

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.3511 of 2013

Date of decision: 23.07.2015

Kamlesh Kumari

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Dinesh Kumar, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G.Haryana.

Mr. Ramesh Hooda, Advocate
for respondent No.2.

AMIT RAWAL J. (Oral)

The petitioner has knocked the door of this Court for quashing of the impugned order dated 18.10.2010, Annexure P-6 and for issuance of writ of mandamus directing the respondents to consider the case of the petitioner for regularization.

Mr. Dinesh Kumar, learned counsel appearing on behalf of the petitioner submits that the petitioner was appointed as Mess Servant on 01.06.1984. After rendering the services of 06 years, her services were terminated on 01.02.1990. On raising of the demand, the matter was referred to the Labour Court. The Labour Court vide order dated 12.09.1994, Annexure P-1, held that the termination was

illegal and ordered for reinstatement with continuity of service and with 50% back wages. The aforementioned award was challenged by the Management vide CWP No.12350 of 1995 which was dismissed on 10.08.2009 (Annexure P-2). Thereafter, the petitioner was taken back into service. He further submits that the Management adopted clever advice in changing the terms and conditions of her appointment by shifting her as the employee of contractor, which action of the respondents is not sustainable as this Court held that the petitioner was employee of the Institute.

Mr. Ramesh Hooda, learned counsel appearing on behalf of the Management submits that as per letter dated 16.02.2009, Annexure R-1, the Government of Haryana, General Administration Department General Services-I, Branch, had directed all the Institutes to notify the Policy of engaging/outsourcing of services/activities by giving opportunity to the employer to engage the person on contract basis through service provider under outsourcing regular contract policy. He also drawn attention of this Court to condition No.3 to say that activity, which the petitioner was performing is also through outsourcing and therefore, the impugned order is legal and justified.

Mr. Dinesh Kumar, in rebuttal submits that the petitioner had also served a legal notice dated 3.8.2011, Annexure P-11 seeking regularization of services and for grant of regular pay scale as admissible to regular employee with all consequential benefits and further for release of salary from October 2010 onwards along with

interest @ 18% per annum.

Learned counsel for the petitioner relied upon orders dated 10.08.2004, 07.02.2005 and 14.12.2005, Annexures P-8, P-9 and P-10 respectively passed by this Court whereby, claim of similarly situated persons serving in the same institute has been acceded to by complying with the aforementioned directions contained in the order.

I have heard learned counsel for the parties and appraised the paper book.

By referring to the aforementioned facts and particularly on going through the award referred by the labour Court, it is now crystal clear that the petitioner has been found to be in the employment of the Institute. The aforementioned decision was rendered as way back in the year 2009. The action of the respondents in passing in order dated 18.10.2010, Annexure P-6 is not only fallacious but arbitrary and illegal as the respondents cannot be permitted to thrust upon petitioner, relationship of employer and employee with third party i.e. Contractor by relying upon the policy Annexure R-1, *ibid*. The policy does not envisage that existing employee working in the institute would *mutatis mutandis/ ipso facto* be an employee of the contractor. It only empowers to engage the employee on temporary post/ or on contract in respect of particular work. Moreover, the action of the respondents in passing the impugned order on the face of it amounts to willful disobedience but I will refrain myself in passing any order in this context.

In view of what has been observed above, the impugned order dated 18.10.2010, Annexure P-6 is hereby quashed. As regards, claim of the petitioner for regularization though he is stated to have sent a legal notice dated 3.8.2011, Annexure P-11 and in this regard, relied upon the decision of Division Bench of this Court whereby, direction had been issued to the Institute to regularize the services of the similarly situated persons. According to submission of Mr. Dinesh Kumar, such persons have been granted the benefits with all consequential benefits.

This fact has not been disputed by the counsel appearing on behalf of the private respondent.

Therefore, I deem it appropriate to issue direction to the respondents to grant the same relief, which has been granted in pursuance to the directions contained in Annexures P-8, P-9 and P-10 and release all the consequential benefits within a period of three months from the date of receipt of a certified copy of this order.

Accordingly, writ petition is allowed.

(AMIT RAWAL)
JUDGE

July 23, 2015
savita