner under the Instructions dated 18.03.2011 and pass appropriate order regularising her services w.e.f the date employees junior to her were regularised in service. Upon regularisation, the salary of the petitioner will be fixed from the date of regularisation but the arrears, will be only admissible for the period of 38 months prior to the date of filing of the present petition.

Present petition is allowed in above terms.

Pending application, if any, also stands disposed of.

29-08-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO