(2014) 12 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 1169 of 2011 (O and M), C.W.P. Nos. 19831 of 2006 (O and M), 2533, 20731 of 2008 (O and M), 1204, 8046, 21596 of 2011 (O and M), 133, 1359, 7489, 15013, 16198 of 2012 (O and M), 26462, 8465, 9291, 9862, 17225, 18420, 20208, 20608, 28507 of 2013

Balwinder Kaur and Others	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:
Constitution of India, 1950 — Article 14, 16

Citation : (2015) 2 SCT 98

Hon'ble Judges : Mahesh Grover, J.

Bench : Single Bench

Advocate : J.S. Maanipur, Ramesh Goyal, R.K. Arora, P.K. Goklaney, R.K. Sharma, S.K. Arora, A.P. Kaushal for R.K.S. Brar, for the Appellant; Monica Chhibber Sharma, D.A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

Mahesh Grover, J.?By this order I will dispose of C.W.P. Nos. 1169 of 2011, 19831 of 2006, 2533, 20731 of 2008, 1204, 8046, 21596 of 2011, 133, 1359, 7489, 15013, 16198 of 2012, 26462, 8465, 9291,9862,17225, 18420, 20208, 20608, 28507 of 2013, 233, 7449 and 21105 of 2014. The facts of all the cases though marginally different, would still be broadly covered by the spectrum of the controversy raised in all these petitions which the Court proposes to answer.

2. The petitioners are the widows of those unfortunate employees who died in harness, but their services were not regularized even though the prevailing policies entitled them to such a benefit and consequent upon their death, the widows were denied the family pension. In C.W.P. No. 21105 of 2014 petitioners Labh Dass and Hazura Singh retired after completion of their service.

3. A prayer for the issuance of a writ in the nature of certiorari has been made

quashing the impugned decisions rendered in each petition disentitling the petitioners to such a benefit primarily on the ground that the deceased employee was not regular to avail himself of any further benefit except the salary and gratuity which stood paid.

4. For the sake of brevity, the dates of appointments/death of the petitioners are given below:--

5. It is not in dispute that the policy was introduced by the State on 23.1.2001 intending to offer the benefit of regularisation of service of work charge, daily wage and other categories of workers engaged by various Departments of the State in connection with the ongoing projects, works of perennial nature. The salient features of the policy would need to be extracted here below:--

"(i) No new posts are ordinarily to be created to absorb and regularize existing work charged/daily wage and other categories of workers. Wherever the full circumstances of the particular situation warrant that new posts may be created, the case should be thoroughly examined, Finance Department should be consulted and approval of the CMM should be obtained.

(ii) Each Department may prepare a list of work-charged, daily wage and other categories of workers who have completed 3 years service and those lists may be updated from time to time. The lists should be prepared strictly as per seniority.

(iii) Out of the lists prepared thus, workers should be absorbed/regularized only against regular posts existing in each department. In the first instance work charged workers should be regularized in the order of seniority. Only when all eligible persons of this category have been accommodated cases of daily wage and other category of workers who have completed 3 years of service in the department may be taken up. The basic idea is that workers belonging to a particular department should be considered for regularization only against available regular vacancies in that department. The claim of work charged/daily wage/other categories of workers for regularization will extend only against available vacancies in the department to which these workers belong.

(iv) For accommodating work charged/daily wage/other category workers as per the above policy against the existing vacancies the existing instructions requiring permission of the DOP and FD for filling up the vacancies would not apply. Whenever for the absorption/regularisation of workers as per the above policy any department''s own recruitment Rules come in the way, such provisions, of the Recruitment Rules will stand relaxed."

6. The deceased employees'' cases for regularisation were recommended, but before the decision could fructify, they died. The dates of their deaths would indicate that some of the persons continued to work for as along as 8 to 9 years after the introduction of the policy entitling them for regularisation of service.

