

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

CWP No.20042 of 2013 (O&M)

Date of Decision: 14.03.2017

Poonam Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Raman Goklaney, Advocate
for the petitioner.

Mr. Avinit Awasthi, AAG Punjab.

Mr. Amit Arora, Advocate
for respondent No.6.

Mr. Vivek Chauhan, Advocate
for respondents No.4 and 5.

JAISHREE THAKUR, J. (Oral)

The petitioner herein challenges order dated 15/05/2013 (Annexure P-20) by which she has been ordered to be relieved from services.

2. In brief the facts are that the petitioner was appointed as Clerk in Panchayat Samiti Fazilka on contract basis for a period of 3 years by respondent No. 5, the Panchayat Samiti Fazilka by its resolution No. 1 dated 29.09.2006. Finding her services satisfactory, her services were extended

and resolutions dated 12.09.2007, 17.08.2009 and 22.03.2012 were passed for regularization of her services as Panchayat Samiti Clerk. The State of Punjab issued instructions dated 18/03/2011 regarding appointment of employees working on contract basis in different departments. It was specified that all those employees working on contract basis against Permanent posts and who were recruited by following a proper procedure having necessary qualifications, their services should be regularized w.e.f. 01/04/2011 or on completion of 3 years of service on contract basis. Pursuant to the instructions, resolution No. 2 dated 22/03/2012 was also passed for regularizing the services of the petitioner, however, no further orders were passed by the date on the resolution. Respondent No.4, Executive Officer (Fazilka) issued letter dated 15/05/2013 to the petitioner relieving her from duty to accommodate a person who had been given appointment on compassionate basis. Aggrieved, the instant writ petition has been preferred

3. Learned counsel appearing on behalf of the petitioner would contend that the impugned order has been passed, without giving any opportunity of hearing to the petitioner. The petitioner was on contract basis and working satisfactorily against the post of a Clerk in the Panchayat Samiti and as such, her services could not be terminated without following the principles of natural justice. Moreover, it is argued that the petitioner was appointed by the Panchayat Samiti and therefore the Executive Officer, respondent No. 4, was not a person competent to issue relieving orders dated 15/05/2013. The

4. Per contra, learned counsel appearing on behalf of the

respondents submits that the petitioner had been appointed on contract and as such, was not a regular employee. On the appointment of regular employees in the Panchayat Samiti, the services of the petitioner were dispensed with by issuing the relieving order dated 15/05/2013.

5. I have heard the counsel for the parties and with their assistance gone through the record of the case.

6. Admittedly the petitioner had been appointed on contract . In the meeting held on 5/09/2006 the Panchayat Samiti Fazilka decided to fill up the posts lying vacant in the Panchayat Samiti and after noting that the petitioner herein had applied to the post of Clerk, decided to appoint her as she fulfilled all the qualifications for the post of Clerk in subsequent meeting of the Panchayat Samiti held on 29/09/2006, the Samiti resolved to appoint her for 3 years on contract basis on a consolidated salary of Rs. 3500/- and at the same time authorize the Executive Officer to issue appointment letter as per terms and conditions. It is only thereafter that the Executive Officer Panchayat Samiti issued appointment letter dated 12/10/2006. Noting her satisfactory work, there are several resolutions passed, wherein, a conscious decision was taken to regularize her services and even after policy dated 18/03/2011, the case of the petitioner was considered for regularization. She was relieved by office order dated 15/05/2013 by the Executive Officer, Panchayat Samiti Fazilka, on account that two posts of Panchayat Samiti Clerk in Panchayat Samiti Fazilka were filled up, one by appointment and the other on the basis of compassionate appointment. The office order has been issued by the Executive Officer, who is not the appointing authority of the petitioner. As per Rule 4 A(ii) of

the Punjab Panchayat Samitis and Zila Parisad Service Rules, 1965, the appointing authority of employees of a Panchayat Samiti is the Panchayat Samiti concerned. Therefore, the appointing authority of the petitioner herein would be the Panchayat Samiti.

7. The contention raised that the appointment letter was issued by the Executive Officer and therefore, the Executive Officer was the appointing authority of the petitioner is an argument required to be rejected. A perusal of the proceedings held on 29/09/2006 would clearly show that it is the Panchayat Samiti Fazilka, who had authorized the Executive Officer to issue an appointment letter to the petitioner. Whereas, there is nothing on the record to show that the Panchayat Samiti had authorized the Executive Officer to issue the impugned order dated 15/05/2013 by which the petitioner was relieved from service. In fact, the State counsel on instructions from Mr. Nirmal Singh, the Executive Officer, Panchayat Samiti Fazilka, submits that there was no such resolution on the record. Once the rule itself envisages that the appointing authorities of employees of the Panchayat Samiti is the Panchayat Samiti itself, any order passed without the concurrence of the Panchayat Samiti would be nonest, without jurisdiction and therefore liable to be quashed.

8. Moreover, it is noted that the petitioner had been working on contract basis for a considerable length of time and had been granted extension from time to time. The matter had been considered for regularization and forwarded for regularization by the Executive Officer Panchayat Samiti Fazilka to the Director Rural Development and Panchayat Department, Punjab by letter dated 11/03/2013, however, the impugned

order was issued relieving her from service, without giving her any opportunity of hearing, which is against the canons of natural justice. The petitioner herein was entitled to a hearing before any adverse orders could have been passed.

9. Therefore, in view of the above this writ petition is being allowed by holding that there is total violation of the rules of natural justice and the impugned order dated 15/05/2013 is without jurisdiction having been issued by a person, who was not competent to do so.

10. Resultantly the impugned order dated 15.5.2013 is hereby set aside and the petitioner is reinstated in service with all consequential benefits.

11. The writ petition stands allowed accordingly.

March 14, 2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No