
Before M.M. Kumar, J.

SIMLA DEVI,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 17980 of 2002

21st February, 2006

Constitution of India, 1950—Art. 226—Policy instructions on regularization dated 4th March, 1999 issued by the State of Punjab—Appointment of petitioner as Class IV employee on part-time basis—High Court setting aside the order of her termination and ordering reinstatement—Claim for regularization of services rejected on the ground that petitioner did not satisfy the required conditions of policy instructions dated 4th March, 1999- No plea regarding lacking of educational qualification raised by respondents in the earlier petition filed by petitioner- Requirement of qualification of middle pass was not existing when petitioner joined service in 1992 so it could not be introduced at the time of considering her case for regularization—Petitioner submitting affidavit disclosing her date of birth as 3rd March, 1955— Respondents failing to show while rejecting the claim of petitioner for regularization as to how after applying the rule of relaxation the petitioner lacked the requirement of age— Completion of 13 years of service by petitioner— Petition allowed while directing the respondents to regularize the services of petitioner with all consequential benefits.

Held, that the question whether the petitioner lacked educational qualification and on that basis the benefit of regularization of her services could be declined would no longer be available to the respondents because when the matter came up before the Division Bench of this Court in the case of the petitioner herself, titled as Simla Devi V. Presiding Officer, Labour Court, Bathinda, 1998(2) RSJ 55, no question was raised that she did not fulfil the educational qualification and, therefore her termination on completion of 240 days in a period of preceding 12 months was valid. The only issue raised was that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act,

1947 as she was employed on part time basis. Therefore, this plea cannot be made the basis for declining her claim for regularization. Moreover, the qualification of middle pass has been introduced by instructions issued by the Punjab Government on 21st May, 1998, which shows that such a Notification was not applicable when the petitioner joined service on 1st June, 1992.

(Para 9)

Further held, that if the employer has felt satisfied with the working of an employee for a long time then the employer cannot be heard to say that for regularization he would lack qualification for discharging duty. In such a situation, the experience gained by an employee must be considered equivalent to the educational qualification. It is admitted position that the petitioner has now completed more than 10 years of service. The arbitrariness of the respondents can be gauged from the fact that her claim was rejected on 20th May, 2002 when she was proceeding to complete 10 years after about 10 days. In any case, the petitioner has now fulfilled the qualification on completing 10 years of service and, therefore, deserve to be regularized.

(Para 11)

Rakesh Garg, Advocate, for the petitioner.

Sushant Maini, Deputy Advocate General, Punjab.

JUDGMENT

M.M. KUMAR, J.

(1) Although the petitioner has approached this Court on umpteen times yet her grievances have remained un-redressed. This is another petition filed by her under Article 226 of the Constitution with a prayer for quashing order dated 20th May, 2002 (P-18) whereby her representation seeking regularisation of her services has been rejected. A further prayer has been made to issue directions to the respondents to extend the benefit of the Division Bench judgment of this Court in the case of **Swaran Kaur & others versus State of Punjab & others**, C.W.P. No. 2117 of 1997, decided on 17th July, 1997 (P-5). Accordingly, a direction has been sought to regularise the services of the petitioner on the basis of the policy dated 4th March,

1999 (P-11) with all consequential benefits such as fixation of pay, seniority and payment of arrears etc. to the petitioner.

(2) Brief facts are that the petitioner was registered with the Employment Exchange namely the District Employment Officer, Bathinda, on 28th September, 1992. She was appointed as Class IV employee on part time basis in the office of the Civil Surgeon, Bathinda, in the same year on a fixed salary of Rs. 502 per month. She continued to work as such for some time. On 19th August, 1993, her services were terminated. She sought a reference, which was decided against her by the Labour Court on 17th January, 1996. The award of the Labour Court was set aside in C.W.P. No. 4201 of 1996, decided on 28th August, 1996, which was filed by her. The case was remanded back to the Labour Court for deciding the reference afresh. The Labour Court again decided against the petitioner,—*vide* its award dated 22nd May, 1997. The petitioner again challenged the award of the Labour Court by filing C.W.P. No. 9606 of 1997. The petition was allowed by a Division Bench of this Court directing reinstatement of the petitioner into service. The Division Bench judgment is reported as **Simla Devi versus Presiding Officer, Labour Court, Bathinda (1)**. As per the direction, the petitioner has been taken back in service and paid the arrears of salary from 19th August, 1993 till the date of rejoining i.e. 28th February, 1998. The petitioner made two representations dated 1st July, 2000 and 5th June, 2001, *inter alia*, to regularise her services claiming that she has been working as part time worker for the last about 10 years. She filed C.W.P. No. 12349 of 2001. A Division Bench of this Court disposed of the writ petition on 20th August, 2001 (P-13) directing the respondents to decide her representation by passing a speaking order. On 31st December, 2001, respondent No. 3 i.e. Civil Surgeon, Bathinda, rejected her representation (P-15). The petitioner again filed C.W.P. No. 2920 of 2002 in which prayer was made for quashing the order dated 31st December, 2001. It is appropriate to mention that in the order dated 31st December, 2001, respondent No. 3 has rejected the claim of the petitioner for regularisation of her services by passing the order that the representation of Smt. Simla Devi part time worker for regularization of services is rejected after consideration. There are no instructions of the Punjab Government for regularization of the services of part time'. A Division Bench of this Court set aside the order passed

