

CWP No.5696 of 2020

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

CWP No.5696 of 2020

Date of Decision: 2nd March, 2020

Sonia

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Harinder Sharma, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the memo dated 07.09.2017 (Annexure P-6) issued by the Director, Department of Rural Development and Panchayat, Punjab – respondent No.2, vide which, in response to the letter dated 28.07.2017 (Annexure P-5) submitted by the Executive Officer, Panchayat Samiti, Sirhind, seeking guidance with regard to continuance of the services of the petitioner as Steno-typist in Panchayat Samiti, Sirhind, at D.C. rates after the appointment of Ms. Harman Kaur daughter of Shri Kuldeep Singh, who had been appointed as Steno-typist in the office of Block Development and Panchayat Officer on regular basis, vide endorsement No.18.10.2016, which post she had joined on 20.10.2016 leaving no sanctioned post of Steno-typist in the office of the Executive officer, Panchayat Samiti, Sirhind, for seeking continuance of the services of the petitioner was declined with a direction to terminate her services and order dated 11.09.2017 (Annexure P-7), whereby the Executive Officer,

Panchayat Samiti, Sirhind – respondent No.5 relieved her from duty.

2. It is the contention of the learned counsel for the petitioner that the petitioner possesses the qualification for appointment to the post of Punjabi Steno-typist. As computer and typing work in the office of the Executive Officer, Panchayat Samiti, Sirhind, including the receipt and despatch of Dak from the said office to the higher authorities was suffering, petitioner was called upon to do the said work, which she carried out without any remuneration and salary. Petitioner continued to work till her appointment against the sanctioned vacant post in the office of the Block Development and Panchayat Officer, Sirhind – respondent No.4. An unanimous resolution was passed by the Panchayat Samiti, Sirhind in its meeting dated 25.03.2011 (Annexure P-1) to the effect that approval be obtained from the Director, Rural Development and Panchayat Department, Punjab – respondent No.2 for appointment of Punjabi Steno-typist on temporary basis at D.C. rates in the office of the Panchayat Samiti, Sirhind, from its own funds. The Executive Officer sent the case of the petitioner along with the resolution dated 25.03.2011 (Annexue P-1) to the Director, Rural Development and Panchayat Officer, Punjab – respondent No.2 for approval on the same date.

3. On consideration of the case of the petitioner, approval was granted for appointment of the petitioner against the vacant post in the office of the Block Development and Panchayat Officer, Sirhind, on temporary basis at D.C. rates with a condition that the funds for payment of the salary would be made available by the Panchayat Samiti, Sirhind.

Another condition which was imposed was that the continuance of this post in future would be the domain of the Director, Panchayats. In pursuance to the said approval, petitioner was issued the appointment letter vide communication dated 13.06.2011 (Annexure P-4). It is mentioned categorically in the said appointment letter that her services shall be purely temporary and continuance of the said post would be within the rights of the Director, Panchayats.

4. Petitioner continued as such till 20.10.2016 when one Harman Kaur daughter of Shri Kuldeep Singh was appointed as Steno-typist against the vacant post in the office of the Block Development and Panchayat Officer, vide order dated 18.10.2016. This led to the reference being made by the Executive Officer, Panchayat Samiti, Sirhind – respondent No.5 to the Director, Rural Development and Panchayat Department, Punjab, on 28.07.2017 (Annexure P-5). It was stated therein that no post of Steno-typist is sanctioned to the office of the Executive Officer, Panchayat Samiti, Sirhind and she was appointed against the post of Steno-typist lying in the office of the Block Development and Panchayat Officer, as per the approval of the Director. Advice was sought with regard to the continuance of her services.

5. In response thereto, a communication dated 07.09.2017 (Annexure P-6) was received from the Director, Rural Development and Panchayat Department, Punjab – respondent No.2 that the petitioner, who was working on temporary basis, need to be relieved as there is no post against which she can continue as the post of Steno-typist has been filled-up

through the Punjab Subordinate Staff Selection Board on regular basis on the joining of Ms. Harman Kaur. It is, in pursuance thereto that the relieving order of the petitioner from duty was passed on 11.09.2017 by the Executive Officer, Panchayat Samiti, Sirhind, which has been challenged by her through the present writ petition.