7. The petitioners place reliance on Rule 6.7(a), (b) and clause (2) of the rules to seek the benefit of family pension. The relevant portion of the rules is extracted

here below:--

"6.17. The provisions of this rule shall apply:--

(a) to a regular employee of Punjab Government in a pensionable establishment on or after the 1st July, 1964; and

(b) to a Punjab Government employee who was in service on the 30th June, 1964 and came to be governed by the provisions of Family Pension Scheme, 1964, for Punjab Government employees.

xxxx

(2) The Scheme will be administered as below:--

(i) The family pension will be admissible in case of death while in service or after retirement if at the time of death the retired Government employee was in receipt of a compensation, in valid, retiring or superannuation pension. In case of death while in service, the Government employee should have completed a minimum period of one year of continuous service, without break. The family pension will not be admissible in cases of death after retirement, if the retired employee at the time of death was in receipt of gratuity only.

Provided that the condition of completing a minimum period of one year of continuous service will not be applicable in the case of Government employee who has been medically examined and declared fit for entry into Government service.

(ii) The term "One year continuous service" used in clause (i) is inclusive of permanent and temporary service in a Pensionable establishment and any period of leave including Extraordinary leave but does not include Boy Service and suspension period unless that is regularized by the competent authority.

xxxx"

The petitioners would refer to clause (2) and plead that the scheme envisages grant of family pension in the case of death while in service if an employee has completed a minimum period of one year of continuous service without break and further upon the proviso which envisages waiver of the condition of one year of continuous service if a Government employee who has been medically examined and declared fit for entry into Government service. Clause (2) upon which reliance is placed, defines one year continues service to be inclusive of permanent and temporary service in a pensionable establishment.

8. The petitioners have placed reliance on some precedents of this Court which may be noticed.

In Smt. Chameli v. The State of Haryana and others, 1999(2) R.S.J. 688, this Court was dealing with an issue almost of the similar kind where despite entitlement to regularisation after having completed 4 years of service and having been medically examined, the benefit of family pension was declined since the employee expired. The Court held as follows:--

"7. The question whether the services of Shri Mange Ram should have been brought on regular establishment deserves to be examined in the light of the instructions issued by the respondents from time to time. Vide memo No. 5-EIII-78/7295-18/EIII dated 3.7.1980-, the Engineer-in-Chief, Haryana, P.W.D. B&R Branch, directed all the Superintending Engineers to furnish information regarding those work-charge employees who had completed 5 years'' service as on 31.12.1978. Vide memo No. 83-EIII-81/15333- 47/111 dated 26.10.1983, he issued similar directions for furnishing the particulars of those work-charge employees who had completed 4 years service as on 31.12.1981. Instructions were again issued on 30.5.1988 for regularisation of services of those who had completed 4 years service on 31.12.1986. On 27.5.1993, the Chief Secretary to Government, Haryana issued instructions for regularisation of those work-charge employees who had completed 5 years continuous service as on 31.3.1993. However, as we are not concerned with the instructions issued vide memos dated 30.5.1988 and 27.5.1993, it is not necessary to deal with the same. The instructions issued by the Engineer-in-Chief vide memo dated 3.7.1980 are also not very relevant because Shri Mange Ram did not fulfill the condition of 5 years service as on 31.12.1978. In view of this, we are left with the instructions issued vide memo dated 26.10.1983. The same read as under:--

"From The Engineer-in-Chief, Haryana, PWD B&R Branch, Chandigarh.

To

1. All the Superintending Engineer in Haryana, PWD B&R Branch,

2. The Director, Research and Design, PWD, B&R, Br., Hissar.

Memo No. 83-EII 81/15333-47/111 dated

Chandigarh the 26.10.1983.

Sub: Regularisation of work charged employees.

In this connection your attention is invited to this office memo No. 4602-17/EIII dated 24.3.1993 vide which you are requested to supply information regarding work-charged employees who had completed four years service on 31.12.1981 as the Govt. wanted this information for considering regularisation of such work charged employees. On the basis of the information supplied by you to this office from time to time in reply to this office memo No. 4602- 17/EIII DATED 24.3.83, there were 2560 work charged employees who have completed 4 years service on 31.12.81. Out of these 560 work-charged employees, 1095 work-charged employees can be brought on regular cadre against the vacant posts lying in the department and for bringing the remaining work-charged employees on regular cadre, a proposal for creation of 1465 posts was referred to the Govt. Now the Govt. vide their memo No. 1-40-B&R (Works) 6-83 dated 13.10.83 (copy enclosed) have accorded sanction for creation of 1465 posts. Accordingly, 1095 vacant posts, and now created 1465 posts are allocated category-wise/circlewise as per Annexure-II and the position of the persons at present on the work charged made regular cadre shown as per Annexure-I.

