

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(211)

CWP No. 4144 of 2016

Date of Decision : 13.12.2022

Sunita

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Johan Kumar, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

In the present petition, the grievance of the petitioner is that the petitioner, who is working with the respondent-department since the year 1995 and her services were regularized by the respondents, was sought to be de-regularized by the impugned order dated 11.02.2016 (Annexure P-4) on the ground that the petitioner was appointed in the year 1998 and not in the year 1995 so as to become eligible under the Regularization Policy of the year 2003, according to which, six years service was required for consideration for regularization of the services.

As per the facts mentioned in the petition, the petitioner was appointed as a part time Sweeper in Government Primary School, Mandkola, District Palwal. Petitioner kept on working when the respondents had issued a Policy in the year 2003 for regularization of Class-IV employees, who are working on part time basis. As per the said Policy

dated 11.11.2003 (Annexure P-6), a Class-IV employee is entitled for regularization of his/her services in case, he/she has completed six years service upto the date of issuance of the said Notification and the services were to be regularized against the regular sanctioned post on the basis of the seniority of the Class-IV employees.

Keeping in view the Instructions dated 11.11.2003 (Annexure P-6), the services of the petitioner were regularized by the respondents by passing order dated 25.08.2014 (Annexure P-1). Petitioner continued working as a regular employee when on 04.02.2016, the petitioner received a letter from the respondents proposing to de-regularize her services on the ground that the initial date of appointment of the petitioner is 30.09.1998 and not 31.12.1995 and, therefore, as the petitioner did not had six years service on the date of issuance of the Notification dated 11.11.2003 (Annexure P-6), the petitioner was not entitled for regularization of her services. The respondents asked the petitioner to prove her assertion that she was appointed on 31.12.1995, failing which, her services will be de-regularized.

The petitioner challenged the said order dated 11.02.2016 (Annexure P-4) that the action of the respondents in proposing to de-regularize the services of the petitioner is bad and asking the petitioner to support her claim that she was appointed on 31.12.1995 is also bad as all the record of the service of the petitioner is with the respondents themselves.

While issuing notice of motion, the respondents were restrained from de-regularize the services of the petitioner. The respondents have filed the reply in which, they have stated that the date of appointment of the

the department in proposing the de-regularization of the services of the petitioner is perfectly valid and legal. Along with the reply, the respondents also attached a seniority list of part-II employees, who were working as on 30.06.2003 as Annexure R-1 giving the details of their date of initial appointment. As per the respondents, though in the seniority list, the date of appointment of the petitioner has been mentioned as 31.12.1995 but the same was found to be incorrect.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Petitioner is an illiterate lady working on a Class-IV post as a Sweeper. The petitioner has raised her claim for regularization of her services on the basis of the Instructions dated 11.11.2003 (Annexure P-6), which prayer was accepted by the respondents on the basis of the seniority list appended by the respondents themselves as Annexure R-1, wherein the date of appointment of the petitioner has been depicted as 31.12.1995. Once, the respondents have prepared a seniority list in which the date of appointment of the petitioner has been mentioned as 31.12.1995, nothing has come on record as to on what basis, the respondents are treating the said date of appointment as incorrect.

Further, the respondents are asking the petitioner to substantiate her claim that she was appointed on 31.12.1995. Petitioner being an illiterate lady and working on a Class-IV post, cannot be made to respond to a letter/supply a record, which is already in possession of the respondents. Nothing has come on record to show that the seniority list prepared by the respondents themselves, a copy of which has been appended

as Annexure R-1, is contrary to the record. In case, in 2003, a seniority list

was prepared, it is presumed that the said seniority list is based upon the record available with the respondents themselves. Once, the presumption of a document arises to be a correct, the same can only be treated as incorrect in case, valid record is produced before the Court to negativate the said presumption.

In the present case, no record has been produced before this Court to negativate a presumption, which has been recorded in the seniority list prepared by the respondents themselves to show that the petitioner was appointed on 31.12.1995. Keeping in view the said, asking for a document from the petitioner contrary to the presumption, cannot be allowed to operate.

Keeping in view the above, once the seniority list prepared by the respondents depicts that the petitioner was appointed on 31.12.1995, which seniority list has already been acted by the respondents, no ground is made out to allow the respondents to act against the said seniority list and that too without any valid justification.

Keeping in view the above, the regularization of the services of the petitioner is held to be valid, which is based upon the seniority prepared by the respondents themselves. Accordingly, the impugned order dated 11.02.2016 (Annexure P-4) is set-aside and the petitioner be treated as regular employee for all intents and purposes.

Petition is allowed in above terms.

December 13, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No