

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. (S).2747-2748 OF 2015

(Arising out of SLP(C) Nos.15962-15963 of 2013)

JAGJIT SINGH

Appellant(s)

VERSUS

PUNJABI UNIVERSITY & ORS.

Respondent(s)

O R D E R

Leave granted.

These appeals arise out of an order dated 18<sup>th</sup> May, 2007 passed by the High Court of Punjab and Haryana at Chandigarh in C.W.P. No.7511 of 2007 and a subsequent order dated 3<sup>rd</sup> August, 2012 passed by the said court in Review Application No.254 of 2012. The facts giving rise to the filing of the writ petition before the High Court and eventually the present appeals may be summarised as under.

The appellant joined the respondent-University as a daily-wager on 19<sup>th</sup> May, 1980. Three years later his services were terminated on 14<sup>th</sup> April, 1983. The appellant questioned the validity of the termination order before the Labour Court who held the termination to be invalid and directed reinstatement of the appellant with continuity of service but without any back-wages. This

happened on 23<sup>rd</sup> August, 1988, shortly whereafter the appellant resumed service under the respondent-University. What is noteworthy is that during the intervening period four other persons, namely, Sukhwinder Singh, Harnek Singh, Gurcharan Singh and Gurdarshan Singh were also appointed on daily-wage basis between 1<sup>st</sup> June, 1982 and 1<sup>st</sup> April, 1986. These persons were appointed on work-charged basis on 4<sup>th</sup> March, 1987 and eventually regularised in the service of the respondent-University w.e.f. 1<sup>st</sup> April, 1992 as per the policy of the university which permitted such regularisation in case the employee on work-charged basis had put in five years of service. The appellant's grievance in Writ Petition No.7511 of 2007 filed before the High Court was that he had been singled out for a hostile treatment in the matter of regularisation of his services for, according to the appellant, while the afore-mentioned four persons appointed subsequent to the appointment of the appellant as daily-wagers had been regularised in service, no such benefit was given to him simply because his services had been illegally terminated thereby denying to him the opportunity to be placed on work-charged basis like the juniors, mentioned above. A Division Bench of the High Court of Punjab and Haryana at Chandigarh before whom the

writ petition came up for hearing dismissed the said petition by a short order holding that the prayer for regularisation of services of the appellant could not be allowed in view of the Decision of this Court in Secretary, State of Karnataka and Others v. Uma Devi (3) and Others - (2006) 4 SCC 1. The appellant sought review of the said order of the Division Bench of the High Court but failed in having the same reversed or modified. The review petition was dismissed by an order dated 3<sup>rd</sup> August, 2012 holding that the relief prayed for in the writ petition was misconceived since the appellant was out of service on the date of the filing of the writ petition in 2007. The present appeals assail the correctness of the afore-mentioned two orders passed by the High Court.

When this matter came up before us on an earlier occasion on 6<sup>th</sup> January, 2015 we had directed the respondent-University to file an affidavit and explain whether anyone junior to the appellant as generator operator or equivalent was at any time regularised in the service and if so in terms of what scheme if any prevalent in the University. The University was also directed to examine and explain whether the case of the appellant was considered along with other eligible candidates while granting such regularisation. An affidavit pursuant to

the said direction was filed by the respondent-University which was found to be unsatisfactory by us leading to the issue of a further direction on 3<sup>rd</sup> February, 2015 asking the respondent-University to specifically answer the three questions formulated in our order dated 6<sup>th</sup> January, 2015. The Registrar of the University has, in compliance with the said order, filed an additional affidavit from a reading whereof it appears that although the appellant was appointed on 19<sup>th</sup> May, 1980 and reinstated with continuity of service in 1988, four other daily-wagers appointed in similar circumstances as the appellant between 1982 and 1986 had been not only placed on work-charged basis during the period the appellant was out of service on account of the termination order but also regularised in service in September, 1992. We have in the light of the said affidavit and the facts stated therein no hesitation in holding that the appellant was unfairly deprived of an opportunity to be placed on work-charged basis and subsequent regularisation upon completion of the five years' service in that capacity. The grievance of the appellant that but for the illegal termination order passed against him he would have been one of those placed on worked-charged basis and upon completion of the prescribed five years period he would have been

regularised in service in preference to the juniors who were so regularised, is in that view well-founded.

Mr. Manoj Swarup, learned counsel for the respondent-University, all the same argued that the grievance of the appellant, against denial of the appointment on work-charged basis and subsequent regularisation in service, has come belatedly inasmuch any such grievance ought to have been made within a reasonable time of the regularisation granted to the junior employees in the year 1992. There is no manner of doubt that the immediate provocation for filing a petition for redress of his grievance accrued to the appellant in the year 1992 by which time his juniors had already been placed on work-charged basis and even regularised in service but such delay has not, in our opinion, weighed with the High Court before whom the said grievance was made. Delay and laches, it is fairly well-settled, is no doubt an important consideration that weighs with a writ court in deciding whether or not to grant relief to the petitioner before it. But the same is not an absolute bar if the court is satisfied with the explanation offered for such delay. The High Court has, it is evident from a reading of the order passed by it in the writ petition as also in the review petition, taken no adverse view based on delay

and laches sought to be pressed against the appellant by Mr. Swarup. We therefore see no reason why we should allow that submission advanced before us belatedly to prevail. That apart, the order we propose to make will not result in the ouster of anyone of those who were junior to the appellant and who were regularised in preference to his claim. Delay does not even on that count make any material difference, given the nature of the controversy before us.

