

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

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Regular Second Appeal No.1096 of 2018 (O&M)
Date of Decision: July 23rd, 2019

Smt. Sushila Devi

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Aditya Yadav, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.2725-C of 2018

Prayer in this application is for condonation of delay of 55 days in filing the appeal.

For the reasons mentioned in the application, which is supported by the affidavit of applicant-appellant Sushila Devi, the same is allowed.

Delay of 55 days in filing the appeal stands condoned.

CM No.2726-C of 2018

Prayer in this application is for exemption from filing the certified/typed copies of impugned judgment and decree passed by trial Court and grounds of appeal.

Application is allowed subject to just exceptions.

Exemption, as prayed for, is granted.

RSA No.1096 of 2018

Challenge in this appeal is to the judgment and decree dated 02.01.2016 passed by the Civil Judge (Junior Division), Rewari, whereby the suit for declaration to the effect that the order dated 10.09.2014

unjust and against the principle of natural justice and with a mandatory injunction for reinstatement in service without any service break with full back wages and emoluments and regularizing the services as per the Government of Haryana Policy along with interest at the rate of 24% on the delayed payment, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the District Judge, Rewari, on 20.05.2017 upholding the judgment passed by the trial Court.

2. It has been asserted by the counsel for the appellant-plaintiff that the appellant was appointed as a part-time Sweeper against sanctioned post through Employment Exchange on 06.06.1995 and she joined the respondent-department on the same date. She had been continuing to serve the respondents till her termination on 11.09.2014 after a period of 19 years. Assertion has been made that the appellant has been discriminated as persons, who had been appointed subsequent to the appellant, have been adjusted in various departments, whereas the appellant has not been granted such benefit. That apart, it has been asserted that as per the policy instructions dated 29.07.2011 of the Government of Haryana, appellant was entitled to regularization of her services as she fulfilled the requisite qualifications for regularization. Counsel for the appellant has very fairly conceded that no names were mentioned by the appellant-plaintiff in the civil suit as she was not aware of the same, however, he has placed reliance upon the cross-examination of DW-1 Ranjit Singh, who had admitted in his cross-examination that except for the appellant-plaintiff, all other employees of the department have been adjusted against regular post including the part-time employees. He asserts that this establishes the factum of discrimination vis-a-vis the appellant-plaintiff and, therefore, the action of

the respondents cannot sustain.

3. As regards claim of regularization is concerned, it is asserted that since the conditions of the policy of the year 2011 had been fulfilled by the appellant-plaintiff, her services were liable to be regularized. Prayer has thus been made for setting aside the impugned judgments and decreeing the suit of the appellant-plaintiff.

4. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

5. It is not in dispute that the appellant-plaintiff had been appointed on part-time basis for a period of two hours per day as per the rate fixed by the Deputy Commissioner, Rewari, through the Employment Exchange but there is nothing on the record which would indicate that the appellant-plaintiff had been appointed against a regular sanctioned post. Merely because sanction has been received by the department on yearly basis for continuation of work to be taken as a Sweeper for a period of two hours per day and that too on part-time basis at the wages to be fixed by the Deputy Commissioner, the same cannot be termed as a regular post. In the absence of this fact coming on record that there was a regular sanctioned post against which the appellant had been appointed, policy of regularization dated 29.07.2011 would not apply to the case of the appellant-plaintiff as she would not be fulfilling this condition of eligibility for regularization of her services.

6. As regards the contention of learned counsel for the appellant that the appellant-plaintiff was entitled to retention in services because persons junior to her have been retained, suffice it to say that names of none

of the persons, who were similarly appointed as the appellant-plaintiff and were working as part-time Sweeper, sanction for whom was received every year on part-time basis, have come on record. A vague assertion or admission on the part of departmental official in the cross-examination cannot be made the basis for coming to a conclusion that there was violation of Article 14 of the Constitution of India or there was hostile discrimination vis-a-vis the appellant. The observations of the Courts below, therefore, on this aspect also, cannot be faulted with.

7. It would not be out of way to mention here that the termination of the services of the appellant were primarily because of the closure of the office, where she had been working with the respondents. If the office itself had been closed, the services of the appellant were rightly not required and since the appointment was contractual in nature, her services have been terminated as per the contract.

8. In view of the above, there being concurrent findings recorded by the Courts below, which are based upon proper appreciation of the pleadings and the evidence on record, no interference by this Court is called for in this appeal.

9. Finding no merit in the present appeal, the same stands dismissed.

July 23rd, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No