

*Before Surya Kant, J.*

**SOHAN SINGH—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No. 4860 of 2009**

25th May, 2010

*Constitution of India, 1950—Art. 226—Policy decision dated 15th December, 2006 issued by State of Punjab—A work-charge employee after rendering 25 years service retiring from service on attaining age of superannuation—Claim for benefit of pension and other consequential retiral dues—Rejection of—Challenge thereto—Policy decision dated 15th December, 2006 entitles an employee regularization of service on completion of 10 years' service—Petitioner completing more than 10 years' service on date of policy decision—Action of respondents in not granting benefit of regularization is a totally unfair, arbitrary and discriminatory—Petition allowed, respondents directed to regularize service of petitioner in terms of Government policy and grant retiral benefits along with all other consequential benefits.*

*Held*, that even when the Government had taken a conscious policy decision on December, 2006, the benefits flowing therefrom have been painfully halted by the respondents and not allowed to reach the poor beneficiaries like the petitioner, by adopting one or the other delaying tactics. There is not even a whisper as to why respondent No. 2 took three long years' in implementing a uniform policy decision taken by the Superior Authority, namely, the State Government. Similarly, how imposition of model code of conduct could be relevant to deny the benefits of a decision which had already been taken, are conspicuously missing from the affidavit dated 24th May, 2010.

(Para 11)

*Further held*, that the respondents have acted in a totally unfair, arbitrarily and discriminating manner and have exploited the work-charged employees who invariably belong to the poorest section of the Society, in total disregard to their obligation as of a 'welfare State' or 'model employer'.

There appears to be a deliberate attempt to deny the petitioner what he deserves in law as well as equity on the strength of his spotless service of over 25 years.

(Para 12)

Ranjivan Singh, Advocate, *for the petitioner.*

K. S. Sidhu, Deputy Advocate General, Punjab

**SURYA KANT, J. (ORAL)**

(1) The petitioner seeks a *mandamus* to direct the respondents firstly to regularize his services and thereafter grant him the retrial benefits as he has already retired on attaining the age of superannuation with effect from 31st March, 2009.

(2) Shorn of the details, suffice it to notice that the petitioner was appointed as a Driver on work-charge basis in the Irrigation Department, Government of Punjab on 27th April, 1984. While working as such uninterruptedly, he has retired from service with effect from 31st March, 2009 on attaining the age of superannuation. It is unfortunate that despite serving the department for over 25 years, the petitioner, according to the respondents, has retired as a work-charged employee only and is not entitled to the benefit of pension and other consequential retrial dues as he was never brought on regular establishment.

(3) The solitary question that arises for consideration is as to whether or not the petitioner, while he was in service, was entitled to regularization of his services ?

(4) There is no serious challenge to the fact that the State of Punjab has been issuing one after the other policy decisions for regularization of services of the *ad hoc*, work-charged and daily wager employees. The relevant para/clause of one of the said Policy-decision issued *vide* memo dated 15th December, 2006 reads as follows :—

“2. While considering the cases for regularization of the services of such irregularly appointed workers/employees as a one time measure, the following guidelines are to be followed in letter and spirit, namely :—

- (i) The employee should have worked for not less than 10 (Ten) years as on 10th April, 2006 without the intervention of the orders of the Courts or Tribunals against duly sanctioned posts ;

- (ii) The employee fulfills the minimum basic qualifications for the post against which he was appointed :
- (iii) It shall be certified by the competent authority that no supernumerary posts were created to retain the employee in service, when the persons were appointed on regular basis ; and
- (iv) It shall be the duty of the Administrative Department that while considering the case of each employee, the orders of the Hon'ble Supreme Court of India passed in the aforesaid case are implemented in letter and spirit. It shall be ensured that there should be no further by-passing of Constitutional requirements and regularizing or making permanent those, who were not appointed as per the said constitutional scheme."

(5) It may be seen that services of all those employees who were appointed even irregularly but had completed 10 years' of service on 10th April, 2006 without intervention of the orders of the Court or the Tribunal, were also ordered to be regularized under the afore-cited policy.

(6) The petitioner admittedly completed more than 10 years' of service as on 10th April, 2006 and was also in possession of the requisite qualification including a valid driving licence required for the post of a Driver but his services were not regularized immediately for the reasons best known to the respondents.

