

CWP No.15050 of 2010 (O&M)

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Manoj Kumar
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.15050 of 2010 (O&M)

Date of decision: 25.07.2016

Raj Kumar

....Petitioner

Vs.

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. P.K. Goklaney, Advocate for the petitioner.

Mr. Vaibhav Sharma, DAG Punjab for respondent

Nos.1 & 2.

Mr. Gaurav Jindal, Advocate for respondent Nos.3 to 5.

Jaswant Singh, J

The petitioner, who was working as a Sweeper with Municipal council, Ferozepur has filed this petition for quashing the impugned Resolution No.85 dated 12.8.2010 (**P.5**) passed by the Municipality whereby his services have been terminated.

One Sh. Faquir Chand while working as Tubewell Sweeper in the office of SDE, Punjab Water Supply and Sewerage Board-respondent No.5 did not turn up at home on 24.7.1995 and was not traceable despite best efforts. Consequently, an FIR No.22 dated 28.7.1995 was lodged at Police Station City Ferozepur to that effect i.e missing person. After some time, his widow-Smt. Leelo Devi was appointed by the Board as a Sweeper on compassionate ground in the year 1996 on a part time basis, as seven years were yet to lapse for considering Sh. Faquir Chand to be legally dead.

The petitioner is claiming himself to be an adopted son of Leelo-widow of Faqir Chand (having been adopted on 30.6.2004 by Smt. Leelo Devi) and she also died on 31.3.2005 while working with the Sewerage Board. Consequently, the petitioner requested for being appointed on compassionate ground but since he was a minor, therefore, could not be appointed. Ultimately, after attaining majority, the petitioner made a representation dated 24.3.2009 **(P.2)** and the same was considered by the Municipality, which is not even a party respondent herein. It transpires that a resolution No.27 dated 17.9.2009 to that effect was passed in which a decision was taken to appoint the petitioner as Sweeper on compassionate basis and the case was forwarded to respondent No.2 for approval, who vide his letter dated 21.1.2010 **(P.3)** clarified that in view of Instructions dated 22.6.2004, Municipality is competent to take a decision.

Thereafter, the petitioner was appointed as a Sweeper vide appointment letter dated 17.2.2010 **(P.4)** and continued till his termination vide impugned Resolution **(P.5)**.

It is contended by learned counsel for the petitioner that the petitioner was appointed on compassionate ground in the light of the aforesaid resolution No.27 dated 17.9.2009 without any misrepresentation on his part, therefore he is entitled to continue in service against the post on which he was appointed by the Municipality. It is argued that the mother of the petitioner was entitled for compassionate appointment way back in 1995 with the previous employer-Sewerage Board and therefore, while treating

her as a regular employee, the petitioner deserves to be appointed on compassionate basis as his father was missing for last seven years.

On the other hand, it is argued on behalf of the respondents that in the earlier resolution No.47 dated 17.9.2009 of the Municipal Council on the basis of which the appointment letter dated 17.2.2010 (**P.4**) was issued in favour of the petitioner, there was absolutely no consideration regarding nature of the employment of the mother of the petitioner.

Heard learned counsel for the parties and perused the paper book with their able assistance.

The services of the petitioner on the post of Safai Sewak on compassionate basis has been terminated by way of the impugned Resolution on account of the fact that the petitioner concealed the fact that his mother-Leelo was working as a Part-time Sweeper. Although equally, the Municipality was also responsible to verify the status of the mother of the petitioner whether she was working on Part time or Full time basis but the fact remains that even as on today the petitioner is not in a position to substantiate that her mother was working on full time basis. Be that as it may, learned counsel for the petitioner is not able to show any Instructions or Government Policy from the record of the case as to how and on what basis the dependent of a Part Time Sweeper is entitled for appointment on compassionate ground.

The law is well settled by Hon'ble Supreme Court that the appointment on compassionate ground is an exception to the ordinary mode of employment and is a matter of concession, which

can be claimed only if the Instructions or Policy of the State so provides and not otherwise. Although the petitioner was offered appointment letter dated 17.2.2010 by the Executive Officer of the Municipality but the same was not legally permissible as the petitioner could not produce any Government Instructions entitling him for an appointment on compassionate ground. Therefore, the impugned Resolution passed by the Municipality, which has not even been impleaded a party respondent, in the opinion of this Court, does not warrant any interference under the writ jurisdiction.

Although, a perusal of the impugned Resolution reveals that the petitioner has been asked to refund the salary received by him by depositing in the account of the Committee, but in the opinion of this court, that would be too harsh and inequitable in view of the facts and circumstances of the present case as the petitioner had been paid the salary in lieu of the duties discharged by him, therefore, such a course regarding salary component incorporated in the impugned Resolution against the petitioner is not justified and cannot be recovered.

In view of the aforesaid discussion, the writ petition is dismissed subject to the observations made hereinabove.

July 25, 2016
manoj

(JASWANT SINGH)
JUDGE