

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

Date of decision: 18.03.2016

1. CWP No.3229 of 2011 (O&M)

Ms. Jogindero Devi and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

2. CWP No.3228 of 2011 (O&M)

Ms. Birmati Devi and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Shrey Goel, Advocate,
for the petitioner(s).**

**Mr. Ravi Partap Singh, AAG, Haryana,
for the respondents.**

**Mr. M.S. Sindhu, Advocate,
for respondent No.4.**

Ritu Bahri, J.

**This order will dispose of CWP Nos.3228 and 3229 together as
common questions of law and facts are involved in both the petitions. For
reference, facts are being taken from CWP No.3229 of 2011.**

The petitioners are seeking quashing of the order dated

Council, Thanesar-respondent No.4. Further direction is sought to be issued to the respondent-authorities to provide employment to petitioner No.2 (in both the petitions) under ex-gratia rules or to provide financial assistance in view of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006.

Sh. Raj Kumar, husband of petitioner No.1 and father of petitioner No.2 was appointed on 03.01.1997 vide appointment letter (Annexure P-1) on the post of sweeper on daily wage basis at the rates fixed by Deputy Commissioner, Kurukshetra. His services were not regularized. Thereafter, he filed CWP No.16056 of 2001, which was disposed of by this Court on 07.10.2002 by giving direction to the respondents to pass an appropriate speaking order in consonance with the Policy of the State. Thereafter, respondent No.4 issued appointment letter dated 31.03.2003 (Annexure P-2) to Raj Kumar for the post of Sweeper on regular basis. He was medically examined on 02.04.2003. A copy of the medical fitness certificate has been annexed as Annexure P-3. Unfortunately, Raj Kumar died on 13.11.2009 while he was in service. Thereafter, the petitioners made an application for compassionate employment to respondent No.4. When no action was taken on the application, they served a detailed legal notice dated 09.03.2010 (Annexure P-4) requesting respondent Nos. 2 to 4 to provide employment to petitioner No.2 under ex-gratia scheme, but to no avail. Consequently, they filed CWP No.17803 of 2010, which was disposed of by this Court on 30.09.2010 (Annexure P-6) by giving direction to the respondents to take a decision on the application/legal notice of the petitioners within a period of three months. Ultimately, the case of the petitioners was rejected by the respondents vide order dated 12.01.2011 (Annexure P-7) on the ground that

not entitled for compassionate appointment or Financial Assistance.

In its written statement, respondent No.4 has taken a stand that deceased-Raj Kumar was appointed on adhoc basis and the benefit of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 as well as 2006 was not admissible to the employees who died while working on adhoc basis. Under the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993, there is no provision for grant of pensionary benefits to adhoc employees. Respondents have placed on record copy of letter dated 02.09.2008 (Annexure R-4/1), which was sent to the Executive Officer, Municipal Council, Thanesar by thirty sweepers, who had been appointed during strike. On 01.04.2003, they were promoted as sweepers on adhoc basis, but were not regularized despite the fact that all employees engaged during strike in all other Municipal Councils/Committees in the State have been regularized. In response to the said letter, the Deputy Commissioner, Kurukshetra, vide letter dated 21.11.2008 (Annexure R-4/4) had informed the Executive Officer, Municipal Council, Thanesar that he was competent to take necessary action for regularization as per instructions and rules of the Government. Despite the said letter, Municipal Council, Thanesar had sought sanction for regularization of services of the employees appointed on adhoc basis, from the Director, Urban Local Bodies, Haryana, vide letter dated 12.01.2009 (Annexure R-4/5). Director, Urban Local Bodies, Haryana, vide letter dated 25.02.2010 (Annexure R-4/6) sought some more information with regard to the post(s) of Raj Kumar son of Sh. Tuli Ram and Vedpal son of Sh. Chhottu Ram. The relevant information was sent vide letter dated 08.03.2010 (Annexure R-4/7). Thereafter, the Director, Urban Local Bodies, vide letter dated 22.06.2010 (Annexure R-4/8) sought

information with regard to deduction of GPF of adhoc sweepers and the communication in this regard continued till 14.09.2010 (Annexure R-4/10). The Financial Commissioner and Principal Secretary to Government of Haryana, vide letter dated 03.11.2010 (Annexure R-4/11), rejected the case of the petitioners for grant of ex-gratia appointment on the ground that it was admissible only to regular employees.

