

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

**CWP NO. 6663 OF 1995
DATE OF DECISION : 13.03.2019**

Paramjit Kaur

...Petitioner

versus

The State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. B. S. Patwalia, Advocate,
for the petitioner.

Mr. Abhay Pal Singh, AAG, Punjab.

ARUN MONGA, J. (ORAL)

1. The present petition has been filed, inter-alia, seeking issuance of writ in the nature of certiorari, to quash the impugned orders dated 24.04.1995 (Annexure P-12), whereby, the representation of the petitioner for regularization was rejected and services of the petitioner terminated.

2. Brief facts of the case are that the petitioner was appointed as Clerk on daily wages on 24.11.1986 with the Punjab School Education Board, Mohali (hereinafter referred to as "the Board"). She worked there till 23.02.1987. Thereafter the term of petitioner was extended and she worked upto 14.08.1987. The services of petitioner were terminated on 15.08.1987 without

giving any show cause notice. The persons junior to the petitioner were retained in service.

3. The petitioner served demand notice dated 14.10.1991 (Annexure P-2), under Section 2-A of the Industrial Disputes Act. On 05.06.1992, petitioner filed a Statement of Claim before the Presiding Officer, Labour Court, Patiala. The petitioner in the meanwhile was reappointed on 08.07.1993 as Clerk on ad hoc basis for 89 days but later on her term was extended. The Labour Court passed an Award dated 19.03.1994 (Annexure P-5), wherein, it was held that since the petitioner had been reappointed on 08.07.1993, the petitioner does not press the reference and it was accordingly dismissed.

4. The petitioner made a representation dated 25.04.1994 (Annexure P-6) to the respondent regarding her regularization on the post of Clerk. To be noted that this Court, in CWP No.1046 of 1994, held that all the vacancies existing in the Board should be filled up on regular basis. Notwithstanding, petitioner was not given benefit of regularization. The petitioner was compelled to file CWP No. 15441 of 1994, wherein, directions were given to the respondent Board vide order dated 28.10.1994 (Annexure P-7), to decide the representation filed by the petitioner and it was also ordered that till then services of the petitioner shall not be terminated. Despite the said order, services of petitioner were terminated. She challenged the said order dated 30.01.1995 by filing yet another CWP No.2355 of

1995. During the pendency of said writ petition, the order dated 30.01.1995 was withdrawn.

5. The main ground, as pleaded in the written statement, to justify the impugned order, vide which service of the petitioners were dispensed with, is that she did not appear in the type test while serving as a Clerk.

6. I have perused the speaking order dated 24/25.04.1995 (Annexure P-12), wherein the same ground has been taken in a more elaborate manner. To my mind, the justification given therein is devoid of any merit. The same flies in the face of Rule 10 of the Punjab Civil Secretariat (State Service Class III) Rules, 1976, relevant part whereof is extracted herein below :

"10. Members of the service shall be entitled to such scales of pay including special pay, as may be sanctioned by Government from time to time. The scales of pay and special pay at present, in force, in respect of specified posts are given in Appendix 'A'.

Provided that notwithstanding anything to the contrary contained in Rule 7, a clerk shall not be allowed to draw his annual increment for so long as he does not pass the departmental test in Punjabi/Hindi/English typewriting at a speed of 30 words per minute. However, on his passing the test he will be allowed to draw his annual increments from due date but he will not be paid arrears for the period from the date on which the increments fell due to the date of the test in which he qualifies."

7. A perusal of the above Rule clearly shows that in the worst case scenario, the petitioner could have been held disentitled for annual increments until clearance of type test examination. The impugned order is, therefore, in violation of Rule 10, *ibid*, and is liable to be set-aside.

8. Even otherwise, learned counsel for the petitioner has drawn my attention to an office order dated 30.12.1992 (Annexure P-15), passed by the respondent-PSEB, wherein, as many as 12 officials were granted exemption from passing the type test examinations. Even though an innocuous caveat has been added that, the exemption, so granted, will not be treated as precedent for future. Such an unfettered and absolute discretion as exercised by the respondent-PSEB is highly deprecable. The same is in violation of Article 14 read with Article 16 of the Constitution of India.

9. Learned counsel for the appellant has also drawn my attention to instances of those persons who have been given exemptions, even though appointed on a later date than the one when the petitioner was originally appointed as Clerk on daily wages on 24.11.1986.

10. The next argument put forth by the learned counsel for the petitioner is that if the order of termination is set-aside, the petitioner as a consequence thereof, is entitled for benefit of regularization with effect from her original date of appointment i.e 24.11.1986. While I am in agreement with the argument that

the petitioner is entitled for regularization, however, the contention of learned counsel that the petitioner is entitled to be regularised from the very original date of appointment is misplaced in view of the fact that she only served for less than a year on daily wages when her services were terminated on 15.08.1987. Thereafter, the petitioner was once again appointed on 19.03.1994 on ad hoc/daily wages. Her services were terminated again on 1995, which is subject matter of the present writ petition.

11. A perusal of the prayer, as also the averments in the writ petition, reflects that prayer is only with regard to quashing of the impugned order vide which services of the petitioner were terminated.

11 In view of my discussion and reasons contained therein, the writ petition is allowed. The impugned order dated 24.04.1995 (Annexure P-12), is set-aside, with direction to respondents to give to the petitioner consequential benefits with effect from the date of her entitlement, in accordance with law.

(ARUN MONGA)
JUDGE

MARCH 13, 2019
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Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No