

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

LPA No. 1694 of 2017 (O & M)
Date of decision: 17.08.2022

The Municipal Corporation, Faridabad and another

....Appellant(s)

Versus

Sarvesh and another

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Deepak Sabherwal, Advocate,
for the appellants.

Mr. Pankaj Maini, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

CM-3654-LPA-2017

Application has been filed for condonation of delay of 129 days
in filing the appeal.

Keeping in view the averments made in the application duly
supported by affidavit of the official of the appellant-Corporation,
application is allowed. Delay of 129 days in filing the appeal is condoned.

CM stands disposed of.

LPA No. 1694 of 2017

The present letters patent appeal is arising out of the order
passed by the learned Single Judge dated 21.02.2017 in CWP No. 6379 of
2016, Sarvesh and another vs. The Municipal Corporation and another and
the review order dated 03.07.2017 wherein, the date of the regularization of
the first petitioner namely Sarvesh was corrected to be read as 22.08.2014.

In principle, the learned Single Judge has directed the appellant-Corporation herein to consider the claim of the second writ petitioner namely Sumantra for the purposes of regularization on the ground that she was not aware of the various provisions of law governing the post of Safai Karamchari and other related service conditions. Resultantly, the learned Single Judge, apart from directing consideration of the case of Sumantra, also directed that the first petitioner namely Sarvesh would also continue to discharge her duties to the post of Safai Karamchari and if any arrears of salary is to be paid, the same will also be paid within three months.

A perusal of the writ petition would go on to show that apparently the first writ petitioner Sarvesh had already been granted the benefit of regular appointment on 22.08.2014 (Annexure P-1) as a Sweeper w.e.f. 01.07.2014 and thus in such circumstances, the learned Single Judge had not granted any specific directions qua the said writ petitioner. The directions were issued qua the second writ petitioner Sumantra only on account of the fact that she had not put in appearance on 19.08.2014 in pursuance of the advertisement dated 13.08.2014. The said offer was given to the candidates who were working for 10 years with the Municipal Corporation, Faridabad on various Class-IV posts. It is not disputed that she had filed the representation immediately thereafter on 30.08.2014 (Annexure P-3) wherein, she had stated that she was working on the post of the sweeper since 1996-97 and asked to be considered as such.

In the reply filed before the learned Single Judge also, the factum of representation being submitted is admitted and there is no denial regarding the fact that no action as such has been taken on the same. It is

Haryana in December, 1996. On account of that the Corporation had employed the writ petitioners as per instructions of the State Government on regular basis from the open market. The striking employees were, however, taken back and on account of that, retrenchment was done on 11.01.2001 under the Industrial Disputes Act, 1947 of the writ petitioners. Thereafter, the Government took a decision on 22.12.2011 to take the retrenched employees back on daily wage basis. The writ petitioners belong to this set of persons who were eventually given the benefit of employment on daily wage basis, which would be clear from Annexure R-2 dated 18.01.2012 and Annexure R-3 dated 31.01.2012 wherein, their names figure at Sr. No.85 and at Sr. No.8.

A perusal of the said documents would go on to show that they had to give an affidavit that they would not claim any back wages. Apparently, petitioner No.1 got the benefit of regular appointment w.e.f. 01.07.2014 (Annexure P-1) on the basis of the advertisement which had been issued on 13.08.2014 (Annexure A-1). In such circumstances, the learned Single Judge rightly issued the directions that she should be allowed to continue to work. Her benefits, however, will of course be subject to the terms and conditions of her regularization order dated 22.08.2014 and she cannot claim any more benefits over and above that considering the fact that she gave an affidavit dated 08.09.2014 (Annexure R-6). A perusal of the appointment order (Annexure P-1) would go on to show that she was made regular Sweeper in the pay band of 4400-7440 plus grade pay of Rs.1,300/- fixed pay scale alongwith other emoluments. There was no challenge to the same and, therefore, the parties including the appellant and the writ petitioner No.1 is bound by the said terms and the appellant is bound to pay

the arrears of salary as per the terms of the letter of appointment.

Regarding the second respondent herein namely Sumantra, we are of the considered opinion that apparently she has also been granted the benefit as such of reappointment as noticed in Annexure R-3 on 31.01.2012. Only because she did miss the advertisement dated 13.08.2014 as such and did not appear on 19.08.2014 but had subsequently represented at the earliest point of time on 30.08.2014 (Annexure P-3), which was not responded to by the Corporation, the learned Single Judge has rightly directed consideration of her case for regularization. She is similarly placed in all respects otherwise and had also been employed from 1996 onwards till 2001 and thereafter taken back in service after the period of almost 11 years in January, 2012. In such circumstances, her case has been rightly directed to be considered for regularization alongwith other similarly situated persons like the first writ petitioner as a writ of mandamus is liable to be issued to ensure enforcement of a legal right for consideration as per the advertisement issued in lieu of government instructions.

Accordingly, the appeal is dismissed. The case of the second respondent namely Sumantra be considered for regularization within a period of 3 months from the date of receipt of certified copy of the judgment.

(G.S. SANDHAWALIA)
JUDGE

17.08.2022
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No