You are requested that all the work-charged employees who have completed 4 years service on 31.12.1981 may please be brought on regular cadre w.e.f. 13.1.1983 on the basis of seniority subject to the following conditions:

1. He has put in 4 years service in the work-charged capacity on 31.12.1981 and his seniority will also be kept in view.

2. His antecedents will be verified and he will also undergo medical examination for fitness before he is brought on regular establishment.

3. Every work-charged employee will be placed on probation period of one year.

It is also requested that the total strength (Category-wise) of work-charged establishment along with their full particulars as on 1.11.82, 1.1.1983 and 1.7.1983 may be sent to this office by 31.10.1983 positively so that the same could be supplied to Government well in time. Similarly, six monthly report on 1st July and 1st Jan. every year be sent regularly by 15th July and 15th Jan. respectively.

Sd/- Registrar, for Engineer-in-Chief, Haryana, PWD B&R Chandigarh."

A careful reading of the averments made in the petition shows that Shri Mange Ram was eligible to be regularized in service as per the above extracted instructions. The respondents have not contested his eligibility to be regularized in service on the ground that he did not complete 4 years work-charge service as on 31.12.1981 on the ground that his antecedents were found to be wanting in any manner but on the ground that due to his demise on 18.7.1983, Shri Mange Ram could not be subjected to medical examination as envisaged by the instructions dated 26.10.1983. In our opinion, this cannot be considered to be a rational justification for denying the benefit of regularisation of service to late Shri Mange Ram because it has not been proved that as on 31.12.1981, he suffered from any disability.

8. In view of the above, we allow the writ petition and direct the respondents to take the following steps:

"(i) The services of Shri Mange Ram should be regularised in accordance with the instructions issued by the Engineer-in-Chief vide memo dated 26.10.1983. This shall be done within a period of 2 months from the date of handing over of an attested copy of this order to the learned Deputy Advocate General by the Bench Secretary.

(ii) Within next 2 months, the respondents shall determine the amount of gratuity, ex-gratia and family pension payable to the petitioner.

(iii) The amount due to the petitioner shall be paid to her within next 4 weeks.

(iv) In case there is a lapse in the payment of amount of a family pension, gratuity, ex-gratia etc., then the petitioner shall get interest at the rate of 18% per annum."

In Usha Rani v. State of Haryana and others, 2004(4) R.S.J. 546, it was held that even a work-charge employee would be entitled to family pension in case the employee died before the benefit of regularisation could materialize.

9. To a similar effect are the decisions rendered by this Court in C. W.P. No. 12668 of2010 titled Milan Rani v. The Punjab State Power Corporation Ltd. & another and C. W.P. No. 11530 of 2003 titled Chameli Devi v. Haryana Power Generation Corporation Ltd.

10. The respondents in turn, plead that the benefit of regularisation having not been conferred upon the deceased employees, there could be no deemed date of regularisation and the pension scheme would talk of benefit being admissible only to a regular employee. It has further been pleaded in the reply that the concept of deemed date of regularisation is alien to the policy and that even otherwise, the deceased employee did not reach the seniority level so as to entitle him to regularization. It has further been averred that after the introduction of the scheme, regularisation was to be done on the basis of seniority against vacant regular posts of the concerned category and seniority list was only exhausted till Sr. No. 637A, whereas the deceased employees stood much lower down in the seniority.

