

CWP-26714-2019 (O&M) & connected cases -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212 (04 cases) + (1)CWP-26714-2019 (O&M)
210 (01 case) Date of decision :19.07.2024

Hira Devi and others ...Petitioners

Versus

State of Punjab and othersRespondents
(2)CWP-29442-2019 (O&M)

Kulwant Kaur and others ...Petitioners

Versus

State of Punjab and othersRespondents
(3)CWP-6793-2021 (O&M)

Harbhajan Kaur and another ...Petitioners

Versus

State of Punjab and othersRespondents
(4)CWP-24507-2017 (O&M)

Gurcharan Kaur and others ...Petitioners

Versus



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State of Punjab and others

...Respondents

(5) CWP-17065-2018 (O&M)

Shavinder Pal Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Manveer Kahlon, Advocate for the petitioner(s)
in all the writ petitions.

Mr. Swapan Shorey, DAG, Punjab.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present bunch of petitions, grievance being raised by the petitioners is that they have worked with the respondent-State of Punjab as Craft Teacher/Gram Sevika but their services have not been regularized despite the fact that as per the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.3595-3612 of 1999 titled as Secretary, State of Karnataka and others vs. Uma Devi and others decided on 10.04.2006**, in case, an employee has 10 years of service to his/her credit, he/she will be entitled for regularization of his/her service and also as per the instructions issued by the respondent-State of Punjab on 15.12.2006, the petitioner's services should have been regularized but upto the date the petitioners attained the age of superannuation and retired, their services were never regularized so as to avoid the payment of pensionary benefits to them.



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For the purpose of this order, facts are being taken from CWP-26714-2019 tilted as **Hira Devi and others vs. State of Punjab and others.**

As per the averments made in the present petition, the petitioners were appointed starting from year 1980 onwards till 1987 and they have worked for the respondent-State for more than two decades before they attained the age of superannuation and retired from service but upto the date, they attained the age of superannuation, their services were not regularized by the respondents, even though, as per the judgment of Hon'ble Supreme Court of India in **Uma Devi (supra)**, the State was given liberty to regularize the services of the employees, who had completed 10 years of services and on the basis of the said judgment even the Instruction dated 15.12.2006 were issued by the Government of Punjab so as to regularize the services of employees, who completed 10 years of service in December 2006.

Learned counsel for the petitioners submits that the petitioners were entitled for regularization of their services but the only objection being taken by the respondent-State is that even though, the petitioners have worked with the respondent-State for more than two decades but there was no regular post sanctioned with the Government so as to regularize their services.

Learned counsel for the respondent-State submits that it is a conceded fact that the petitioners were appointed as Sewing Teachers starting from year 1980 and at the time they attained the age of superannuation, they had more than 10 years of service to their credit but as there was no regular post, the services of the petitioners could not be



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regularized. Learned counsel for respondent-State further submits that as per the judgment of the Hon'ble Supreme Court of India in **Uma Devi (supra)**, no supernumerary post was to be created to regularize the services of an employee and hence, the petitioners cannot claim benefit of regularization.

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

It is a sorry state of affairs that an employee was made to work for the State for a period of more than two decades and now a plea is being taken that though work of the post on which the petitioners worked existed but the posts were not sanctioned and a post was created for the said employee so as to regularize his/her services. Once, the respondents continued to take work from the petitioners for a period of more than two decades, it cannot be said that there was no work of the post in question so as to create a liability upon the State to create the post in the budgetary provisions. Being a welfare State, the State should have come forward to rescue the petitioners so that after rendering more than two decades of services, they can get pensionary benefits so as to live a dignified life after they attained the age of superannuation.

It seems that respondent-State was only bothered to take work from the petitioners without giving any thought as to how they will survive after attaining the age of superannuation.

Further, the respondents are not denying that the petitioners were working with them for more than two decades and as per the judgment of the Hon'ble Supreme Court of India in **Uma Devi (supra)**, an employee having 10 years of service to his/her credit was entitled for benefit of



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regularization of his/her services and respondent-State had also issued instructions dated 15.12.2006 for the regularization of such employees but the benefit is only being denied because the State in its wisdom decided not to create post so as to regularize the services of the petitioners.

