

Sr.No.236

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-8919-2010 (O&M)

Decided on: 01.09.2015

Santosh @ Nihal Kaur

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. Ajay Chaudhary, Advocate for the petitioner.

Mr. G.S.Wasu, Addl. AG, Haryana.

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Mahesh Grover, J

The petitioner is the widow of one Rajender Singh son of Sh.Ram Sarup who was employed with the respondents on daily wages as a Mali-cum-Beldar w.e.f 01.08.1988. He continued as such till the time his services were abruptly terminated on 28.09.1998 whereupon he claimed a reference under the Industrial Disputes Act which was decided by way of the award of the Labour Court on 09.04.2004 granting re-instatment to the petitioner with continuity of service and 50% back wages.

This award became final as it was not challenged by the respondents. Having implemented the award, the petitioner was taken back into the services whereupon he claimed regularization in terms of the policy of the State Government of the year 2003 which envisaged grant of benefit of regularization upon an incumbent who completes three years of service on 30.09.2003. This benefit was denied to the petitioner by virtue of an order dated 07.05.2007 appended to the amended petition as Annexure P7. A perusal of the impugned order would show that benefit of regularization has been considered in the light of the policy of 1996 and thereafter while

relying on the decision of the Hon'ble Supreme Court in **State of Karnataka and others v. Uma Devi and others (2006) 4 SCC 1**, the respondents have held the husband of the petitioner dis-entitled to the benefit as his appointment was not in accordance with the accepted mode of public appointment envisioning public notice for all.

Upon perusal of the material and appraisal of the contentions raised before this Court, I am of the view that the stand of the respondents is unsustainable. The petitioner states that her husband was entitled to regularization in view of the fact that the award dated 09.04.2004 envisaged his re-instatement with continuity of service which if considered and granted would imply that the petitioner was in service on the cut off date of September 2003 in terms of the policy of 2003.

The petitioner has very fairly conceded that the claim of her husband under the 1996 policy was not maintainable but he was certainly entitled to regularization in terms of the later policy of 2003.

The respondents pleaded that the policy itself was withdrawn in the year 2007 in view of **Uma Devi's case (supra)** but this fact came into existence atleast three years after the date when the petitioner was entitled for regularization in terms of the policy. Argument has been raised that the petitioner was not entitled for regularization as he had not actually worked against the sanctioned post and was also not in service on the cut off date of September 2003.

I am afraid that the reasoning adopted by the respondents is fallacious. The award confers re-instatement with continuity of service and the fiction of law would imply the petitioner in deemed service on the cut off date of September 2003 and the withdrawal of the policy in 2007 would thus have no effect on the claim of the husband of the petitioner for the simple reason

that the respondents were duty bound to consider the case of the husband of the petitioner for regularization in terms of the policy of 2003 expeditiously and not delay the matter for three years. The husband of the petitioner in the meantime expired in 2010. As such his claim for regularization remained in limbo.

Considering the aforesaid, I am of the view that order dated 07.05.2007 Annexure P7 impugned in the writ petition is un-sustainable in law. The same is accordingly set aside and the husband of the petitioner is held entitled to regularization of his service in terms of the existing policy of 2003 when his claim which envisaged regularization to incumbent who was in service on 30.09.2003 which the petitioner indeed was even though under deeming fiction of law created by virtue of the award of the Labour Court.

The petition is allowed and the husband of the petitioner having been held entitled to regularization, the petitioner being his widow, would be entitled to all consequential benefits arising from such regularization.

01.09.2015
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(MAHESH GROVER)
JUDGE