

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

**CWP No. 7259 of 2015
Date of Decision:-09.10.2018**

Sunita

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present:- Mr. Surender Singh Dalal, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA J.(Oral)

Prayer in this writ petition is for issuance of a writ of certiorari for quashing the impugned order dated 09.4.2012 (Annexure P-7), issued by respondent No.2 and also impugned letter No.16 dated 18.5.2012 (Annexure P-8) issued on the directions of respondent No.2 to terminate the services of the petitioner as there is no sanctioned post of helper in the school and also the order dated 30.3.2015 (Annexure P-13) passed by respondent No.3 whereby services of the petitioner has been ordered to be dispensed with.

A cumulative reading of the appointment letter dated 29.01.2004 (Annexure P-4) and the order passed by the Head Teacher, G.G.P.S., S.S. Majra, Village Salimsar Majra, Sonapat reveals adjusting the

petitioner against the same position held by her mother-in-law Smt. Prem and the recommendation of the Headmaster of the same school made to the Block Education Officer, Sonapat vide memo No.69 dated 26.8.2011 confirming that the petitioner was working as Nursery Helper and was being paid fixed pay of Rs.100/- per month with the money drawn from the Government treasury. Having regard to the case of the petitioner, there is no doubt regarding the appointment of the petitioner and its validity and for making a case for permission to pay the minimum salary to the petitioner; and the fact that the appointment was made in 2004 with the permission of the Block Education Officer, Sonapat; and the order passed in CWP No.10561 of 2012 in the case of the petitioner herself, decided on 24.9.2014, it appears that the impugned order dated 31.3.2003 has the effect, prima facie, of annulling the directions of this Court. The operative part of the judgment and order in the aforesaid writ petition are reproduced below :-

“It appears that if the petitioner had not litigated, she may have continued to serve the respondent-Department in her previous capacity. Merely because the petitioner has approached this Court and was granted liberty to approach the Authority under the Minimum Wages Act (APW) claiming minimum wages fixed by the Deputy Commissioner of the District for the category of post, it would appear too harsh if the Government punishes her citing financial liability and throw her out of her means of livelihood on micro earnings. It is no sin to ask for minimum wages established by law or to approach the APW or this Court for succour nor should a citizen be punished for that reason. The Government should after

all ought always to act as a model employer.

This Court had stayed the operation of the impugned notice dated 18.05.2012 against proposed action that the petitioners services would automatically stand terminated after one month on 18.06.2012 on the ground that there is no sanctioned post of NTT Helper in Government Girls Primary School, Salimsar by taking resort to the Industrial Disputes Act, 1947. The petitioner had filed a reply to the show cause notice. She approached this Court in a writ petition in which she had pointed out that a post of Helper in the Nursery Branch of the said school had been sanctioned in 1977 and her mother-in-law Smt. Prem Kaur was appointed as Helper in 1977. The petitioner was engaged as a Helper on 29.01.2004 at Rs.100/- per day. Her effort to better her lot has resulted in adverse action against her.

Learned counsel for the petitioner points out to order No.1-2-75/415 dated 01.02.1977 issued by the Education Officer, Sonapat-II which appears to suggest that the post offered to Smt. Prem Kaur in the same school through the Employment Exchange on six months' basis with the condition that in case, a candidate is appointed or a confirmed employee is transferred to this post then her appointment will be considered as cancelled without any notice. If this is the position then the learned counsel for the petitioner may be true in his contention that the engagement of Smt. Prem Kaur was against a 'post'. If the petitioner has stepped into the shoes of her mother-in-law then she deserves the same protection at least to the extent that she should be continued in service and not replaced till such time as a regular recruit is inducted.

Heard the learned counsel for the parties and

perused the record with the able assistance of the learned counsel for the parties.

There appears to be merit in the submission of the learned counsel for the petitioner that the engagement of the petitioner was not against a post. If the post has continued since 1977 with or without break that may be reason enough to suggest that continuation of the post was not unlawful and that there may be deemed sanction involved especially looking to the duration of existence of the job.

Be that as it may, I think it would suffice to serve the ends of justice if the respondents would take up the matter sympathetically and consider the case of the petitioner for continuation as Nursery Helper in Government Girls Primary School, Salimsar Majra, Tehsil & District Sonapat (Haryana). The State would, therefore, also consider adjusting her in the arrangement till such time the final decision is not taken with respect to the engagement/post if there is continued need for such permanent help for little children in the school set in rural background.

With the aforesaid directions, trust and hope the writ petition stands disposed of.”

I may record that the word “not” used in the third last paragraph of the order was an accidental slip and clerical mistake as it would run counter to the reasoning in the preceding paragraphs that indeed Smt. Prem was appointed against a “post” vide order No.1-2-75/415 dated 01.2.1977. Accordingly, the observation in the impugned order that the petitioner's services are no more required to be continued in the school without any substantive post is contrary to record. In the service rules there

is hardly any difference between “post” and a “substantive post”. Besides, the impugned order does not refer to the recommendations made by the Headmaster vide order dated 26.8.2011 (Annexure P-14). Annexure P-14 has been placed on record by the petitioner through his replication, which has not been rebutted by the State. If the petitioner drew her wages from the Government treasury then it is also becomes a concluded fact that the post was duly sanctioned and was not just a local arrangement to employ a Nursery Helper to care for the children attending the school.

There was also a direction in the petitioner's case in CWP No.10561 of 2012 that the State would also consider adjusting here in the arrangement till such time the final decision is not taken with respect to the engagement/post. If there is continued need for such permanent helper to look after the children in school, said to be located in the rural background, thus, the impugned order does not address itself to the continuing need of work and bye-passes the issue by a vague observation that her services are no longer required.

If an arrangement has continued since 1977, may be, from the mother-in-law of the petitioner Smt. Prem and that the petitioner replaced her mother-in-law with the consent of the District Education Officer, Sonapat then I have no reason to discard the case out of hand. It matters little if the services of the petitioner were retrenched/terminated with the passing of the impugned order on 30.3.2015 against which she was helpless except to approach this Court in the present writ petition.

Reference to the judgment of the Supreme Court in **State of Karnataka vs. Uma Devi and others 2006(4) SCC 1** in the impugned

order appears inappropriate as the dispute only began when her services were sought to be terminated which compelled her to approach this Court in the previous writ petition in which she obtained stay orders on 29.5.2012. The petitioner could not have been punished for being compelled to approach the authority under the Minimum Wages Act claiming minimum wages fixed by the Deputy Commissioner of the District for the category of the post. The petitioner appears to have been punished only for obtaining an order from the authority under the Minimum Wages Act to pay her Rs.4348/- instead of Rs.100/- per month.

For the reasons recorded above, this petition is allowed and the impugned order dated 30.3.2015 (Annexure P-13) is set aside. The petitioner will be reinstated in service with consequential benefits flowing therefrom.

October 09, 2018
Vijay Asija

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No