11. Reliance was then placed upon a decision of the Hon''ble Supreme Court in Uttar Haryana Bijli Vitran Nigam Ltd. and Others Vs. Surji Devi, wherein it was held as follows:--

"14. The scheme relating to grant of Family Pension was made under a statute. A person would be entitled to the benefit thereof subject to the statutory interdicts. From a bare perusal of the provisions contained in the Punjab Civil Services Rules, Volume 2 vis-?-vis the Family Pension Scheme, it would be evident that the respondent was not entitled to the grant of any family pension. Husband of the respondent was a work-charge employee. His services had never been regularized. It may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the regularisation scheme but sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law.

The statutory provisions, as noticed hereinabove, debar grant of family pension in favour of family members as the deceased employee if was a work-charge employee and not a permanent employee or temporary employee. The period during which an employee worked as a work-charge employee could be taken into consideration only when his services are regularized and he becomes permanent and not otherwise.

Furthermore, there exists a distinction between a pensionable and non-pensionable establishment. Shri Krishan being a member of a non-pensionable establishment, Family Pension was not admissible. It is not a case where an employee had been given an option to opt for one or the other schemes. Once a person had opted for non-pensionable scheme, the question of his being entitled to pension or for that matter his family members becoming entitled to family pension did not and could not arise. The High Court only followed Kanta Devi (supra) without noticing the distinctive features thereof. As it is not necessary, we have not gone into the question as to whether Kanta Devi (supra) was correctly decided. Apart from the fact that the fact therein was different, evidently the questions which have been raised before us were not raised therein. The High Court, therefore, committed a serious error in applying Kanta Devi (supra) to the fact of the present case."

Similarly, in State of Haryana and Others Vs. Shakuntla Devi, , it was held as follows:--

"The Family Pension Scheme was formulated to afford further relief to the family of the deceased government employee i.e. something more than what was contemplated in the Punjab Civil Service Rules. Dependents of those employees who are otherwise not eligible in terms of the Rules do not get benefit of Family Pension Scheme. Eligibility clause must be satisfied so as to enable dependent of a government employee to obtain the said benefit. The Scheme is subject to Part II of the Punjab Civil Service Rules, and Rules in Part II are subject to Part I, which in turn would be subject to the constitutional provisions. Before a person can be said to have acquired a right to obtain the benefits of Family Pension Scheme he must satisfy eligibility as envisaged under the rules. Family pension can be granted to dependent of deceased government employee under the Scheme only by way of a further relief and not independent of main Pension Rules. If a person was not a government employee, the question of his dependent becoming entitled to the benefits of the Scheme would not arise.

Confirmation in service whether before retirement or before death must be held to be sine qua non for becoming eligible for grant of pension. Only when an employee renders service in a pensionable service, would be entitled to pension. Reliance placed on Note I of Para 4 of the Scheme is not apposite.

The Scheme in terms of Para 3 is applicable to all regular employees in pensionable establishments, temporary or permanent, who were in service. Whether temporary or permanent, the employee must be a regular employee which would mean an employee- appointed on a regular basis i.e. in accordance with the Rules. Only because services of ad hoc employees were continued, the same would not mean that thereby their status has been changed. Status of an employee can change either by reason of a contract or by reason of a statute. There is nothing on record to show that the deceased employees in the present case became regular employees of the State. Hence, the Family Pension Scheme is not applicable to the respondent widows.

An employee must be a government employee at the first instance. He must be working in a pensionable scheme. He only in that capacity should have completed a minimum period of one year of continuous service without break which would mean that he must be a temporary or permanent employee."

12. I have heard the learned counsel for the parties and perused the material on record.

13. There is no dispute on facts. The deceased having worked with the respondents for almost three decades and the policy of the Government entitling the employee to regularisation of his services after having completed three years of service is a crucial fact from which this Court would proceed to determine the issues raised before it. Considering the length of service rendered by the deceased employee without the benefit of regularisation can at best be termed to be an exploitative action on the part of the State and human resource whose service are so desired and utilized for such an inordinate long period, cannot be kept away from the fruits of a regular employment on the premise of non-availability of vacancies. The State which professes to be a Welfare State, bound by the dictates of the Constitution of India which mandates adherence to Articles 14 and 16 of the Constitution in terms of public employment, can ill afford to seek refuge in such hypocrisy. If the services of an incumbent are required for more than three decades and practically utilized for that purpose, then the plea of non-availability of regular posts is unacceptable.