6. The ground that has been taken by the petitioner challenging the impugned order is that her services should have been considered for regularization in the light of the notification dated 18.03.2011 (Annexure P-8) of the Personnel Department, wherein, it is stated that on completion of three years service although on contract basis but against the regular post and possessing prescribed qualifications/eligibility be regularized w.e.f. 01.04.2011 or on completion of three years of service, whichever is later, his/her services are required to be considered for regularization. He, thus, contends that the respondents should have regularized her services. Reference has also been made by placing reliance upon the Punjab Ad hoc, Contractual, Daily Wage, Temporary, Work Charge and Outsourced Welfare Act, 2016 (hereinafter referred to as '2016 Act'), where again the services of the employees of these categories are to be considered for regularization. On this basis, it is asserted by the counsel for the petitioner that the claim of the petitioner having not been considered by the respondents for regularization, the order of termination/relieving cannot sustain and deserves to be set aside.

7. I have considered the submissions made by the learned counsel for the petitioner and with his assistance have gone through the pleadings

and the records but do not find myself in agreement with the claim as put forth by him.

8. Firstly, the appointment of the petitioner was made in the Panchayat Samiti, Sirhind, against the post of Punjabi Steno-typist lying vacant in the office of the Block Development and Panchayat Officer and it is not in dispute that there is no such post available in the office of the Block Development and Panchayat Officer, Sirhind and it is also admitted that there is no such post of Punjabi Steno-typist in the office of the Panchayat Samiti, Sirhind. It is also admitted and is apparent from the recommendation of the Executive Officer, Panchayat Samiti, Sirhind, dated 23.05.2011 (Annexure P-2) to the Director, Department of Rural Development and Panchayat, Punjab that the appointment of the petitioner was on purely temporary basis from the funds which were to be generated by the Panchayat Samiti, Sirhind. It has also not come on record that the post was ever advertised or there was a selection for the said post. What is apparent from the pleadings is that she started working with the Panchayat Samiti, Sirhind, voluntarily.

9. The approval which was granted by the Director, Rural Development and Panchayat Department, Punjab, for appointment of the petitioner as Steno-typist was on purely temporary basis against a post, which was available in the office of the Block Development and Panchayat Officer, from the Panchayat Samiti funds at D.C. rates. The said appointment did not confer any right on her as it was clearly mentioned that she would have no right to continue on the said post in future and the

continuance of the said post shall also be at the discretion of the Director, Panchayats. This is apparent from the appointment letter of the petitioner dated 13.06.2011 (Annexure P-4).

10. The post against which the petitioner was working as a Steno-typist stood filled-up by appointment of Ms. Harman Kaur, vide order dated 18.10.2016 and in pursuance whereof, she joined the duties on 20.10.2016 leaving no post against which the petitioner could have worked. The Executive Officer, Panchayat Samiti, Sirhind – respondent No.5 sought advice with regard to the continuance of the services of the petitioner. It was clarified that there is no sanctioned post of Steno-typist in Panchayat Samiti and if the petitioner has to be continued, the sanction has to come from the Government for such continuance. The said proposal/advice was responded to vide communication dated 07.09.2017 (Annexure P-6) in the negative by observing that the post of Steno-typist in the office of the Block Development and Panchayat Officer, stands filled through the Punjab Subordinate Staff Selection Board and therefore, the services of the petitioner was required to be terminated as her appointment was on temporary basis leading to the order of relieving her on 11.09.2017 (Annexure P-7) by Panchayat Samiti, Sirhind – respondent No.5.

The services of the petitioner being terminated in accordance with her appointment letter, thus, in itself cannot be said to be illegal.

11. The plea which has been taken by the counsel for the petitioner is that the claim of the petitioner was required to be considered for regularization of her services, which plea was never taken by the petitioner

before the respondents either in pursuance to the instructions dated 18.03.2011 (Annexure P-8) or as per the 2016 Act, prior to her termination. It may be added here that it is not the case where after the termination of the services of the petitioner, someone else would have appointed against the said post leading to her replacement by other contractual employee.

12. Counsel has very fairly admitted that as of now, none is working on the post of Punjabi Steno-typist in Panchayat Samiti, Sirhind. He, however, contends that the said instructions and the 2016 Act would entitle her to regularization of her services, which claim of the petitioner cannot be accepted firstly in the light of the fact that the petitioner has approached this Court at a belated stage. Secondly, the instructions and the 2016 Act are applicable to the employees who are in service. Unfortunately, the petitioner is not in service. Thirdly, the 2016 Act has been kept in abeyance as per the statement given by the counsel for the State before the Division Bench of this Court, where the vires of the said Act have been challenged and therefore, the benefit of the 2016 Act cannot be granted to the petitioner as of now.

13. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

2nd March, 2020

Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No