

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

CWP-824-2013 (O&M)

Date of Decision: 23.01.2018

Surinder Kaur

... Petitioner

Vs.

Presiding Officer and others

... Respondents

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

Present : Mr. Arvind Galav, Advocate for the petitioner.

Mr. Avinit Avasthi, A.A.G. Punjab.

Mr. J.S. Toor, Advocate for respondent No.4.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 4.10.2012 (Annexure P-6).

Petitioner's brother one Shri Sunder Pal was Car Driver with the Municipal Council, Kharar. He died in motor vehicle accident on 30.5.1993. Municipal Council, Kharar, passed a resolution in appointing the petitioner on 28.6.1993. Municipal Council, Kharar, proceeded to pass a resolution for regularization of petitioner's services. The same was examined by the Director Local Government Punjab. While rejecting the proposal for regularization, it was directed Municipal Council, Kharar, to relieve the services of the petitioner with immediate effect. Thus, petitioner's services have been terminated which was the subject matter of reference decided by the Labour Court. Petitioner being aggrieved by the award passed by the Labour Court has filed the present petition.

Learned counsel for the petitioner submitted that order of termination is contrary to the initial appointment and resolution dated 28.6.1993. What was the subject matter before the Director Local

Government Punjab was the issue relating to regularization of the petitioner's services and not relating to relieving or terminating the services of the petitioner. In other words. Director was examining the issue relating to regularization. Thus, Director has exceeded his jurisdiction in directing the Municipal Council, Kharar to relieve the petitioner with immediate effect. The Labour Court failed to appreciate dates and events like appointing the petitioner by means of resolution and the termination is with reference to the issue relating to regularization. In other words, resolution dated 28.06.1993 to appoint the petitioner is either cancelled, modified or reviewed as on the date of termination of the petitioner. Thus, Director has exceeded his jurisdiction in directing the Municipal Council, Kharar to relieve the petitioner.

Per contra, learned counsel for the Municipal Council submitted that deceased Sunder Pal who was driver in the Municipal Council was a daily wager. Therefore, question of appointment on compassionate ground to the petitioner do not arise and the petitioner has not made out a case for appointment. It was also submitted that her appointment was contrary to the instructions issued by the Government as observed by the Director in the order dated 9.11.1998. Thus, the petitioner has not made out a case as she has no right to continue in the post held by her in view of the instructions issued by the Government read with the order passed by the Director dated 9.11.1998. Thus, there is no infirmity in the award passed by the Labour Court.

Heard learned counsel for the parties.

Crux of the matter in the present petition is whether order of appointment of the petitioner dated 28.6.1993 has not been

modified/cancelled/reviewed as on the date on which Director directed the Municipal Council, Kharar to relieve the services of the petitioner on 09.11.1998. What was the subject matter before the Director was relating to regularization of the services of the petitioner in view of the resolution passed by the Municipal Council, Kharar in the year 1995-96. No doubt petitioner's initial appointment may be contrary to instructions issued by the Government as noted by the Director in the order dated 9.11.1998 but issue which was presented before the Director by the Municipal Council, Kharar, is relating to regularization and not relating to the correctness of the petitioner's appointment or termination. Thus, Labour Court has failed to appreciate these factual aspects.

Accordingly, award passed by the Labour Court dated 4.10.2012 is set aside. Petitioner is entitled for reinstatement with consequential benefits including monetary benefits from the date of termination till reinstatement. Municipal Council, Kharar, is hereby directed to calculate monetary benefits from the date of relieving till reinstatement and disburse the amount within a period of three months from today. This order will not come in the way of respondent's to take necessary action if the initial appointment of the petitioner is not in accordance with law by issuing necessary notice and in accordance with law, if it is warranted.

With the above observation, petition stands allowed.

23.01.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**