The reason being given to deny the benefit of regularization of service to the petitioners should not come from a model employer like State especially, qua the employees, who had served the State throughout their life and that too by teaching the students so that a generation can gain and lead better life.

A similar question of law came up for consideration before the Hon'ble Supreme Court of India in **Civil Appeal No.6798-2019, titled as Prem Singh vs. State of Uttar Pradesh and others decided on 02.09.2019,** wherein, the employees had rendered services for more than 30 to 40 years upto the date they attained the age of superannuation but their services were not regularized. In the said case, the Hon'ble Supreme Court of India has held that once, an employee had worked for sufficiently long time with the department but attained the age of superannuation before his/her services could be regularized, such employee should be deemed to be regularized for the purpose of grant of pensionary benefits. Relevant paragraph of the said judgment 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



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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.”

Keeping in view the settled principle of law settled by the Hon’ble Supreme Court of India in **Prem Singh (supra)** wherein, Hon’ble Supreme Court of India granted the pensionary benefits to the employees, who had rendered decades of services before attaining the age of superannuation but were denied the grant of pensionary benefits on account that their services were never regularized, the petitioners are also entitled for the grant of said benefit as they also belong to the same class.

Nothing has been pointed out by the learned counsel for the respondent-State that the petitioners were not qualified or there was any impediment in the service rendered by the petitioners so as to not make



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budgetary provisions in the budget so as to create post especially, when the respondents themselves continued to take work from the petitioners with regard to teaching of students.

At this stage, learned counsel for the respondent-State has raised a objection that a speaking order was passed by the respondent-State that there was no sanctioned post with the department so as to regularize the services of the petitioners, which speaking order has not been challenged by the petitioners.

It may be noticed that the said speaking order was passed during the pendency of the present writ petitions and objection taken in the said speaking order has already been dealt with by this Court while passing this order hence, merely that speaking order has not been challenged will not come in the way of the petitioners as the objection being taken by the State to deny the claim has already been dealt by this Court.

The next question which needs to be adjudicated is whether, the petitioners are to be paid the pensionary benefits under the Pension Scheme which was in operation prior to 01.01.2004 or the petitioners will be governed by the New Contributory Provident Fund Scheme which is applicable after 01.01.2004.

As the petitioners are concededly working since the year 1980 onwards and were in service as on 01.01.2004, as per the judgment of the Division Bench of this Court in ***CWP No.2371 of 2010 titled as Harbans Lal Vs. State of Punjab and others, decided on 31.08.2010***, which judgment has already attained finality upto the Hon'ble Supreme Court of India, any employee, who was in service as on 01.01.2004 but his/her services were



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regularized after the said date will still be governed by the Old Pension Scheme which was applicable prior to 01.01.2004 hence, the claim for the grant of pensionary benefits to the petitioners will be considered under the Old Pension Scheme as applicable prior to 01.01.2004.

Keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **Prem Singh (supra)** as cited hereinbefore, the petitioners should be deemed to be a regular employees on the date when they attained the age of superannuation. The respondents are directed to pass such order regularizing the services of the petitioners on the date of their superannuation and accordingly calculate and grant pensionary benefits admissible to them under the Old Pension Scheme as existed prior to 01.01.2004 keeping in view their length of service, which they had rendered with the respondent-department.

As directed by Hon'ble Supreme Court of India in **Prem Singh (supra)**, the petitioners will not be entitled for regular pay scale for the service rendered and they will only be considered as regular employee for the purpose of grant of pensionary benefits to them and pensionary benefits will be calculated keeping in view the regular pay scale admissible to the post held by them and fixing the salary of the petitioners in the said pay scale keeping in view the length of service of each petitioner on the date of retirement and pensionary benefits along with arrears of pension be released in their favour.

Let the present order be complied with and appropriate order qua the regularization of petitioners be passed within a period of three months from the date of receipt of copy of this order and they be granted

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pensionary benefits along with arrears of pension admissible to them as directed hereinbefore.

All the writ petitions stand allowed.

Civil miscellaneous application pending, if any, is also disposed of.

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

July 19, 2024 (HARSIMRAN SINGH SETHI)
aarti JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/Nor