

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.25226 of 2016 (O&M)

Date of decision :02.03.2020

Santosh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE Ms. JUSTICE RITU BAHRI

Present:- Mr.Ashok Tyagi, Advocate, for the petitioner.

Mr.Hitesh Pandit, Additional A.G.Haryana.

RITU BAHRI, J. (ORAL)

CM No.4250 of 2019

This application has been filed under Order 22 Rule 3 and Section 151 of CPC read with Rule 2 of Chapter 1, Part C, Vol. 5 of High Court Rules for bringing LRs of the deceased-petitioner on record.

Application is allowed and legal representatives of the petitioner-Santosh who has expired on 25.12.2018 mentioned at para No.2 of the application are ordered to be impleaded as a party.

Application stands allowed.

Main Case

Petitioner is challenging the order dated 27.01.2015 (Annexure P-5) whereby services of Beldar-Smt.Santosh wife of Shri Jai Lal has not been regularized keeping in view that she does not possess the requisite qualification as middle pass as per government order.

In the impugned order (Annexure P-5), it has further been observed that the petitioner-Santosh Devi wife of Shri Jai Lal was engaged on muster roll as daily wages in January, 1989. In the written statement, the

stand taken by the respondents is that petitioner was engaged on muster roll in the year 1989 and this order does not show that there is any break in service. The only ground has been taken for rejection of her regularization that she does not fulfil the middle class qualification. In the written statement, the only ground for rejection of her regularization has been mentioned that she does possess the qualification of Middle Pass and her services could not be regularized.

As per para 2 and 3 of the writ petition it is mentioned that services of the petitioner were terminated on 01.09.1996 and as per Labour Court Award dated 27.10.2005, she was held entitle to reinstatement with continuity of service and 50% of back wages. The Department challenged the said award before the High Court by filing CWP No.16742 of 2006 but the the same was dismissed vide order dated 03.11.2006. Thereafter, she filed CWP No.16113 of 2006 before this Court and only then when the petitioner was taken back in her services and hence the continuity has to be taken as per date reflected in Annexure P-5. With regard to labour Court Award as stated in paragraph-3 of the writ petition, the respondents are not denying this fact. However, they are insisting the petitioner was not engaged in March, 1989.

Keeping in view the Labour Court Award I am of the opinion that, Even if, petitioner's date of engagement in March, 1989, she has continuity of service when a case was rejected vide impugned order Annexure P-5 dated 27.01.2015.

The Supreme Court has clarified with respect to the objection in the impugned order that petitioner is not qualified. The Supreme Court has

of Haryana 2002(2) SLR 470 and Des Raj Vs. State of Haryana and Others 2003(4) SCT 264 in which this issue has already been attained finality that a person has been serving for more than 25 years, regularization cannot be denied on the ground that he is not qualified for the post as experience in itself is sufficient to overcome the qualification issue.

Learned counsel for the State has referred to an order dated 02.09.2017 (Annexure R-1) whereby an LPA Bench has held that the impugned policy runs contrary to the mandate of the Constitutional Bench judgment in the **Yogesh Tyagi and another Vs. State of Haryana** and stayed the regularization of services of the employees under the said policy working till the final decision of the writ petition. The Division Bench had set aside the regularization policy 14.06.2018 and the State has gone in SLP. However, the policy of 14.06.2018 is not applicable in the case of the petitioner and petitioner's case has to be considered as per policy dated 10.10.2003. Keeping in view the Award of the Labour Court was answered in favour of the petitioner on 27.10.2005, the writ petition is decided in favour of the petitioner.

In view of the above, present writ petition is allowed and petitioner is held entitled for regularization of her service in view of the 01.10.2003 policy. The respondent-State is directed to pass appropriate order in this regard with all consequential benefits within one month from the date of receipt of this order with a costs of Rs.50,000/-.

02.03.2020
anil

(RITU BAHRI)
JUDGE

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Whether speaking/reasoned = Yes/No.
Whether reportable= Yes/No.