

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

**CWP-9885-2015 (O&M)
Date of decision: 18.07.2017**

Nirmala

... Petitioner

Vs.

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. V.K. Shukla, Advocate for petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Sanjeev Soni, Advocate for respondent No.3.

...

TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the order dated 04.09.2013 (Annexure P-7) passed by the Commissioner, Municipal Corporation, Moga and in terms of which the services of the petitioner, who was working against a regular post of Sweeper have been terminated.

Counsel appearing for the petitioner would submit that the petitioner had joined as temporary Safai Sewak under the Mohalla Sanitation Committee of the Municipal Corporation, Moga in January, 1998. Date of birth of the petitioner is 07.06.1963 and as such, at the stage of initial engagement on temporary basis, the petitioner was 35 years of age approximately.

Reliance has been placed upon the document at Annexure P-1 dated 14.11.2011 issued by the Directorate, Local Government, Punjab and which contained the decision as regards conferring benefit of regularization of service upon a Safai Sewak working in the Mohalla Sanitation

Committees and wherein the cut off date was fixed as 01.04.2008. Decision in a nutshell was that all those temporary employees working in the Mohalla Sanitation Committees and who were in service on 01.04.2008 and were continuing in service as on the date of consideration of their cases, their services would be regularized. Placed on record at Annexure P-3 is a letter dated 12.04.2012 issued from the office of Executive Officer, Municipal Corporation, Moga and whereby services of the petitioner were regularized in the scale of 4900-10680+GP1300.

The petitioner continued to serve on the basis of Sweeper on a regular basis till the passing of the impugned order dated 04.09.2013 at Annexure P-7.

Upon notice of motion having been issued, separate replies have been filed i.e. one on behalf of respondents No.1 and 2 and other on behalf of contesting respondent No.3 i.e. Municipal Corporation, Moga. In the reply filed on behalf of respondent No.3/Corporation, the impugned order of termination of the services of the petitioner is sought to be justified on the ground that as per Punjab Municipal Safai Karamchari Rules, 1984, the age limit for appointment as Safai Karamchari was between 18-35 years. However, as a special case, the State Government relaxed the Rules for purposes of grant of benefit of regularization to the temporary Safai Karamchari and as such, the upper age limit was enhanced to 47 years. In a nutshell, the case set up on behalf of the contesting respondent No.3/Corporation is that the petitioner had crossed the age of 47 years, when her case for regularization had been considered. Learned counsel representing respondent No.3 would also place reliance upon condition No.3 contained in the order of regularization dated 12.04.2012 (Annexure P-3) and which

was as under:

“3. That in case, any mistake or deficiency is found in the facts/proofs produced by you, your services can be terminated immediately without any notice.”

Counsel for the parties have been heard at length.

In the considered view of this Court, the order of termination of the petitioner cannot sustain.

Undoubtedly, under the Punjab Municipal Safai Karamchari Rules, 1984, the age limit for appointment as Safai Karamchari was stipulated between 18-35 years. In the written statement, it stands conceded that as per requisite proof furnished, the date of birth of the petitioner is 19.06.1963. The petitioner has served continuously since the year 1998. The relevant point of time for considering any objection as regards being overage was the stage of entering into service/initial engagement on temporary basis.

In para 2 of the writ petition, it has been specifically averred that the petitioner has been working as a temporary Safai Sewak in Mohalla Sanitation Committee of the Municipal Corporation, Moga since January, 1998. Such facts have not met any rebuttal in the written statement filed.

Services of the petitioner had been regularized in the year 2012. It is not the case of the respondents that the work and conduct of the petitioner is not satisfactory.

The action of the respondent/Corporation on the face of it, is harsh and arbitrary.

A Division Bench of this Court in **Baldu Ram Versus State of Haryana , 2000 (3) SCT 288** was called upon to examine the validity of an

order dated 12.04.1999 declining the claim of the petitioners therein for regularization. The petitioners in **Baldu Ram's case (supra)** had rendered services as Class IV category employees for more than 10 years. Their claim for regularization had been rejected on two counts; (i) that the petitioners did not fulfill the eligibility of age limit of 16-35 years as prescribed in the Haryana Secondary Education Department, Regional Office (Group 'D') Service Rules and; (ii) no posts were available against which the services of the petitioners could be regularized.

The Division Bench rejected the ground taken on behalf of the State as regards eligibility of age limit and observed as follows:

“The first ground of rejection is regarding the age of the petitioners not being within the age limit of 16 to 35 years. In this regard it may be pointed out that the petitioners were within the permissible limit of age when they were recruited in the respondent-department and were appointed on their respective posts. They became overage and crossed the aforesaid age limit while they rendered service in the department. In this view of the matter, since the petitioners at the time of their initial appointment were within the permissible age limit, the case for regularization of their services cannot be declined on the ground that they became overage while rendering service with the respondent-department.”

The dictum laid down by the Division Bench in **Baldu Ram's case (supra)** would apply squarely on the facts of the present case as well. It is not the case of the respondents that the petitioner was not within the permissible age limit at the time of initial engagement/appointment. Petitioner, if at all, had become overage and crossed the age limit of 47 years while serving the respondent/Corporation. As such, the very basis of

passing of the impugned order of termination dated 04.09.2013 (Annexure P-7) cannot sustain.

For the reasons recorded above, the present petition is allowed. Impugned order dated 04.09.2013 issued by the Commissioner, Municipal Corporation, Moga (Annexure P-7) is quashed. Petitioner is directed to be reinstated in service forthwith with consequential benefits in the nature of seniority, continuity of service etc. Statement of the counsel representing the petitioner is recorded to the effect that the petitioner upon reinstatement would not claim actual arrears of salary for the period in question i.e. from the date of termination of service to her actual date of reinstatement in service.

Petition is allowed in the aforesaid terms.

18.07.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| (i) | Whether speaking/reasoned? | Yes/No |
| (ii) | Whether reportable? | Yes/No |