



**301 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-10722-2019 (O&M)
Date of Decision : 19-02-2025**

SUMAN TEWATIAPetitioner
VERSUS
**REGISTRAR GENERAL PUNJAB AND HARYANA HIGH COURT,
CHANDIGARH AND ANR**
.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Ms. Deepali Puri, Advocate for the respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the letter dated 07.03.2019 (Annexure P-4) and letter dated 06.04.2019 (Annexure P-5) issued by respondent No.2 whereby the claim of the petitioner is for regularization of her services, which has been denied on the ground that the post of Restorer is to be filled by way of promotion from amongst the employees in service whereas the petitioner is working as a Restorer in the Sessions Division, U.T., Chandigarh on contract basis.

2. Learned counsel for the petitioner submits that an advertisement was issued on 11.03.2014 (Annexure P-1) for filling up the post of Restorer against which the petitioner competed and was selected on contract basis for 89 days.

3. Learned counsel for the petitioner further argues that the said post of the Restorer is a sanctioned post.

4. Learned counsel for the petitioner argues that as of now, the petitioner has already discharged the duties of the post of Restorer for a period of 10 years and keeping in view the judgment of the Hon'ble Supreme Court of India in ***Secretary, State of Karnataka & Ors. Vs. Uma Devi 2006 (4) SCC 1.*** as interpreted by the Hon'ble Supreme Court of India Civil Appeal No.14831 of 2024 titled ***"Jaggo Vs. Union of India"*** decided on 20.12.2024, where an employee has served on a part-time basis also for a sufficiently long period of time, and the job being rendered by such employee is continuing in nature, the services of such employee needs to be regularised hence, the petitioner is entitled for regularisation of her services.

5. Learned counsel for the petitioner argues that where sanctioned posts existed with the Department, services of similarly situated employees of Sessions Division, Chandigarh have already been regularised and where there is no sanctioned post, the claim of such employee was also considered by this Court while passing order in CWP No.8912 of 2016 titled ***"Kumar Pal and ors. Vs. Union of India and ors."*** decided on 23.01.2025 wherein a direction has been given that the employees for whom there does not exist sanctioned post, should be allowed to continue till the work of the post exists and as and when the posts are sanctioned by the Government of India, they should be considered for regularisation of their services against those sanctioned posts, as done by the U.T., Chandigarh in case of the similarly situated employees, whose services have been regularised.

6. Learned counsel for the petitioner submits that appropriate direction be issued to the respondents to regularise the services of the

petitioner as she has completed more than 10 years of service as of now and there exist the regular sanctioned post against which petitioner is working for the last more than 10 years.

7. Learned counsel appearing on behalf of the High Court submits that as of now, there is no Rule which exists as to how the said post of Restorer is to be filled up and till such Rules are framed, the services of the petitioner cannot be regularised.

8. Learned counsel for the respondent submits that as of now, the draft Rules exist according to which, the post is to be filled up by way of promotion and not by way of direct recruitment though, the draft Rules are yet to be approved by the competent authority to be converted into the regular Rules governing the post of Restorer.

9. Learned counsel for the respondent further submits that as and when the Rules are finalised, the petitioner will be considered in accordance with the said Rules.

10. Learned counsel for the respondent-State submits that though as of now, the petitioner has 10 years of service to her credit but when the petition was filed in the year 2019, she has only rendered 5 years of service.

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

12. The question which arise is whether, the petitioner who duly competed in pursuance to the advertisement dated 11.03.2014 (Annexure A-1) and was selected on a contractual basis for 89 days which was extended since 2014 and uptill now has 10 years of service to her credit and it is a conceded fact that the similarly situated employees, who had 10 years of service to their credit and there was an availability of sanctioned post, their

services have already been regularised whereas the claim of the petitioner for regularisation of her service has been kept pending for regularisation of service on the ground that Rules qua the post of Restorer are yet to be finalised.

13. The only objection which the respondents have taken is that as of now, there are no Rules governing the post of Restorer hence, till any Rule is finalised qua the said post, as to how the post of Restorer is to be filled up, the grant of benefit of regularisation cannot be extended to the petitioner.

14. It is a settled principle of law that in case there does not exist any Rule, the decision taken by the competent authority to fill up the post, is to be taken as a valid decision of the authority as to how the said post is to be filled up.

15. As per the judgment of the Hon'ble Supreme Court of India in Writ Petition (Civil) No.57 and 56 of 2008 decided on 01.02.2010 titled ***"Ramesh Kumar Vs. High Court of Delhi and anr."*** though, it has been held that where there are no statutory rules, the norms can be laid down for selection by the competent authority to make appointments. The relevant paragraph 13 of the judgment is as under:-

"Thus, law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum Bench Marks for written test as well as for viva-voce."

15. In the present case, the respondent hereinabove decided to fill the post of Restorer by way of direct recruitment though on 89 days basis and the post was advertised and the claim of all eligible candidates was

considered and petitioner got selected against the sanctioned post of Restorer.

16. That being so, the decision by the competent authority to fill the post by way of direct recruitment on 89 days basis has to be treated as a valid decision qua the post of Restorer being held by the petitioner to be filled by Direct Recruitment.

17. As of now, no Rule has been framed by the competent authority to fill the post by way of promotion.

18. Keeping in view the facts that the post of Restorer is not governed by any Rules and there exists a regular sanctioned post and the said post was filled after the approval of the competent authority through advertisement by way of direct recruitment, it cannot be said that the claim of the petitioner is to be kept pending for all times to come to avail the framing of the Rules for the post of Restorer.

19. In the facts and circumstances of the present case, when the petitioner competed along with all the other eligible candidates and was selected and has worked for 10 years and there exists a sanctioned post of Restorer against which the petitioner is working coupled with the fact that the similarly situated employees qua whom the regular sanctioned post existed, their services after rendering 10 years of services have been regularised, the respondents are under obligation to consider the claim of the petitioner for regularisation of her services against the available sanctioned post of Restorer against which she is working, without waiting for the Rules to be framed further for the post of Restorer in case work and conduct of the petitioner is satisfactory, petitioner needs to be granted the benefit of regularisation of her services.

20. It is clarified that henceforth in case, any Rules are framed for the post of Restorer, the post of Restorer which will come into existence thereafter be governed by the said Rules but the claim of the petitioner for regularisation of her services cannot be kept pending for all times to come so as to frame the Rules qua the post of Restorer and to take away the right on the petitioner to claim regularisation of her services especially when, as of now, the petitioner who has rendered 10 years of service and that too against the regular sanctioned post and the similarly situated employees in other cadres where the regular post existed, their services have been regularised, the U.T Chandigarh is under obligation to consider the claim of the petitioner for regularisation of her services against the available sanctioned post of Restorer by treating the same to be filed by Direct Recruitment so as to regularise the services of the petitioner.

21. Keeping in view the observations made hereinbefore, the competent authority i.e. District and Sessions Judge, U.T., Chandigarh to forward the case for consideration of regularisation of the petitioner to U.T., Chandigarh so as to pass an appropriate order in view of the observations made hereinbefore in case, petitioner's service record is satisfactory so that the petitioner does not suffer any prejudice.

22. It is made clear that the District and Sessions Judge, U.T., Chandigarh is the competent authority to appoint a Restorer, then he will take appropriate decision in terms of the present order qua the regularisation of the service of the petitioner and the U.T., Chandigarh will be bound by the same.

23. Let the order be complied with by the authorities concerned within a period of 8 weeks from the receipt of copy of this order.

24. Pending application, if any, also stands disposed of.

19-02-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: YES