by respondent No. 3 with a direction to pass a fresh order within the specified time. The order passed by this Court reads as under :—

“Respondent No. 3 Dr. P.N. Manni, Civil Surgeon Bathinda is present. He submits that he has joined this post only on 15th March, 2002, while the impugned order Annexure P-15, which is contrary of the Government instructions Annexure P-11, was passed by his predecessor. He tendered unqualified apology and submits that he would reconsider the case of the petitioner and decide the same afresh in accordance with the Government Policy which has also been submitted alongwith the reply filed in this Court.

Apology is accepted let respondent No. 3 now pass an order afresh within one month from today, in light of the policy and the law laid down by this Court.

Petition is disposed of.”

(3) In pursuance to the direction issued by this Court, the petitioner was asked to disclose her date of birth and educational qualifications. She filed an affidavit (P-17) disclosing that her date of birth is 3rd March, 1955 and she had gone to school for 23 years. It was further mentioned that she could sign her name but has no certificate to her credit. After considering the case of the petitioner, the Screening Committee recorded the following order (P-18) :—

“As per the report of the Committee dated 15th May, 2002 Smt. Shimla Devi came present and produced photostat copy of Caste Certificate in which “Caste of Chamar” has been declared as Scheduled Caste. She also produced her affidavit attested by Notary Bathinda, in which she has shown her Birth date as 3rd, March 1955. She also stated that she has gone to School for two three years and she can sign and she has no other proof of educational qualification. Smt. Shimla Devi as (has ?) shown the name of her Husband in the caste Certificate and affidavit as Ram Kumar whereas in the writ petition the name of her husband has been shown as Raj Kumar.

For regularization of part time workers as per policy P/11 framed by the Punjab Government,—*vide* its letter dated 4th

March, 1999, as per the decision of Hon'ble Punjab and Haryana High Court dated 10th February, 1998 in Civil Writ Petition No. 13565 of 1997 titled as Gurdev Kaur *versus* State of Punjab, the consideration has to be done as under :—

1. As part time workers services should be ten years or more and attendance should be 30%.
2. At the time of regularization one should have qualifications as per new post.
3. There will be age relaxation for the period of part time service.
4. He should have been appointed through employment Exchange or on the basis of advertisement in the press.
5. He should be suitable for the Job.

(4) The screening committee considered and rejected the case of Shimla Devi for regularization on the Class IV post on basis of above noted points :

1. Smt. Shimla Devi do not fulfil the period of ten years service as part time.
2. As per instructions issued,—*vide* Punjab Government Letter No. 14/114/97-4PP-3/7038 dated 21st May, 1998 middle pass educational qualification has been fixed for regular recruitment to the post of Class IV. Whereas, Smt. Shimla Devi does not fulfil this qualification she has also stated about this in her affidavit.
3. Smt. Shimla Devi could not produce except affidavit, any other proof such as Birth certificate, School Leaving Certificate or Janam Patri in support of her age. However, as per photo copy of the Ration Card produced by her minimum age comes to 53, and on the date of her recruitment on 1st June, 1992 it comes to 43 which is more than the fixed limit of age.
4. Smt. Shimla Devi was appointed on 1st June, 1992 as part time on her application and her appointment as part time Class IV was not through Employment Exchange or through advertisement in press.

Keeping in view the above stated situation and the report of the screening committee that Shimla Devi is not suitable candidate for regular appointment as class IV as she does not fulfil the condition as per the policy dated 4th March, 1999 issued by the Government, I decide that Shimla Devi has no right for appointment on regular basis on Class IV as she does not fulfil the conditions of policy P/11.

(5) The above mentioned order has been made subject matter of challenge in the instant petition.

