

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

CWP No. 14841 of 2009
Date of decision: 22.08.2016

Mitro Devi

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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

Mr. Anil Mehta, DAG, Haryana.

Mr. Raman B. Garg, Advocate,
for respondent No. 2.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, the petitioner has questioned the award dated 03.11.2005.

The petitioner was appointed as Safai Mazdoor on 21.02.1997. The extract of the appointment order is reproduced as under:-

“From

Executive Officer
Municipal Council, Karnal.

To

Smt. Mittro W/o Ram Parshad
H.No. 15, Balmiki Basti, Near Ram Nagar Mandir
Land

No. 416/PH/MCK dated 21.2.97

Subject: Appointment of Safai Mazdoor.

Reference your application dated 27.1.97 for the post of Safai Mazdoor on the subject cited above.

You are hereby offered the appointment for the post

of Safai Mazdoor in the Municipal Council, Karnal on purely temporarily basis in the pay scale of Rs. 750-940 plus dearness pay and allowances according to the sanctioned scale, subject to the following conditions:-

1. Your appointment is subject to one years probation and the period of probation can be extended. Your services can be terminated without giving any formal notice, in case you do not perform your duties as Safai Mazdoor efficiently and diligently to the satisfaction of the undersigned.
2. You shall be governed by the Haryana Municipal Safai Mazdoor Service Rules, 1976 as amended from time to time and the Haryana Municipal Act, 1973 and the rules and byelaws made there under.
3. Before joining the post you will have to furnish an affidavit to the effect that you have never been dismissed from Govt./Local Bodies Service and convicted by any Court and you have one living wife/husband.
4. Before joining you have to produce Medical Certificate of fitness from the Chief Medical Officer, Karnal.

In case you accept the offer you should furnish the necessary affidavit and certificate and report yourself for duty within 3 days.

Executive Officer
Municipal Council, Karnal

Endst No. _____ MCK _____ dated

A copy is forwarded to the Chief Medical Officer, Karnal with the request that he will examine Sh/Smt. _____ and issue necessary certificate if found medically fit.

Executive Officer
Municipal Council, Karnal.”

The lower Court framed the following issues:-

- “1. As per terms of reference? OPP
2. Whether the applicant has no cause of action against the respondent? OPM
3. Whether the claim statement is not maintainable and there is no relationship of master and servant between the parties?OPM
4. Whether the claim statement is bad on the issue of resjudicata? OPM
5. Whether the claim statement is bad on account of non-joinder and mis-joinder or necessary parties.?OPM
6. Whether jurisdiction of this Court is parred?OPM

7. Whether the applicant has not come to this Court with clean hand?OPM
8. Relief?"

The labour Court declined to grant relief to the petitioner since no evidence has been produced to show that the petitioner has rendered continuous service of 240 days in a calendar year. The learned counsel for the petitioner submits that the petitioner was appointed as Safai Mazdoor in the pay scale of ₹ 750-940, which is against the permanent post even though order of appointment recite temporarily. The learned counsel for the petitioner further submits that admittedly the petitioner worked during the period from 21.2.1997 to 31.8.1998, therefore, before the petitioner's services were dispensed, she was entitled for notice and inquiry. The same has not been complied.

Per contra learned counsel for the respondent vehemently contends that no material evidence has been produced to demonstrate that the petitioner has served more than 240 days in a calendar year. Consequently, the labour Court rightly declined to interfere with the relief sought by the petitioner. In support of said contention, learned counsel for the respondent relied on judgments of the Hon'ble Supreme Court in **The Range Forest Officer Vs. S.T. Hadimani: 2002 (1) CLR 922, Municipal Corporation, Faridabad Vs. Siri Niwas: 2004 (5) SLR 816**. Mere statement by means of an affidavit is not sufficient to come to a conclusion that an employee has worked for 240 days, in the absence of sufficient evidence.

Heard learned counsel for the parties.

From perusal of the appointment order it is evident that the petitioner was appointed as Safai Mazdoor in the pay scale of ₹750-940 plus dearness pay and other allowances according to sanctioned scale subject to certain conditions imposed. The conditions are necessary for deciding the status of the petitioner whether she was appointed against sanctioned post/permanent post. She was appointed on probation and probation period can be extended. The petitioner is governed by Haryana Municipal Safai Mazdoor Services Rules, 1976 as amended from time to time and the Haryana Municipal Act, 1973 and the rules and bye-laws made thereunder. The above requirement or conditions would be stipulated to an employee who has been appointed permanently, therefore an inference can be drawn that the petitioner was appointed against sanctioned post. Before terminating her services or dispensing her service she is entitle for notice or inquiry. Admittedly, no show-cause notice or inquiry has been held. Further there is non-compliance of Haryana Municipal Safai Mazdoor Services Rules, 1976, which are the statutory Rules governing the post of Safai Mazdoor. No material has been produced by the respondents to show that before dispensing the petitioner's services under the Haryana Municipal Safai Mazdoor Services Rules, 1976 proper procedure was followed. Therefore, the labour Court erred in holding that the petitioner is required to complete 240 days in a year for the reasons that her appointment is against sanctioned post and she was on probation. Further she is governed by statutory rules of the Municipal Safai Mazdoor Services

Rule, 1976. In view of the statutory rules made under the Municipal Act, 1973, the petitioner and the employer are governed by the above statutory rules and not Industrial Disputes Act, 1947 so as to complete 240 days in a year before termination.

In view of these facts and circumstances award dated 03.11.2005 is set aside. The respondents are directed to reinstate the petitioner with continuity of service and also 50 % back wages shall be paid within a period of six months.

22.08.2016

PA

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No