It was next argued by Mr. Swarup that the appellant had voluntarily abandoned service upon his transfer to Talwandi Sabbo in the year 2001 upon his appointment as a work-charged employee. It was submitted that the unauthorised absence from duty had led to the issue of a charge-sheet against the appellant which charge-sheet though subsequently withdrawn clearly showed that the appellant had without any justification remained away from the place of his posting. This implied that the appellant had abandoned his service. The appellant has, while admitting that he had remained absent from duty for nearly two years, claimed that he had rejoined the place of his posting at Talwandi Sabbo in September, 2003 but was not allowed to mark his presence nor were any wages paid to him. Reliance in this regard placed in the averments made

in the pleadings as also the documents on record.

We do not consider it necessary to go into the question whether the appellant had indeed abandoned his services or had any justification for staying away from duty post 2001 when he was transferred to Talwandi Sabbo. We say so because, in our opinion, interest of justice would be served if we direct the appellant to be regularised in service based on the policy then prevalent in the respondent-University and on the analogy of orders passed in the case of his juniors, Sukhwinder Singh, Harnek Singh, Gurcharan Singh and Gurdarshan Singh w.e.f. 10<sup>th</sup> September, 1992, the date when the said daily-wagers were regularised. We are also of the view that the appellant would be entitled to claim pensionary benefits upon completion of the qualifying service of 10 years reckoned from 10<sup>th</sup> September, 1992. Since, however, the appellant has actually superannuated upon attaining the age of 60 years on 12<sup>th</sup> November, 2012, interest of justice would be served if we direct that the payment of pension would commence from the date he would have retired from service i.e. 30<sup>th</sup> November, 2012. The qualifying period for purpose of fixing his pension shall however remain limited to 10 years reckoned from 10<sup>th</sup> September, 1992. Resultantly, the arrears of pension payable to the

appellant shall be reckoned only from 1<sup>st</sup> December, 2012 onwards.

Besides arrears of pension payable under the rules, as indicated above, the appellant shall also be entitled to 50% of the differential amount between the amount he has actually received as a daily-wager and the amount that he would have been entitled to receive if he had been regularised on 10<sup>th</sup> September, 1992 for the period between between 10<sup>th</sup> September, 1992 till 29<sup>th</sup> November, 2001 when he is alleged to have absented from duty.

In the result, we allow these appeals, set aside the orders passed by the High Court and dispose of the writ petition and the present appeals on the terms indicated above. The differential amount payable to the appellant and the arrears of pension w.e.f. 1<sup>st</sup> December, 2012 onwards shall be paid by the respondent-University within a period of four weeks from today. No costs.

.....J.  
(T.S. THAKUR)

.....J.  
(R. BANUMATHI)

NEW DELHI  
DATED 10<sup>th</sup> March, 2015.

ITEM NO.1

COURT NO.2

SECTION IVB

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).  
15962-15963/2013

(Arising out of impugned final judgment and order dated 18/05/2007 in CWP No. 7511/2007,03/08/2012 in RA No. 254/2012,03/08/2012 in CWP No. 7511/2007 passed by the High Court Of Punjab & Haryana At Chandigarh)

JAGJIT SINGH

Petitioner(s)

VERSUS

PUNJABI UNIVERSITY &amp; ORS.

Respondent(s)

(With appln.(s) for C/delay in filing SLP and interim relief and office report)

Date: 10/03/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. G.S. Dhindsa,Adv.  
Dr. Vinod Kumar Tewari,Adv.

For Respondent(s) Mr. Manoj Swarup,Adv.  
Mr. Ankit Swarup,Adv.  
Ms. Tanya Swarup,Adv.  
Mr. Rohit Kumar Singh,Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned.

Leave granted.

In terms of the signed order, these appeals are allowed:

"Besides arrears of pension payable under the rules, as indicated above, the appellant shall also be entitled to 50% of the differential amount between the amount he has actually received as a daily-wager and the amount that he would have been entitled to receive if he had been regularised on 10<sup>th</sup> September, 1992 for the period between between 10<sup>th</sup> September, 1992 till 29<sup>th</sup> November, 2001 when

he is alleged to have absented from duty.

In the result, we allow these appeals, set aside the orders passed by the High Court and dispose of the writ petition and the present appeals on the terms indicated above. The differential amount payable to the appellant and the arrears of pension w.e.f. 1<sup>st</sup> December, 2012 onwards shall be paid by the respondent-University within a period of four weeks from today. No costs."

(MAHABIR SINGH)

COURT MASTER

(VEENA KHERA)

COURT MASTER

(Signed order is placed on the file)