14. It is because of the fortuitous circumstances that the deceased employees were kept away from regularisation firstly on account of the will of providence and secondly on account of laxity on the part of the State.

15. Clause-4 of the Regularisation Policy would require the process of regularisation in the case of work-charge/daily wage workers within a period of four months. It is not the fault of the employee if the process is kept in abeyance for as long as 8 to 9 years to deprive him of the benefit of regularisation. Rather, such an approach of the respondent/State would necessarily result in the virtual negation of the policy itself. The policy talks of regularisation on the completion of 3 years of service and there can be no justification absolutely to keep the employees away from regularization if they have put in more than three decades of service and that too, when the policy contemplates the process to be completed within 4 months which was permitted to linger on for 8 to 9 years thereafter.

16. The Court is thus of the considered view that it is only on account of the fault of the State that the deceased employees were kept away from the benefit of regularisation. There cannot be any quarrel with the judgments relied upon by the learned counsel for the respondents that a person who has not been regularized, would not be entitled to the benefits of family pension which have their origin in the rules and the schemes framed thereunder. All the employees who died in harness in the case relied upon by the learned counsel for the

respondents in State of Haryana and others v. Shakuntala Devi (supra) pertain to employment of 2 to 4 years and were made on ad hoc/temporary basis. It did not deal with the situation where the State has chosen to extract work from an employee for as long as three decades and then denied the benefit of the policy of regularisation merely on the ground of indecisiveness or laxity in conferment of such a benefit. A person who has rendered this kind of service beyond 2 to 3 decades would be hopelessly beyond employment due to his age if his services are dispensed with. It is on this account that the period of service rendered by an employee assumes great significance to evaluate his right which he asserts against the State in terms which are acknowledged by the State when policies of regularization are introduced limiting the conferment of benefit of regularisation to merely 3 to 4 years of employment.

17. Therefore, it is a fit case where the State should be mandated to prescribe a notional date of regularisation to all deceased employees so as to enable them to the benefits of family pension as per the rules which undisputably would have flowed to the petitioners herein if the benefit of regularisation had been granted to the deceased employees.

18. Learned counsel for the respondents would refer to the decision of the Hon''ble Supreme Court rendered in Uttar Haryana Bijli Vitran Nigam Ltd. & others v. Surji Devi (supra) wherein it was observed that the sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law. The Hon''ble Supreme Court was dealing with a case of a work charge employee whose services had not been regularized. Upholding the stand of the Nigam, it observed that the statutory provisions debarred the grant of family pension in favour of the family members as the deceased was not a permanent or temporary employee.

19. In the present case, as has been observed earlier, the Court feels that the action of the respondents is violative of Article 16 of the Constitution of India, if an employee is to be denied the benefit of regularisation, as this would tantamount to negation of the principle of equality in matters of employment. It is not a case of misplaced sympathy as the Court is conscious that rules are to be adhered to and enforced, but the Court cannot overlook the exploitation of human resource at the hands of the State and this action at best, can be termed an unfair labour practice when it choses to keep the fate of the employee hanging in balance to take advantage of his need for employment.

20. In C.W.P. No. 26462 of 2013, the only distinction between the facts of the other cases and this petition is that the impugned order Annexure P-19 has been passed and the benefit was denied to the deceased employee on the ground that he had been appointed on 89 days basis and did not fall within the ambit of the policy dated 23.1.2001 by which regularisation was contemplated. Evidently, the policy has been misconstrued as clause (i) talks of not only workcharge/daily wage employees, but also of the other categories of workers which would obviously include those who were appointed on short term basis since the policy

would cover the cases of the petitioners. The other observations made would also be attracted to the facts of all the petitioners and all the petitions would necessarily be disposed of in the same terms. All the petitions are accepted. The respondents are mandated to give a notional date of regularisation to the deceased/retired employees in terms of the policy and the petitioners would thereafter be entitled to family pension.

