

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

LPA No.771 of 2015 (O&M)

Date of decision: April 29, 2016.

State of Punjab and others

... **Appellants**

v.

Surjit Kaur

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri Rajesh Bhardwaj, Additional Advocate General, Punjab.

Shri R.K. Arora, Advocate for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral):

This letters patent appeal at the instance of the State of Punjab assails the order dated 16.1.2015 whereby the learned Single Judge has directed to consider and regularize services of the respondent on the Class IV post of Sweeper and then grant her consequential retiral benefits.

The facts are not in dispute. The respondent was employed as a Sweeper on part-time basis in the year 1983. She continued to serve in that capacity uninterruptedly for 31 years till she attained the age of 60 years when she was relieved/retired. Having spent her whole life in the service of the appellants, the respondent looked towards them in her old age for the grant of social security, like pension and other retiral benefits.

It may also be mentioned at this stage that the State of Punjab, through the Department of Personnel, has issued a policy circular dated 4th

March, 1999 (Annexure P-1), which is a “policy regarding regularization of Class IV part-time employees working in various Govt. Departments”.

Some of the salient features of the policy are to the following effect:-

“2. After thorough consideration Government have decided to formulate a policy for the regularization of the services of part time workers as follows:-

(A) the part time workers who have worked for 10 years or more will be considered for regular appointment in the concerned departments and in the concerned District against 25% Class IV vacancies which will become available hereafter subject to the following:-

(i) that during the tenure of their employment on part time basis for 10 years or more, there presence on duty should have been minimum 80%.

(ii) that they fulfill the qualifications for the new job as prescribed under the rules at the time of their consideration for regularization.

(iii) that they will be entitled to relaxation in upper age limit upto the number of years they have served as part-time workers.

(iv) that they had been appointed initially on part time basis through Employment Exchange or through open advertisement in the press; and

(v) that they are otherwise found suitable for the job.”

The respondent though fulfilled the conditions, reproduced above, but still she was deprived of the benefit of regularization on the plea that owing to limited sanctioned regular posts on year-to-year basis, her turn did not come and meanwhile she attained the age of retirement.

The learned Single Judge has viewed that such an explanation given by the authorities is unacceptable as it defeats the very object of the policy.

We have heard Learned Counsel for the parties at a considerable length and gone through the record.

Reliance placed on behalf of the appellants on the decision of the Supreme Court in Secretary to Govt., School Education Department, Chennai v/s R. Govindaswamy, 2014(4) SCC 769, in our considered view, is misplaced for the reason that in the case in hand, the State Govt. has taken a conscious policy decision for regularization of services of the part-time Sweepers/employees. In the cited case, no such policy decision was brought on record. Hence, the Supreme Court held that the High Court was not competent to issue a direction for regularization of part-time employees/Sweepers.

Having held that, it may be further seen that the policy decision dated 4th March, 1999 is undeniably a welfare scheme launched by the State of Punjab in deference to its Constitutional obligations. The policy has been issued to achieve a laudable object to confer the status of regular employees on those Class IV part-employees who are in service for 10 years or more. It may be true that the policy contemplates adjustment of part-time Class IV employees against 25% vacancies which were to become available after the policy has come into force. However, if the authorities find that due to non-availability of requisite vacancies, they were unable to achieve the object and purpose of the policy, even in those case where part-time employee has reached the age of superannuation, it was imperative upon them to re-visit and re-modulate the same so that it does not turn out to be a false promise or a mirage.

Should such a policy remain on papers or its object must

percolate to net-end beneficiaries, at least to those who, after long span of 30 years of service, have attained the age of retirement, is a question which the authorities themselves ought to have addressed instead of awaiting for the court directions.

We are sure that the State of Punjab will look into this aspect of the matter and re-structure the policy in such a manner that services of Class IV part-time employees are regularized at least before one attains the age of retirement and in case, regular vacancy does not become available, in that case, such employee shall be taken to have been made regular immediate before his retirement. Such a liberal and pragmatic interpretation is the only effective modicum to achieve its object. Suffice to observe that recourse to such a policy decision is permissible under the mandate of Constitution Bench decision in Secretary, State Of Karnataka And others vs Umadevi And Others, 2006(4) SCC 1.

In the light of the above discussion, the respondent is held entitled to the benefits of liberal construction of the policy as have been granted by the learned Single Judge.

For the reasons afore-stated, we do not find any merit in this appeal. Accordingly, the same is dismissed.

[**Surya Kant**]
Judge

[**A.B. Chaudhari**]
Judge

April 29, 2016.
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