

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

Civil Writ Petition No. 16944 of 2012
Date of decision: 24.04.2015

Kamlesh Kumari

....Petitioner

versus

The State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. Anurag Goyal, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

DAYA CHAUDHARY, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned order dated 20.11.2010 (Annexure P-16) whereby the claim of the petitioner for regularization has been rejected and a further prayer has also been made for direction to the respondents to regularize the services of the petitioner w.e.f. 01.10.2003 and to pay all the consequential benefits arising thereof.

Learned counsel for the petitioner submits that the claim of the petitioner for regularization has been declined only on the ground that the petitioner was not present on duty on 30.09.2003 whereas she was on maternity leave. It has also been mentioned that the petitioner does not fulfill the mandatory condition of being present on duty on 30.09.2003.

Learned counsel for the petitioner also submits that the petitioner was on

maternity leave w.e.f. 16.01.2000 to 24.02.2000 and said period has also been regularized vide order dated 15.05.2004 (Annexure P-12). A wrong fact has been mentioned in the impugned order that the petitioner was not on maternity leave on that day and otherwise also as per terms and conditions of the policy of 2003, she is entitled for regularization. Learned counsel has also relied upon judgment in case **CWP No.18246 of 2012 titled as 'Umrao Singh and another vs. State of Haryana and another'**, decided on 23.02.2015 wherein it has been held that in case an employee has completed three years continuous service as on 30.09.2003 and even if she was not in service on 01.10.2003, is entitled for regularization. Learned counsel also submits that as per notification dated 18.06.2014, a clarification has been made by way of amendment and the said petitioner is entitled for the relief as prayed for in the petition.

Learned State counsel has fairly admitted that in case, the petitioner was present on 30.09.2003 and fulfills the other terms and conditions of the policy then she will be considered for regularization by the department.

Heard arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also perused the impugned orders as well as documents available on record.

Admittedly, the petitioner was appointed as Science Mistress in the respondent-department on 06.10.1997 on contract basis through advertisement in view of provisions of Article 16 of the Constitution of India. The petitioner went on maternity leave which was allowed by the respondent-department. The petitioner claimed regularization in view of the policy of the State Government issued vide notification dated 01.10.2003

wherein the requirement was that an employee who has completed three years of service as on 30.09.2003, he/she shall be regularized. It is also mentioned that in case any break is there in service of an employee but no role or fault has been attributed to him/her, then the said break shall be condoned. The case of the petitioner was also recommended by the Principal of the School but subsequently the claim of the petitioner has been rejected only on the ground that the petitioner was not present on 30.09.2003.

The same issue has also been decided in **Umrao Singh's case (supra)** wherein it has been observed as under:

“There is no dispute with regard to the fact that under the regularization policy dated 1.10.2003 an employee was vested with a right to be considered for regularization upon completing 3 years continuous service as on 30.9.2003 and was to be in service as on 1.10.2003. Both the petitioners having firstly been reappointed as Lecturers vide orders carrying even date i.e. 26.10.2005 at Annexures P-2 and P-3 and subsequently having been granted the benefit of continuity in service vide order dated 19.5.2006, passed by the Commissioner and Director General, School Education, Haryana at Annexure P-4 would be deemed to be in service w.e.f. their initial appointment relating back to the year 1997. The objection raised on behalf of the State as regards the petitioners not having completed 3 years continuous service as on 30.9.2003 and not being in service on 1.10.2003, is wholly untenable. Such a stand, if, accepted would amount to negating the relief granted by the respondent authorities themselves by virtue of the order dated 19.5.2006 at Annexure P-4, whereby the benefit of continuity in

service stood granted.”

The case of the petitioner is covered by the policy and also the fact that the petitioner was not present because of the maternity leave is contrary to the facts as the period of maternity leave was w.e.f. 16.01.2000 to 24.02.2000. Moreover, it cannot be considered as the period of absence in any manner. The petitioner was paid salary for that period of maternity leave as per the provisions and therefore, it cannot be considered as period of absence.

Accordingly, the present petition is allowed. Impugned order dated 20.11.2010 (Annexure P-16) is set aside. The respondents are directed to pass necessary order in terms of the policy and decision, if otherwise, she fulfills all the terms and conditions of the policy as well as the clarification and judgment in **Umrao Singh's case(supra)**. The necessary exercise be done within a period of 02 months from the date of receipt of certified copy of this order and thereafter, necessary relief be granted to the petitioner within a period of 02 months.

(DAYA CHAUDHARY)
JUDGE

April 24, 2015
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