

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1151 of 2017(O&M)

Date of Decision: 25.05.2017

Punjab State through District Collector,
Mansa & others

...Appellants

Vs.

Bhuri Kaur @ Bhuro

...Respondent

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Deepak Garg, AAG, Punjab.

RAJIV NARAIN RAINA, J. (Oral)

Mr. Hukam Chand, Teacher, Government Sr. Sec. School, Aklia Village, District Mansa and Mr. Sukhbir Singh, Library Restorer, Government Sr. Sec. School (Boys), Boha Village, District Mansa are present in Court today.

When the matter came up for hearing on March 27, 2017, the following order was passed:-

“Learned State counsel takes time to confirm whether another Court at Mansa had directed recasting of seniority and the department implemented the decree qua Pardeep Kumar which involved numerous employees. In this separate litigation, a conflict has arisen which may have to be removed. In order to understand the conflict which Mr. Anil Sharma, Addl. AG, Punjab points out, he prays for an adjournment to obtain instructions.

Adjourned to 08.05.2017, for producing relevant record.”

Again on May 08, 2017, the following order was passed:-

“Mr. Hakam Chand from the office of DEO (SE), Mansa is present in Court who has come to represent the Department.

I have heard learned counsel for the appellant and perused the paper-book.

No useful purpose would be served in calling for the lower court record from the court below in the present case since Pardeep Kumar was not a party to the suit filed by the respondent/plaintiff. Pardeep Kumar has succeeded in some other suit filed before the trial court at Mansa with a prayer to recast the seniority of Part Time Sweepers for the purposes of regularization. If that is so, and the fact that Pardeep Kumar's name is mentioned in the judgment passed in plaintiff's case, then the attention of this Court has to be addressed to the proceedings in the trial court at Mansa against which this appeal has not been filed and as such the record of that case cannot be called for. In case the State has something to say from those proceedings, apart from delay of 91 days in filing this appeal against concurrent findings of the courts below, it is for the State to produce the record. If it does not produce the record including the judgment of the trial court at Mansa in which Pardeep Kumar was a plaintiff, on the next date of hearing, then the present appeal will stand dismissed automatically both on merits and delay without referring it to this court.

Adjourned to 25.5.2017.”

The learned Law Officer has passed on some papers and points out to Clause IV of policy dated March 04, 1999 regarding regularization of Class IV part-time employees working in various Punjab Government Departments. State's contention that part time employees cannot be regularised flies in the face of the policy instructions. The appellate Court is right in his judgment that the case of the plaintiff respondent is covered by the policy and deserves to be allowed.

Clause IV reads with situations where person has been initially appointed on part-time basis through the employment exchanges or through open advertisement in the past and have continued to serve for a substantial length of time as visualized in the policy.

For the applicability of Clause IV, there would have to be a finding of fact recorded before relief can flow is whether a part-time employee came through the employment exchange or not. The burden was on the State to show that the case of the plaintiff/respondent did not fall in the policy of the year 1999 and it has failed to discharge the onus resting on it to prove whether the plaintiff's name was sponsored by the employment exchange or not. Failure to discharge the onus will give rise to a presumption that the plaintiff's case falls in the Clause IV of the policy.

I do not know the reason why the appellant department has passed on and relied on the judgment of the Supreme Court in Civil Appeal Nos. 2726-2769 of 2014 titled as “Secretary to Government, School Education Department, Chennai v. Thiru R. Govindaswamy & others”, decided on February 21, 2014, which has no connection whatsoever with

the facts of this case. Both the State policies are different in style, form and content. Of course, the judgment may deal with regularization of part-time employees in the State of Tamil Nadu but the policy has no likeness to the policy in the case in hand. Each State is free to draw its own policies on regularization or not to, and one cannot be read universal to all the States of the Union. The case is clearly distinguishable on facts. Photocopy of the judgment is retained on record.

I have also examined the reasons for the delay of 91 days in approaching this Court. Only the stock defences have been taken of procedural delay without sufficient justification or causes of late coming in appeal. The appeal is thus liable to be dismissed by applying the law in Office of the Chief Post Master General & ors. v. Living Media India Ltd. & Anr., 2012(2) S.C.T.269.

As a result, this appeal is dismissed on three counts, one by virtue of the operation of the order dated May 08, 2017, secondly, for the reason that State has no case on merits and thirdly, the appeal has been filed belatedly without sufficient cause shown.

(RAJIV NARAIN RAINA)
JUDGE

25.05.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>