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

(216) **CWP-4839-2011 (O&M)**
Date of Decision : July 29, 2025

Kuldeep Singh (since deceased) through his LRs .. Petitioners

Versus

Executive Engineer, Riggin Division, R.S.D Shahpur Kandi, Tehsil Pathankot, District Gurdaspur and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Tahaf Bains, Advocate, for the petitioner.

Mr. Rahul Rampal, Addl. Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the petitioner Kuldeep Singh is first seeking benefit of regularization of his services which benefit has been granted to the other similarly situated employees but the same has been denied to him on the ground that during the period the said benefit was extended to the other similarly situated employees, petitioner was not in service as he was reinstated in service at a later point of time.
2. Further prayer of the petitioner is that after reinstatement of services of the petitioner, he should have been treated as regular employee along with other similarly situated employees and should have been given the retiral benefits admissible to him including the leave encashment of 300 days, which benefit is admissible to a regular employee who retire on attaining the age of superannuation.

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3. Learned counsel for the petitioner submits that the benefit of regularization in service is being denied to the petitioner by the respondents on the ground that petitioner Kuldeep Singh was working on a class-III post and had worked on the post of Workshop Operator upto the age of 60 years being a work-charge employee and therefore, now after working on the said post till the age of retirement i.e. 60 years, he cannot turn around so as to claim the benefit of regularization of service, which benefit in case is to be granted, the petitioner should have had been retired on attaining the age of 58 years, which aspect cannot be undone as of now.

4. Certain facts need to be noticed for the correct appreciation of the issue in hand.

5. Before giving the facts qua the claim of the petitioner No.1. Kuldeep Singh, as noticed hereinbefore, in CWP No.19826 of 2002, except petitioner Kuldeep Singh, the benefit of regularization was granted in favour of all the other employees.

6. Petitioner No.1 namely Kuldeep Singh was appointed on 07.11.1979 as a Workshop Operator which is a class-III post. On 01.06.1983, his services were terminated and the said termination was made subject matter before the Labour Court. Vide Award dated 12.05.1999 (Annexure P-1), the termination of the services of the petitioner Kuldeep Singh was held to be bad by the Labour Court and he was directed to be reinstated in service with continuity with the lump sum back wages of Rs.5,000/-.

7. On 12.07.1999, the petitioner submitted his joining report but ultimately, the petitioner was allowed to join in service on 26.05.2000. As,

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upon reinstatement in service, the benefit of continuity in service and fixation of his basic pay was not being given to the petitioner Kuldeep Singh therefore, an application was filed by him under Section 33-C (2) of the Industrial Disputes Act, 1947, which application was allowed vide order dated 06.05.2003 granting the benefit of the wages for the period the petitioner was asking for.

8. As the State of Punjab had issued a policy for regularization of service in the year 1996, the claim of the petitioner was not being considered by the respondents in accordance to the said policy on the ground that he was not in service in the year 1996 when the benefit of regularization, in accordance to the policy of the State of Punjab, had to be extended to the employees, the petitioner filed the present writ petition claiming the benefit regularization and the consequential benefits. During the pendency of the present petition, the petitioner attained the age of superannuation on reaching the age of 60 years on 31.03.2008.

9. The claim of the petitioner is that once the other similarly situated employees, who were appointed in the service after the petitioner in the year 1979, have already been granted the benefit of regularization of service in accordance to the 1996 policy whereas, the petitioner Kuldeep Singh has been denied the said benefit only on the ground that when the Regularization Policy was made operative in the year 1996, petitioner Kuldeep Singh was not in service and had only joined back in the year 2000 in pursuance to the Labour Court Award dated 12.05.1999 (Annexure P-1) hence, the policy of State of Punjab, regularizing the services of the petitioner cannot be made applicable upon him for the said purpose, as his

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services can only be taken into account from the date he joined i.e. 25.05.2000.

10. Learned counsel for the petitioner submits that the said view of the respondents is incorrect as the respondents are under an obligation to adhere to the directions of Award passed by the Labour Court dated 12.05.1999 (Annexure P-1) wherein, the petitioner was reinstated with continuity in service hence, for all intents and purposes, the petitioner is to be treated as an employee being in continuance of service starting from 07.11.1979 onwards.

11. Learned counsel for the respondents submits that though the petitioner was initially appointed on class-III post on 07.11.1979 but later on his services were terminated on 01.06.1983 and he only joined back in service on 26.05.2000 and therefore, the policy which was made operational in the year 1996 for considering the claim of the employees for regularization of their service cannot be made applicable upon the petitioner as he was not in service in the year 1996 and rather joined back in service in the year 2000.

