

CWP No. 12455 of 1997

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12455 of 1997 (O&M)

Date of Decision:14.12.2016

Tanam

...Petitioner

Vs.

Haryana Urban Development Authority and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present:- Mr. Gaurav Bakshi, Advocate
for the petitioner.

Ms. Bhupinder Kaur, Advocate
for respondents.

RAJIV NARAIN RAINA, J. (Oral)

CM No.15931 of 2016

Application is allowed. Replication is taken on record.

Main Case

Heard for final disposal.

The petitioner was appointed as Beldar on daily wages on 01.01.1991. She has been regularised in service with effect from September 22, 2004 under the policy prevailing next before, during the pendency of the present petition filed in 1997. She has claimed regularization with effect from January 31, 1996 on the ground that she was working as a daily-wager much prior to that date. She fulfilled all the conditions of the then regularization policy which would have brought relief to her in 1996 but for the fact that she was not present on duty on the cut off date and there was a break in service of more than one month prior to January 31, 1996, and therefore, she was not entitled to regularization. Her case was rejected by sheer inaction of the respondents and no order was passed, accepting or

rejecting the request of the petitioner. The reason given by the petitioner for condonation of the period is that she was suffering from 'Viral Bronchitic Asthma' and possessed a medical certificate issued by the Senior Medical Officer, Government Dispensary, Sector 8, Urban Estate, Panchkula and had been advised complete rest by the doctor for one month commencing from 01.01.1996 to 31.01.1996. It was this period which has been used against the petitioner as a break of over one month. The illness of the petitioner was prolonged and even for January 1, 1996 as sufficient explanation she has placed medical evidence on record with the Senior Medical Officer at Panchkula advising her rest on account of ailment of "Bronchitic Asthma". The certificate has been issued by none other than the Senior Medical Officer duly countersigned by the Civil Surgeon, Panchkula.

The learned counsel for HUDA has pointed that as a matter of fact, the petitioner was on leave from December 18, 1995 to January 31, 1996. While taking cognizance of this fact, the question falling for consideration would be how to treat a gap of 14 days which is unexplained. However, 14 days to my mind would not constitute one month to earn the disability of the policy which requires that there should not be breaks for over a month within the period of service considered for purpose of regularization prior to the cutoff date.

I do not think that these 14 days should be used against the petitioner so heavily as to deprive her of the benefit of regularization from January 31, 1996 since the substantial period of one month from January 1, 1996 to January 31, 1996 stands covered by a certificate of Principal, Medical Officer of the Health Department, Haryana at Panchkula. The Court has no reason not to place faith on the medical certificate and therefore the

petitioner has a case for ante-dating her regularization with effect from January 31, 1996. The break in service has been sufficiently explained by medical evidence and consequently, the defence taken by the HUDA is untenable and deserves to be rejected. It may be recorded that the petitioner had put in over six years of daily wage service prior to 1996. The first break of one month has been explained for the reason that the petitioner was in the family way and on sanctioned maternity leave. The period of maternity leave has to be excluded from the count to achieve the socially beneficial purpose, in view of the decision of the Division Bench in Ms. Nishi Gupta Vs. Haryana Urban Development Authority, (2002) 2 SCT 684.

As a result of the above discussion, this petition is allowed. The petitioner will get consequential benefits notionally with retrospective effect from January 31, 1996 and actually from the date of this order since the rights of the petitioner has been declared for the first time.

(RAJIV NARAIN RAINA)
JUDGE

14.12.2016
neeraj

Whether speaking/reasoned	Yes
Whether reportable	No