(6) The principal stand taken in the written statement by the respondents is that the petitioner did not satisfy the required conditions of policy instructions dated 4th March, 1999 (P-11) as she did not have 10 years service as a part time employee, lacked middle pass educational qualification, which is essential for regular recruitment to Class-IV post, she was overage on the initial date of her appointment in 1992 and that she was not appointed through Employment Exchange because she was appointed on 1st June, 1992 whereas she was registered with the Employment Exchange on 28th September, 1992.

(7) Mr. Rakesh Garg, learned counsel for the petitioner has argued that the case of the petitioner is fully covered by the policy instructions because the requirement of educational qualification, age or coming through Employment Exchange would pale into insignificance. According to the learned counsel, the petitioner in any case has now completed 10 years of service on 1st June, 2002. In support of his submission learned counsel has placed reliance on a judgment of the Supreme Court in the case of **Gujarat Agricultural University versus Rathod Labhu Bechar and others**, (2). Learned counsel has insisted that even in a case of daily wage worker if an employer has continuously taken work from him for a long number of years then there is a duty cast on the employer to regularise his services. The Supreme Court has gone to the extent of observing that even if there is no post then post has to be created to regularise the services of such a work charged worker and necessary qualifications are not required to be fulfilled. Learned counsel has also placed reliance on a Division Bench judgment of this Court in the case of **Gurdev Kaur versus State of Punjab and others** (C.W.P No. 2783 of 1995, decided on 13th September, 1995). The Division Bench has decided the case of a Water Carrier/Trained Dai who was working in the same department and has issued directions to regularise her

services as she had completed about 23 years of service. The aforementioned view has also been taken by another Division Bench in the case of Swaran Kaur (*supra*).

(8) Mr. Sushant Maini, learned State counsel has argued that the judgment of the Supreme Court in Gujarat Agricultural University's case (*supra*) could not govern the issue as the aforementioned judgment was not in respect of part time workers and, therefore, they cannot be considered on an equal Reel with those work charged workers who were before the Supreme Court in the aforementioned judgment. Learned counsel has also submitted that once there is a policy framed by the respondent state then the requirements laid down in the policy has to be fulfilled. He has maintained that the petitioner lacked 10 years of service on the date when her case was considered for regularisation. She also lacked educational qualification besides being overage. She has not been recruited through Employment Exchange as required by the policy instructions dated 4th March, 1999 (P-11).

(9) Having heard the learned counsel for the parties, I am of the considered view that this petition deserves to be allowed. The question whether the petitioner lacked educational qualification and on that basis the benefit of regularisation of her services could be declined would no longer be available to the respondents because when the matter came up before the Division Bench of this Court in the case of the petitioner herself, titled as **Simla Devi versus Presiding Officer, Labour Court, Bhathinda**, (*supra*) no question was raised that she did not fulfil the educational qualification and, therefore, her termination on completion of 240 days in a period of preceding 12 months was valid. The only issue raised was that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, as she was employed on part-time basis. Therefore, this plea cannot be made the basis for declining her claim for regularisation. Moreover, the qualification of middle pass has been introduced by instructions issued by the Punjab Government on 21st May, 1998, which shows that such a notification was not applicable when the petitioner joined service on 1st June, 1992. The aforementioned question came up for consideration before this Court in the case of **Geeta Rani versus State of Punjab and others**, (3). This Court has held that the qualification which was not in existence at the time of appointment of an *ad hoc* employee, could not be introduced at the time of considering her case for regularisation.

Following the judgment of the Supreme Court in the case of **Bhagwati Prasad versus Delhi State Mineral Development Corporation**, (4) this Court has held as under :—

“4. There is force in both the submissions of the learned counsel for the petitioner. The qualifications of Matriculation for the post of Matron were laid down on 14th February, 1989. These qualifications could not have been applied in the case of the petitioner, when her services were terminated on 31st October, 1988. Admittedly, on that date, she had the requisite qualifications and had completed more than two years of service. On that date, the regular post of Matron was also available. Consequently, she was entitled to be regularised in view of **Piara Singh’s case (supra)**. The qualifications, which were prescribed later than 31st October, 1988, could not have been made applicable in the case of the petitioner. Even otherwise in view of the dictum of the Apex Court in **Bhagwati Prasad’s case (supra)**, even if a person lacks the requisite qualifications at the time of entry into service, but has been allowed to continue in service, cannot be denied regularisation/confirmation on the ground that the individual lacks the requisite qualifications. Practical experience would always aid the person to effectively discharge the duties and is a sure test to judge the suitability. It has not been suggested in the written statement that there was anything wrong with the work and conduct of the petitioner. The learned counsel for the respondent could not raise any meaningful argument to counter the contentions made by the learned counsel for the petitioner.”