(7) Strangely, the above stated policy decision though was taken in the year 2006, nevertheless respondent No. 2 decided to implement the same somewhere in the year 2009 when the service records of all the work-charged employees were for regularization of their services in terms of the above-mentioned Government Policy dated 15th December, 2006. This fact is evident from the letter dated 27th February, 2009 (Annexure P-1) issued by respondent No. 2, the relevant part whereof is extracted below :—

"On the subject noted above and in continuation of the office's letter under reference, list and details of 17 categories of work-charged employees are hereby sent and is stated that after passing the orders for regularizing the services of these work-charged employees against on the posts lying vacant in the

Bhakra Beas Management Board in the quota of Punjab's share in pursuance to the conditions laid down in the Government Policy No. 15/53/2005-4PP-3/18271, dated 15th December, 2006, these officials are allocated to the disposal of Secretary, Bhakra Beas Management Board, Madhya Marg, Sector-19, Chandigarh for their posting by the Bhakra Beas Management Board under its wings."

(8) This is also not in dispute that the name of the petitioner was also recommended for regularization of his services pursuant to the above-mentioned memo dated 27th February, 2009 (Annexure P-1) and his name figured at Sr. No. 30 in the list of the recommended employees. However, before any formal order of regularization of his services could be passed, the petitioner stood retired from service with effect from 31st March, 2009 on attaining the age of superannuation. His claim for regularization of services has thereafter been turned down on the solitary ground that now he has retired from service. In other words, the services of the petitioner cannot be regularized as he is no longer in service.

(9) Considering the fact that the petitioner was deprived of regularization of his services for not even slightest fault on his part, rather due to arbitraty in-action on the part of the respondents *vide* the following order dated May 5, 2010, the respondents were directed to re-consider the claim of the petitioner :—

"The petitioner joined as a work-charged Driver on 27th April, 1984. He has retired with effect from 31st March, 2009 on attaining the age of superannuation. The case for regularization of his services was sent *vide* memo dated 15th December, 2006. but it appears that the matter was taken up for formal decision in December, 2009 only, i.e. after the retirement of the petitioner and as such no order for regularization of his services has been passed, thereby depriving him of the retrial benefits.

The plea that there was no 'post' of Driver cannot be accepted for the reason that the petitioner worked uninerruptedly for 25 years and services of a Driver were very much needed by the respondents throughtout all these years. The non-sanctioning of the post of a Driver on the regular establishment was ministerial in-action which cannot work to the disadvantage of the petitioner....."

(10) The respondents have now filed an affidavit dated 24th May, 2010 and interestingly in para No. 3 thereof it is stated that :—

“3. That in reply to para No. 1 of the writ petition No. 4860 of 2009, it is submitted with utmost respect at the command of deponent/answering respondent No. 6 that the services of the workmen including petitioner could not be regularized because of the model code of conduct was imposed by the Government with effect from 2nd March, 2009 vide letter No. Elec. 2009/R-4376-77 dated 2nd March, 2009 issued by the Chief Electoral Officer, Punjab, Chandigarh.”

(emphasis applied)

(11) From the above resume of facts, it is writ large that even when the Government had taken a conscious policy decision in December, 2006, the benefits flowing therefrom have been painfully halted by the respondents and not allowed to reach the poor beneficiaries like the petitioner, by adopting one or the other delaying tactics. There is not even a whisper as to why respondent No. 2 took three long years' in implementing a uniform policy decision taken by the Superior Authority, namely, the State Government. Similarly, how imposition of model code of conduct could be relevant to deny the benefits of a decision which had already been taken, are conspicuously missing from the affidavit dated 24th May, 2010.

(12) In my considered view, the respondents have acted in a totally unfair, arbitrarily and discriminating manner and have exploited the work-charged employees who invariably belong to the poorest section of the Society, in total dis-regard to their obligation as of a 'welfare State' or 'model employer'. There appears to be a deliberate attempt to deny the petitioner what he deserves in law as well as equity on the strength of his spotless service of over 25 years.

(13) For the reasons afore-stated, the writ petition is allowed and the respondents are directed to regularize the services of the petitioner with effect from 10th April, 2006 in terms of the Government Policy dated 15th December, 2006 with all the consequential benefits, within a period of one month from the date of receiving a certified copy of this order.

(14) The respondents are further directed to grant the retrial benefits alongwith other consequential benefits, including pension etc. to the petitioner within a period of three months alongwith interest@ 7% per annum from the date of his retirement till the actual payment is made. The petitioner shall also be entitled to the cost of Rs. 10,000 which shall be recovered personally from the Officers/officials including the Chief Engineer who have delayed the implementation of the Government Policy dated 15th December, 2006.

(15) Dasti.