

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

**CWP No.11304 of 1997
Date of Decision:29.03.2017**

Rakesh and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. Vivek Khatri, Advocate for the petitioners.
Mr. Hitesh Pandit, Addl. A.G. Haryana.
Mr. Dhiraj Chawla, Advocate for respondents No.4 to 6.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioners have questioned the validity of order dated 25.6.1997 (Annexure P-8) by which 5th respondent has cancelled the order of appointment of the petitioners dated 12.2.1997 and further changed the status of the petitioners from regular to that of Daily Wage basis and further ordered that the petitioners are entitled for pay on daily rate as fixed by the Deputy Commissioner.

All the class-IV employees who were working in the 5th respondent went on strike in the year 1996. On 19.12.1996, the council passed a resolution. An extract of the resolution reads as under:

“The council of Ministers felt that the call for this strike was ill-advised and it appealed to the employees to withdraw the strike immediately and return to work. If the striking employees do not return to work by 12.00 noon on 20.12.1996 the Local Bodies if they so feel, could dispense with their services and appoint substitutes from the open market who could be given regular employment.”

Further the Director, Local Bodies communicated the decision to all the Presidents/Executive Officers/Secretaries of all the Municipal Committees/Councils in the State including Mayor/Commissioner,

Faridabad Municipal Corporation with reference to strike of employees of urban Local Bodies. An extract of order of the Director, Local Bodies reads as under:

“The Government has also made an appeal to the striking employees of the municipalities to withdraw their strike and resume their duty by 12.00 noon of 20th December, 1996. The local authorities may if they so feel decide to appoint substitutes from open market who could be given regular appointment, in case the striking employees do not withdraw their strike and do not resume their duty. You are, therefore, requested to take necessary action and send report to the Directorate on daily basis.”

Perusal of the above decisions, the petitioners were appointed to the post of Safai Mazdoor in the then Nagar Parishad, Hisar on 1.2.1997 in the pay scale of Rs.750-940 stating that the petitioner's service are governed by the Municipal Services Rules, 1976 (for short “1976 Rules”) and the petitioners are on probation for a period of two years. Extract of the order reads as under:

“8. That your services will be governed under Municipal Services Rules, 1976.

9. That after receipt of this letter you will have to report for duty otherwise your appointment is liable to be cancelled.

10. That your appointment is on a probation period of two years and if your work and conduct is not found satisfactory that can be extended and if work and conduct is not found satisfactory your services can also be dispensed with.”

In this background, the employees who were on strike have reported back to duty in the year 1997. In order to accommodate them, the official respondents proposed to change the status of the petitioners who are appointed on regular basis to that of Daily Wage basis. While doing so, they

cancelled the appointments issued to the petitioners and converted the appointment into Daily Wage basis from regular basis. Thus, the petitioners are questioning the validity of Annexure P-8 by which their order of appointment has been cancelled and modified the status of the petitioners from regular to that of daily wage basis. Hence, the present petition.

Learned counsel for the petitioners submitted that the petitioners were appointed on regular basis as is evident from the aforesaid decisions taken by the official respondents on various dates which are extracted above. That apart the nature of appointment issued on 1.2.1997 (Annexure P-5) which is regular and the appointment of the petitioners are governed by the 1976 Rules and they are on probation. When things stood thus, respondents cannot cancel the order of appointment without issuing notice to the petitioners when their appointments were on regular basis and when they were on probation. Further, without notice the official respondents proceeded to change the status of the appointments of the petitioners is highly arbitrary and illegal. Hence, Annexure P-8 is liable to be set aside. It was further submitted that during the pendency of this litigation, the petitioners services have been regularized in the year 2000 and some of the petitioners have attained the age of superannuation and retired from service.

Per contra, learned counsel for the respondents vehemently contended that the petitioners have been accommodated as a Safai karamchhari against the vacancies which are already occupied by regular holders. Since regular holders of the post reported back to duty of the post while call of the strike. The official respondents proceeded to appoint the petitioners against the vacancies which are already filled up. Therefore,

initial appointments of the petitioners are required to be treated as ad-hoc or daily wage. Thus, a decision has been taken by the official respondents to the extent of cancellation of the petitioners' appointment and change the nature of appointment from regular to that of daily wage. The petitioners have no right to seek for regular appointment in the absence of advertisement and further it was submitted that incompetent authority has passed the order of appointment namely Chief Insanitation Inspector.

Heard learned counsel for the parties.

The official respondents in order to meet the public interest in the various Municipal Committees due to strike called by the Safai Karamchari, the petitioners were appointed. Throughout the decisions taken by the official respondents Annexure P-1 to P-5, it is evident that intention of the official respondents is to go for regular appointment. That after order of appointment to the petitioners on 1.2.1997 is also evident that appointment is with reference to 1976 Rules and further petitioners are governed by said Rules and they are on probation period for two years. These dates and events as well as the decisions of the official respondents, it is evident that they are recruiting Safai Karamchari on regular basis. Merely saying that regular employees who are on strike and they reported back to duty that does not change the status of the appointment of the petitioners in order to accommodate the regular Safai Karamchari who are on strike. In fact the petitioners should have been awarded additional benefits for the reasons that timely they have joined the duties and assisted the Municipal Committee in discharging the duties of Safai Karamchari in the public interest when Safai Karamchari were badly needed due to strike called by the existing Karamchari. Therefore, action of the respondents in

cancellation of order of appointment and change of status of the petitioners from regular to daily wage is without authority of law. Further no notice has been given. Assuming that the petitioners were appointed by a incompetent authority but at the same time from the nature of appointments of the petitioners, it is evident that they are under the 1976 Rules and so also they are on probation which shows that they are appointed on regular basis. In such circumstances, even assuming that incompetent authority passed an order, it is bounden duty of the competent authority to issue show cause notice before cancellation of order of appointment. Thus, Annexure P-8 dated 25.6.1997 is set aside.

Now the question of extending the benefit from 1997 to till the date on which the services of the petitioners were regularized is required to be considered by the official respondents. Admittedly some of the petitioners have already attained the age of superannuation and retired from service, therefore, at the best the petitioners are entitled for monetary benefits during the intervening period from 1997 to till the date on which the services of the petitioners were regularized. Therefore, concerned respondent is directed to refix pay and pension and calculate the difference of pay from 1997 to till the date on which the services of the petitioners were regularized and disburse the same within a period of four months from today.

The petition stands allowed.

29.03.2017

rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No

(P.B. Bajanthri)
Judge