12. Learned counsel for the respondents further submits that as per the facts, the petitioner has continued in service up to the age of 60 years being a work-charged employee and in case the benefit of regularization of his service is to be granted, he was to retire on 31.03.2006 and not 31.03.2008 and since, the clock cannot run backwards so as to grant the benefit of regularization to the petitioner, but even otherwise, in case the petitioner has to be considered for grant of benefit of regularization, he has to return the salary for the two years which he has withdrawn while working on work charged basis upto the age of 60 years.

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

14. The only question which arises for consideration is whether the 1996 policy under which the other similarly situated employees including the other petitioners in CWP No.19826 of 2002 have been regularized, has to be made applicable upon the petitioner Kuldeep Singh or not.

15. Concededly, petitioner Kuldeep Singh joined in the service on 07.11.1979 though his services were terminated on 01.06.1983, but the said termination was held to be bad by the Labour Court vide Award dated 12.05.1999 and he was granted the benefit of reinstatement along with continuity of service and lump sum back wages of Rs.5,000/-. The said Award has already attained finality. Once, the grant of benefit of reinstatement in service to the petitioner was given along with benefit of continuity in service, the petitioner has to be deemed to be in service continuously starting from the initial date of appointment i.e. 07.11.1979. By this deeming fiction, the petitioner has to be treated in service in the year 1996 keeping in view the benefit of continuity in service granted to him and therefore, the regularization policy which came into operation in the year 1996 has to be made operative upon the petitioner.

16. The argument which has been raised by the learned counsel for the respondents is that during the time petitioner remained in service, the petitioner never raised the grievance with regard to the regularization of his services and rather continued working on work charged basis till he attained the age of 60 years which is the retirement age of an employee working under work charge basis and therefore, he now cannot claim the benefit of

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regularization of service under 1996 policy and in case the said benefit is to be granted, the petitioner should have had retired on attaining the age of 58 years rather than 60 years and therefore, the petitioner has to either return the wages he earned for a period of two years in case he seeks consideration of his claim qua regularization of his service under 1996 policy, or he has to relinquish his claim.

17. It may be noticed that the claim qua regularization of his service was raised by the petitioner in the present writ petition in the year 2002. At the said time, the petitioner had not attained the age of 58 years. The petition remained pending for adjudication in this Court for a period of 23 years and is now being decided.

18. Once, before attaining the age of 58 years, the petitioner had claimed the benefit of regularization of his service, the argument of the respondents that the petitioner continued working upto the age of 60 years on work charge basis is a fact enough to deny the petitioner the benefit of regularization, cannot be accepted. Once, under the directions of the Labour Court, the petitioner was granted the benefit of continuity in service, the petitioner has to be deemed to be in service in the year 1996 and it was incumbent upon the respondent-State to consider the claim of the petitioner under 1996 Policy for regularization of his services by deeming the petitioner in service in the year 1996. Non-grant of the said benefit to the petitioner by the respondents has led the petitioner to continue working on work charge basis upto the age of 60 years, which act on part of the petitioner cannot be used as a tool against the petitioner to deny him the benefit which was otherwise admissible under 1996 Policy, especially when

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it was the respondents who did not adhere to the directions of Labour Court qua benefit of continuity of service given to petitioner.

19. Keeping in view the totality of the circumstances, the respondents are directed to consider the claim of the petitioner under 1996 policy for regularization of his service by treating him in service during the year 1996. In case, the petitioner fulfills the requisite of 1996 regularization policy, the benefit of regularization be granted to him notionally from the date he becomes entitled for as per terms and conditions of the regularization policy.

20. In case the benefit of regularization is granted to the petitioner notionally, his salary should be upto the date of his retirement. Age/date of retirement of petitioner will be taken as 58 years. Whatever the salary which the petitioner will be getting notionally on attaining the age of 58 years, will be treated as last drawn pay for the purpose of calculating his pensionary benefits. Though, no salary amount will be given to petitioner for the period he was in service but the consequential benefits of pensionary benefits will be given to the petitioner in case the petitioner's services are regularized including pension and other benefits such as gratuity and leave encashment, which benefits are admissible to a regular employee.

21. As the petitioner has rendered service for upto the age of 60 years, the benefit which the petitioner has received by way of salary, will not be recovered from the petitioner as he was paid salary after discharging the duties of the post in question.

22. Let the order be complied with within a period of eight weeks from the date of receipt of copy of this order.



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23. The present writ petition is disposed of in above terms.

24. Civil miscellaneous application pending if any, also stands disposed of.

July 29, 2025

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No