(10) Letters Patent Bench dismissed L.P.A. No.111 of 1991 on 7th March, 1991 against the aforementioned judgement.

(11) The aforementioned view has also been expressed in para 17 by the Supreme Court in the case of Gujarat Agricultural University (*supra*) wherein it is observed that after such a long experience the qualification needs to be relaxed. In other words, if the employer has felt satisfied with the working of an employee for a long time then the employer cannot be heard to say that for regularisation he would

lack qualification for discharging duty. In such a situation, the experience gained by an employee must be considered equivalent, to the educational qualification. It is admitted position that the petitioner has now completed more than 10 years of service. The arbitrariness of the respondents can be gauged from the fact that her claim was rejected on 20th May, 2002 (P-18) when she was proceeding to complete 10 years after about 10 days. In any case, the petitioner has now fulfilled the qualification on completing 10 years of service and therefore, deserve to be regularised.

(12) The only ground survived for further consideration is that the petitioner was overage at the time of her appointment on 1st June, 1992 and she was not sponsored by the Employment Exchange. According to the affidavit filed by the petitioner her date of birth is 3rd March, 1955 whereas she has been taken to be born in 1953 on the basis of copy of the ration card. If her age is taken to be 39 years on the basis of her date of birth being 3rd March, 1953, even then she would be eligible as according to the instructions (P-11) she is entitled to relaxation in upper age limit up to the number of years she has served as part time worker. Accordingly, her age would work out to be 27 years on 1st June, 2002. It is further appropriate to mention that for members of the Scheduled Castes there are instructions which provide for further relaxation of age. In this regard reference may be made to the Manual of Punjab Government Instructions on Reservation, issued in 1982. Chapter XIV of the aforementioned Manual make reference to Circular Nos. 10972-4 WGI-65/3205, dated 16th February, 1966 and 2/116/78-8001, dated 24th January, 1979. Para 1 of Chapter XIV, which is based on the aforementioned circulars reads as under :—

“1. **Age Relaxation** :— Maximum age limit prescribed for a service or post as a condition for eligibility for appointments shall be relaxed by five years both for the Scheduled Castes and Backward Classes for gazetted and non-gazetted posts. Scheduled Caste and Backward Class person may be allowed to club the age concession with one of the categories if he happen to be a physically handicapped, ex-serviceman, *ad hoc* employee etc.”

(13) A perusal of the aforementioned instructions clearly shows that the members of the Scheduled castes are entitled to club the age concession with any of the categories including *ad hoc*

employees to the extent of further five years. Therefore, if five years more are added, the petitioner become fully eligible. It is further evident that no such objection was taken when the services of the petitioner were retrenched and the retrenchment order was eventually quashed by this Court in the case reported as **Simla Devi versus Presiding Officer, Labour Court, Bathinda**, (*supra*). Even otherwise, the respondents have failed to disclose in the impugned order the maximum age provided for recruitment for class IV employee and as to how after applying the rule of relaxation the petitioner lack the requirement of age. therefore, I do not find any substance in the view taken by the respondents while rejecting her case for regularisation on that basis.

(14) The question of sponsoring through Employment Exchange would also pale into insignificance after the petitioner has been allowed to complete more than 13 years of service. Apart from the fact that the aforementioned question should have been raised before the Division Benches who have earlier decided her case including the one to which reference has been made it is clear that the petitioner has been registered with the Employment Exchange. It is also not disputed that the services of part time workmen who were employed at the Deputy Commissioner rates have been regularised who were working either in Health Department as Water Carrier/Trained Dai or in Police Department as is evident from two Division Bench judgments of this Court in the case of **Swaran Kaur and others versus State of Punjab and others** (C.W.P. No. 2117 of 1997, decided on 17th July, 1997) and **Gurdev Kaur versus State of Punjab and others** (C.W.P. No. 2783 of 1995, decided on 13th September, 1995). Therefore there is no substance in the argument raised.

(15) For the reasons aforementioned, this petition succeeds. Accordingly, the impugned order, dated 20th May, 2002, annexure P-18 is quashed. The respondents are directed to regularise the services of the petitioner with effect from 1st June, 2002. She shall also be entitled to all consequential benefits with regard to re-fixation of her pay, arrears of her salary, seniority and promotion etc. Let needful be done within a period of four months from the date of receipt of certified copy of this judgment.