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

**(105)** **CWP-10150-1999 (O&M)**
**Date of Decision : 11.03.2025**

**Raj Singh and others**

**...Petitioners**

**Versus**

**State of Punjab and others**

**...Respondents**

**(105/2)** **CWP-3042-2002 (O&M)**

**Smt. Satya Devi**

**...Petitioner**

**Versus**

**State of Punjab and others**

**...Respondents**

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. Vinod Kumar, Advocate with
Mr. M.K. Dogra, Advocate for the petitioners
in CWP-10150-1999.

Mr. S.K. Rattan, Advocate for the petitioner
in CWP-3042-2002.

Mr. T.P.S. Chawla, Senior Deputy Advocate General, Punjab.

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***Harsimran Singh Sethi J. (Oral)***

1. By this order, two petitions are being decided, which involve the same question of law.

2. For the sake of convenience, the facts are being taken from CWP-10150-1999 titled as ***Raj Singh and others Vs. State of Punjab and others***.

3. The present petition has been filed by the petitioners claiming the benefit of regularization of their services in view of the Instructions dated 23.01.1995.

4. Learned counsel for the petitioners submit that the petitioners were appointed by the respondent-State on work charge basis starting from the year 1974 onwards till 1982 and they have worked for more than two decades with the respondents hence, the petitioners were entitled for regularization of their service before they attained the age of superannuation so that they can get the pensionary benefits, which is must for an employee who has worked for over two decades with the respondents but their services have not been regularized, which is causing prejudice to them.

5. The respondents have appeared and initially contested the claim of the petitioners on the ground that the petitioners were working on a particular project and as there were no regular posts, the services of the petitioners could not be regularized and further, once the petitioners were working on a particular project, they can only be allowed to continue in service till the project survives and after the completion of the project, the petitioners' services are to be dispensed with hence, the benefit of regularization of services being sought is not admissible. However, in the reply filed, the factum that the petitioners have worked with the respondents for over two decades, has been conceded.

6. During the pendency of the writ petition, the respondents have filed an affidavit, wherein, they have stated that in CWP No. 10150 of 1999, the services of all the petitioners except four petitioners i.e. petitioners No. 3, 6, 14 and 19 have already been regularized. With regard to the four

petitioners, it has been stated that no regular post was available for regularization of their services hence, their services have not been regularized.

7. Learned counsel for the petitioner in CWP No. 3042 of 2002 submits that the grievance of the petitioner is that the husband of the petitioner had approached this Court by filing CWP No. 3777 of 1986 and was petitioner No. 16, namely, Hoshiar Singh son of Pannu Ram in the said petition. In the said writ petition, the statement was made by the State on 10.10.2002 that the services of the petitioners have already been regularised but, no benefit of the said regularization was extended to the husband of the petitioner before he unfortunately died and even as of now, no pensionary benefit is being extended to the petitioner, which is causing prejudice hence, the prayer of the petitioner is for directing the respondents to grant the benefit of regularization of services of the husband of the petitioner along with arrears as well as the family pension and all other consequential benefits.

8. Learned counsel appearing on behalf of the respondents has not been able to dispute the said factual averment made qua the claim of the petitioners as recorded here-in-before.

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

10. As of now, the question which survives for determination is whether, the four petitioners in CWP No. 10150 of 1999 whose services have not been regularized, are entitled for any benefit or not and whether the

petitioner in CWP No. 3042 of 2002 is entitled for the benefits after the regularization of services of the husband of the petitioner.

11. With regard to the prayer of the four petitioners in CWP No. 10150 of 1999, it may be noticed that the objection which was taken by the respondent-State for not regularizing the services of the petitioners was that they were working on a particular project and on completion of the project, the services of the petitioners were to be dispensed with hence, they cannot claim the benefit of regularization. The said objection cannot be accepted keeping in view the conduct of the respondents themselves as, the services of all other petitioners have already been regularized by the respondents and the consequential benefit were also granted. The benefits have not been granted to only four of the petitioners, the details of whom have been given here-in-before.

12. Once, the benefit of regularization has been granted to the similarly situated employees, the grant of same benefit to the four petitioners cannot be rejected on the ground that they were working on a project or there were no regular posts.

13. Further, the same question of law as to whether, an employee who has worked for two decades, is entitled for benefit of regularization of his/her services came up for consideration before the Hon'ble Supreme Court of India in Civil Appeal No. 14831 of 2024 titled as ***Jaggo Vs. Union of India,*** decided on 20.12.2024, wherein, it has been held that where an employee has completed ten years of service, he/she is entitled for regularization of his/her services keeping in view the judgment of the Constitution Bench in ***Secretary, State of Karnataka and others Vs. Uma***

***Devi,*** 2006 (4) SCCC 1. The relevant paragraphs of the said judgment are as under :-

> *"xxx*
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> *20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgement of this Court in Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.5, it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgement have been reproduced below:*
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> > *"6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive*

> *rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).*
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> *7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments [2024] 1 S.C.R. 1230 even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case…"*

*xxx*

*26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural*

*formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.*

*27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country."*

14. The said question of regularization of the services of an employee again came up for consideration before the Hon'ble Supreme Court of India in Civil Appeal No. 8158-7179 of 2024 titled as ***Shripal and another Vs. Nagar Nigam, Ghaziabad,*** decided on 31.01.2025, where non-regularization of the services of an employee who had completed more than 20 years of service has been treated as arbitrary and illegal and has been described as exploitation. The relevant paragraphs of the said judgment are as under :-

*"xxx*

*18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:*

> *I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service. II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any. III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement. IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not*

> *impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms."*

15. Learned counsel for the respondents has not been able to dispute that the petitioners whose services have not been regularized so far on the ground that they had attained the age of superannuation, cannot be accepted. Their services are required to be regularized from the date prior to their attaining the age of superannuation.