A perusal of letter dated 21.11.2008 (Annexure R-4/4) shows that the Deputy Commissioner, Kurukshetra had given direction to the Executive Officer, Municipal Council, Thanesar for regularization of employees working on adhoc basis at his own level as he was the appointing authority of those employees. Vide order dated 16.03.2016, the Executive Officer of Municipal Council-respondent No.4 was directed to be present in Court today in order to explain, as to how they have finalized regularization of adhoc employees after receipt of letter dated 21.11.2008 (Annexure R-4/4). However, no satisfactory explanation has been given to the Court.

The respondents are not disputing the fact that Raj Kumar had been appointed during strike on 03.01.1997 vide Annexure P-1. Thereafter, he was appointed on 31.03.2003 vide Annexure P-2 on adhoc basis. A perusal of appointment letter (Annexure P-2) shows that he had been appointed on probation for a period of one year and thereafter, he was medically examined as per medical certificate (Annexure P-3). He had been working since 31.03.2003 till 13.11.2009 when he died.

At this stage, reference can be made to a judgment passed by the Division Bench of this Court in **Narender Kumar Vs. The Municipal Council, Ambala City and others**, CWP No.5280 of 2006 (decided on 11.03.2008). In that case, the petitioner had been appointed as Sanitary

Committee in the year 1996-97. While dismissing the said petition, claim for adjustment/absorption after being appointed during the period strike had been rejected. Learned counsel for the respondents has referred to the aforesaid judgment to contend that the persons, who had been appointed during strike, cannot claim appointment on regular basis. However, this judgment cannot be applied in the case of the petitioners. In that case, after being appointed during the period of strike, the Haryana Government had issued a circular dated 13.05.1997 to the effect that adhoc employees and daily wagers, who had been appointed during strike, be adjusted against the available vacancies. The petitioner (in that case) was engaged only on contract basis, therefore, he was not covered by the Instructions dated 13.05.1997. Moreover, he had not completed 240 days in a calendar year. Further, a decision had been taken vide circular dated 19.02.2007, whereby the Government had decided not to absorb any employee in the Municipal services, who had worked during the strike period of Municipal Employees in the year 1996-97. It was held that the petitioner, who had been appointed on contract basis, could not claim any right to be absorbed on a regular post.

In the present case, Raj Kumar (father of petitioner No.2) was not appointed on contract basis. Moreover, after the disposal of CWP No.16056 of 2001, he was appointed on adhoc basis vide appointment letter dated 31.03.2003 (Annexure P-2). His medical examination was also conducted as is evident from the certificate (Annexure P-3). For all intents and purposes, he was working on adhoc basis and not on contract basis. After being appointed on adhoc basis, he was on probation for a period of one year. Vide letter dated 21.11.2008 (Annexure R-4/4), the Deputy Commissioner had clarified to the Executive Officer, Municipal Council,

decision could be taken by him at his own level, as per instructions and rules of the Government. Thus, after completion of the probation period of Raj Kumar, the authorities should have regularized him as per the instructions/policy of the Government, which the Municipal Council-respondent No.4 has not done in the present case. Moreover, as per instructions dated 09.07.1998, the Haryana Government had taken a decision to regularize the services of the employees, who were appointed on adhoc basis during strike. While passing the impugned order dated 12.01.2011 (Annexure P-7), the respondents have admitted that services of Raj Kumar were converted in to adhoc services in March, 2003. However, his services were not regularized and his case was not covered under the Regularization Policy as he had not completed three years of service as on 30.09.2003.

