

HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 23575 of 2002

ORDER:-

This writ petition is filed seeking to declare the order dated 11.10.2002 passed by the 2nd respondent as null, void and inoperative and set aside the same, and consequently direct the respondents not to alter the date of regularization of the petitioner's services from 07.10.1985 to 07.10.1990.

Heard Sri J.M.Naidu, learned counsel for the petitioner and Sri N.Bhupal Reddy, learned counsel for respondent Nos.2 and 3 and perused the material placed on record.

The brief facts of the case are that the petitioner was appointed as Sweeper on 06.10.1985 after undergoing regular selection process conducted by the 1st respondent on 04.07.1985. Thereafter, her services were regularized by order dated 07.10.1985, and since then, she has been discharging her duties without any complaint. While so, the 2nd respondent, who is an incompetent person and lower authority than the 1st respondent, issued a Show Cause Notice on 09.04.2002 indicating as to why the date of regularization given to the petitioner way back in 1985 be altered to 07.10.1990. The petitioner submitted her explanation on 12.06.2002 objecting to the alteration of date of regularization, however the 2nd respondent passed the

impugned order dated 11.10.2002 altering the date of regularization of the petitioner from 07.10.1985 to 07.10.1990. Now, the petitioner's grievance is that apart from altering the date of her regularization from 07.10.1985 to 07.10.1990, the 2nd respondent is taking steps to recover excess payment made to her consequent upon erroneous orders of regularization. It is contended by the petitioner that recoveries from Class-III and Class-IV employees cannot be made in terms of the law laid down by the Supreme Court in *State of Punjab v. Rafiq Masih (White Washer)*¹ summarizing the following situations wherein recoveries by the employers would be impermissible in law:

- i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" Service).
- ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover".

¹ (2015) 4 SCC 434

The learned counsel for the respondents submits that as per the orders issued by the Government in G.O.Ms.No. 9 Finance & Planning (F.W. PRC.VI), dated 08.01.1981, the persons who have put in five years of service, are alone entitled to regularization of services, however the petitioner was appointed on 06.10.1985 and her services were erroneously regularized within one year with effect from 07.10.1985. The learned counsel further contends that the 2nd respondent is not inferior authority to the 1st respondent, and in fact, he is the Secretary of A.P. Social Welfare Residential Educational Institutions Society for the entire State and the 1st respondent - District Collector is the Chairman for the Schools in the District, therefore, the Secretary for the entire State is superior officer to the 1st respondent, as such, he has exercised powers to correct the orders passed by the District Collector, and accordingly, issued Show Cause Notice to the petitioner, and after giving opportunity, the 2nd respondent has rightly altered the date of regularization, and consequent thereupon, the excess amount paid to the petitioner should be recovered.

This Court, having considered the rival submissions of both the parties, is of the opinion that the services of similar situated persons, who are appointed along with the petitioners, were regularized after completion of five years of

services and no illegality has been committed by the 2nd respondent in altering the date of regularization from 07.10.1985 to 07.10.1990. So far as the contention that the excess amount paid to the petitioners cannot be recovered from the petitioner is concerned, the issue is squarely covered by the judgment of Apex Court cited supra. Since the petitioner belongs to Class-III category, the respondents cannot recover the excess amount paid to her.

To the extent indicated above, this writ petition is allowed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

ABHINAND KUMAR SHAVILI, J

28.08.2018

bcj

