

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

CWP No.26171 of 2015 (O&M)

Date of Decision: 27.01.2020

Rajpal

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ram Niwas Sharma, Advocate,
for the petitioner.

Mr. Randhir Singh, Advocate,
for respondent-State.

RITU BAHRI, J. (ORAL)

CM No.17484-CWP of 2018

The application is for impleading the LR of deceased Rajpal, who is stated to have expired on 22.09.2018.

For the reasons mentioned in the application, supported by an affidavit, applicant-Ram Ratti widow of Rajpal, is impleaded as legal heir of deceased petitioner-Rajpal.

Misc. application stands allowed.

CWP No.26171 of 2015

Petitioner is seeking quashing of the order dated 19.01.2015 (Annexure P-3) to the extent of imposing the condition of fresh appointment as well as denial of seniority.

Rajpal-petitioner filed a civil suit against his termination order dated 14.09.2001, which was decreed vide judgment dated 20.03.2013 (Annexure P-1) passed by the trial Court. A perusal of this judgment shows

that the petitioner was appointed as part-time *Kahar* (Water Carrier) on 06.07.1988 at Govt. Middle School, Sotha (Hisar). Thereafter, vide order dated 22.07.1991, he was appointed as Class-IV employee i.e. Peon-cum-Chowkidar on regular basis in the pay scale of 750-12-870-EB-14-940 plus usual allowances. On 15.07.1999 and 24.05.2000, he made complaints against some teachers, who had got drunk in the school premises and fought with him. But, no action was taken thereon, however, a charge sheet was issued to the petitioner on 19.09.2000 with the allegations that he had misbehaved with the teachers, disobeyed the order of Head Master and had given away the pair of school doors to one Hoshiyar Singh. He also received a notice dated 27.02.2001 that he had submitted a false experience certificate at the time of getting regular appointment and had tampered with the Govt. record. Thereafter, an enquiry officer was appointed, who gave his report dated 10.07.2001. Plaintiff was served a shows cause notice dated 21.08.2001 calling upon him to submit reply to the findings of the enquiry report. Finally, the services of plaintiff were terminated vide order dated 14.09.2001. He challenged the termination order by filing the above said suit, which was decreed and order terminating his services was set aside. He was not given the back wages on the principle of 'no work no pay.' However, consequence of joining of service has to follow and liberty was granted to the department to conduct a fresh enquiry against the petitioner. Appeal against this judgment was dismissed by the District Judge, Hisar, on 15.04.2015 (Annexure P-2). Vide order dated 19.01.2015 (Annexure P-3), petitioner was reinstated in service, but was not given the benefit of seniority for the previous service. He was to be treated as a fresh candidate.

This order has been challenged by the petitioner by filing this petition.

During the pendency of this petition, petitioner stood retired on 31.03.2017. Unfortunately, he expired on 22.09.2018. Thereafter, widow of petitioner namely Smt. Ram Ratti filed an application i.e. CM No.17484 of 2018 for impleading herself in the petition being legal heir petitioner.

Upon notice, written statement on behalf of the respondents has been filed, wherein they have resisted the claim of the petitioner.

Learned State counsel has argued that vide judgment dated 20.03.2013 (Annexure P-1), benefit of back wages was not granted to the petitioner. Petitioner was reinstated and the department has implemented the said judgment by offering him appointment as a fresh appointee. He further argued that petitioner has no right to claim seniority of the service rendered by him w.e.f. 22.07.1991 till the date of decree.

This argument is liable to be rejected on the ground that the petitioner was regularly appointed as Peon-cum-Chowkidar on 22.07.1991. His termination order dated 14.09.2001 was set aside by the trial Court vide judgment dated 20.03.2013 (Annexure P-1) by observing that the enquiry was not conducted in accordance with the rules of the department and he had been wrongly terminated from service. While deciding issue No.2, trial Court has observed that since the plaintiff (petitioner herein) had not worked during the period of trial, he was not entitled to any wages on the principle of 'no work no pay'. But, since the enquiry, upon which he was dismissed from service, had been set aside and the subsequent orders passed by the appellate authority dismissing from service were set aside, the consequence of his joining of service has to follow.

Another fact, which learned State counsel is not disputing, is that after decree of the suit and dismissal of the appeal by the District Judge,

no fresh enquiry was initiated against the petitioner. Hence, the department has accepted that the enquiry proceedings resulting into the termination of the petitioner, who was a regular employe, were wrongly initiated. As per judgment dated 20.03.2013 (Annexure P-1) passed by the trial Court, petitioner had to be reinstated with continuity of service without back wages. Therefore, the stand taken by the respondents is rejected.

In view of the above discussion, present petition is allowed and a direction is given to the respondents to treat the petitioner (Rajpal) as a regularly appointed peon w.e.f. 22.07.1991 till the date of his superannuation i.e. 31.03.2017 and grant him all the consequential benefits in accordance with law. The respondents will also grant him pension w.e.f. 31.03.2017 and thereafter, family pension to his widow namely Ram Ratti with effect from the date of death of petitioner i.e. 22.09.2018 along with interest at the rate of 8% per annum. This exercise will be completed within a period of three months from the date of receipt of certified copy of this order and compliance report thereof, be sent to this Court.

(RITU BAHRI)
JUDGE

27.01.2020
ajp

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No