16. It may be noticed that the Hon'ble Supreme Court of India while deciding Civil Appeal No. 6798 of 2019 titled as ***Prem Singh Vs. State of Uttar Pradesh and others,*** on 02.09.2019 has held that the daily wage service is to be taken into account for computing the pensionary benefits and the employee cannot be deprived of getting benefit of the said period by not counting the same for the pensionary benefits. The relevant paragraphs of the said judgment are under:-

> *"30. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work-charged basis for long amounts to adopting the exploitative device. Later on, though their*

*services have been regularized. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work charged establishment but have also been deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work-charged establishment.*

*31. In view of the note appended to Rule 3(8) of the 1961 Rules, there is a provision to count service spent on work charged, contingencies or non pensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.*

*32. The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularization had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in Note to Rule 3(8) of 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services.*

> *There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularization. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.*
>
> *33. As it would be unjust, illegal and impermissible to make aforesaid classification to make the Rule 3(8) valid and non discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularization in the capacity of work-charged employees, contingency paid fund employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment."*

17. Further, the only objection taken is that there was no regular post, which was available on the date when the four petitioners whose services are yet to be regularized, attained the age of superannuation. Once, the State was taking work from the petitioners and the petitioners have worked for over twenty years, it cannot be said that there was no work so as to create the post. Continuation for a period of more than two decades by the

petitioners itself shows that work of the post existed. The creation of the post was within the domain of the respondent-State and being a model employer, they should have created the post so as to grant the benefit of regularization of services to all the employees so that no prejudice is caused to any such employee.

18. Keeping in view the decisions of the Hon'ble Supreme Court of India in ***Jaggo's case (supra) and Shripal and another's case (supra)*** as well as ***Prem Singh's case (supra)*** petitioners are entitled for the grant of benefit of regularization even if, the respondents are to create supernumerary post to accommodate the petitioners so that the employee who has served the department for more than two decades does not suffer.

19. Keeping in view the totality of the circumstances, the respondents are directed to regularize the services of the four remaining petitioners prior to the date when they attained the age of superannuation. It may be noticed that the regularization will only be for the purpose of grant of pensionary benefits and no arrears of pay will be given to the petitioners but the pensionary benefits of the petitioners will be calculated by a deeming fiction as to what pay they would have drawn being a regular employee on the date when they attained the age of superannuation. However, for the arrears of pension and pensionary benefits, the petitioners will be entitled for all the benefits as admissible to a regular employee, who retires on attaining the age of superannuation. In case, any of the four petitioner has unfortunately died as of now, the pensionary benefits will be extended to the legal heirs of the said petitioner and in case, the spouse is alive or any

children was entitled for the family pension admissible, they will also be granted the said benefit.

20. With regard to the claim of the petitioner in CWP No. 3042 of 2002, it may be noticed that the petitioner's husband had approached this Court by filing CWP No. 3777 of 1986. The order passed by the Competent Authority on the statement of the State is as under :-

> *"* *Lok Adalat*
>
> *CWP No. 3777 of 1986*
>
> *Moti Ram and others Vs. State of Punjab and others*
>
> *Present :- Mr. Neeraj Sharma, Advocate for*
>
> *Mr. S.D. Sharma, Advocate for the petitioners.*
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> *Mr. Devinder Kumar, AAG, Punjab.*
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> *This writ petition has become infructuous. The order dated March 23, 2001, shows that all the petitioners except petitioners Nos. 15, 21, 24 and 27 were regularized. Petitioner No. 15 Dharam Pal has moved an application for withdrawal of the writ petition on his behalf. That application is fixed before the High Court on October 31, 2002. The High Court will pass appropriate orders thereon. Petitioner No. 21 Yash Pal Singh and petitioner No. 24 family have filed separate CWP No. 10150 of 1999. Necessary orders would be passed in that writ petition. Petitioner No. 27 Babu Ram stands regularized, as stated.*
>
> *Hence this petition has become infructuous and is dismissed, as stated above.*
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> *Copies of the order be given to the counsel for the parties.*

*Sd/-*

*Dated : October 10, 2002* *(A.L. Bahri)*
*President*

*(Mrs. Reva Gandhi)*
*Member"*

21. A bare perusal of the above order would shows that respondents conceded before the Court that the services of the husband of the petitioner have already been regularized. The only claim of the petitioner herein is that no actual benefit has been extended after the regularization of the services of the husband of the petitioner.

22. Keeping in view the said fact which has gone un-rebutted that services of the husband of the petitioner was regularized, the respondents are directed that all the benefits which the husband of the petitioner was entitled upon regularization of his services, be extended to the petitioner keeping in view the order regularizing the services of the husband of the petitioner from the date his services were regularized. The service benefits liable to be extended to the husband of the petitioner will be paid to the petitioner being the legal heir as, the husband of the petitioner has unfortunately died. Further, the petitioner will also be entitled for the grant of benefit of family pension from the date the husband of the petitioner had unfortunately died along with arrears.

23. It may be noticed that as the respondents had conceded as far back as in the year 2002 that the services of the husband of the petitioner had already been regularized but no benefit has been extended which delay is attributable to the State, upon the arrears which will be admissible to the

petitioner in CWP No. 3042 of 2002, an interest will also be paid @ 6% per annum from the date the amount became due till the actual payment of the same. Let the order be complied with within a period of eight weeks of the receipt of copy of this order.

24. Petitions are disposed of in above terms.

25. Pending miscellaneous application, if any, also stands disposed of.

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

**March 11, 2025** **(HARSIMRAN SINGH SETHI)**
*kanchan* **JUDGE**

*Whether speaking/reasoned : Yes*
*Whether reportable : No*