After being appointed on adhoc basis, deceased-Raj Kumar continued to work from 2003 till 13.11.2009 i.e. for a period of about 6 years. The respondents had not taken appropriate steps for regularization of those employees, who had been appointed on adhoc basis. Another fact, which transpires from the letter dated 05.07.2010 (Annexure R-4/9) is that GPF of the sweepers working on adhoc basis was not deducted by the Municipal Council, Thanesar. Deceased-Raj Kumar was appointed on the post of sweepers during strike on 03.01.1997. His services were not regularized till 2002. Aggrieved with the action of the respondents, he filed CWP No.16056 of 2001, which was disposed of on 07.10.2002 and thereafter, Raj Kumar was appointed on the post of Sweeper on regular basis vide appointment letter dated 31.03.2003 (Annexure P-2) with the condition that he will be on probation for one year and if, his work and conduct is no

respondents are not disputing that Raj Kumar had been in service w.e.f. 03.01.1997 till his death i.e. 13.11.2009. He had served the department for almost 12 years before his death. At this stage, reference can be made to the Haryana Municipal Safai Mazdoor Service Rules, 1976. Rule 7 of the above Rules is reproduced as under:-

7. Probation :- (1) Persons appointed to be posts in the Service shall remain on probation for a period of one year.
(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory, it may;-
(a) If such person is appointed by direct recruitment, dispense with this services; or
(b) if such person is appointed by transfer, deal with him in such manner as the terms and conditions of the previous appointment permit.
(3) On the completion of probation of a person, the appointing, authority may,-
(a) if his work or conduct has, in his opinion, been satisfactory;
(i) confirm such person from the date of his appointment, if appointed against a permanent vacancy; or
(ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy;
(iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy; or
(b) if his work and conduct has, in its opinion, been not satisfactory —
(i) dispense with his services, if appointed by direct recruitment; or
(ii) deal with him in such other manner as the terms and conditions of his previous appointment permit; or
(iii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation:
Provided that the total period of probation including extension, if any, shall not exceed two years.”

Raj Kumar, after being appointed as per appointment letter (Annexure P-2), was to be on probation for a period of one year. As per the stand taken by the Municipal Committee, neither his work and conduct was found unsatisfactory nor he was confirmed before the date of his death. Moreover, while recommending the case for regularization, the Deputy Commissioner, Kurukshetra vide letter dated 21.11.2008 (Annexure R-4/4) had conveyed to the Municipal Council, Thanesar to take appropriate steps for regularization as per instructions and rules of the government. As per

appointment letter dated 31.03.2003 (Annexure P-2) and Haryana Municipal Safai Mazdoor Service Rules, 1976, after completing his probation period successfully, Raj Kumar ought to have been regularized by the Municipal Council, which has not been done. The Hon'ble Supreme Court in High Court of M.P. Through Registrar and others Vs. Satya Narayan Jhavar, 2001 (7) SCC 161, while interpreting relevant rules had observed that **where** there was a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which, it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. In Para 11 of the judgment, it has been observed as under:-

“11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed

the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.”

In the appointment letter dated 31.03.2003 (Annexure P-2), there was a specific condition that Raj Kumar would be on probation for a period of one year and in case his work and conduct would not found to be satisfactory, he would be reverted back on daily wages basis. Raj Kumar continued to work w.e.f. 03.01.1997 till he died on 13.11.2009. Hence, as per the conditions mentioned in the appointment letter as well as the relevant rules, he is deemed to have been confirmed on the post as he was not reverted back as daily wager. It was a regular appointment after getting the medical fitness certificate dated 02.04.2003 (Annexure P-3). Hence, deceased Raj Kumar and Ved Pal were liable to be regularized as per their appointment letters.

In view of the above, both the petitions i.e. CWP No.3229 of 2011 and 3228 of 2011 are allowed and the impugned order(s) dated 12.01.2011 are set aside. Deceased Raj Kumar and Ved Pal would be deemed to have been confirmed as regular employees as per their appointment letters and their families are entitled to the pensionary benefits, which are admissible to regular employees under the above said rules and the benefits under the Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. Respondents are directed to pass appropriate orders within a period of three months from the date of receipt of certified copy of this order and thereafter, payment be made to the petitioners within next one month along with interest at the rate of 9% per annum from the date of death of Raj Kumar and Ved Pal to their respective family members.

(RITU BAHRI)
JUDGE

18.03.2016