

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

110

**CM-9403-C-2022 in/and
RSA-232-2017 (O&M)
Date of decision: 15.12.2022**

The Tehsildar Kharkhoda, District Sonipat and othersAppellants

Versus

KarambirRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rohit Arya, DAG, Haryana
for the appellants.

None for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

CM-9403-C-2022

Prayer in the instant application is for fixing an actual date of hearing in the appeal.

Heard.

In view of the reasons mentioned in the application, the same is allowed and the appeal is taken up on board for hearing today itself.

RSA-232-2017 (O&M)

Suit for declaration and mandatory injunction filed by the respondent/plaintiff was decreed by the learned Trial Court vide judgment and decree dated 29.09.2012. The appeal preferred by the appellants/defendants against the said judgment and decree was dismissed by the Lower Appellate Court vide order dated 06.08.2016. The appellants/defendants are now before this Court in Regular Second Appeal.

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

Suit in question was instituted by the plaintiff seeking decree for declaration to the effect that his services were entitled to be regularized as Sweeper-cum-Chowkidar with effect from 30.09.2003/01.10.2003 as per notification of Haryana Government dated 01.10.2003. The plaintiff also claimed that he was entitled to get arrears of pay and other benefits of service with effect from 01.10.2003 along with interest @ 18% per annum. Decree of mandatory injunction was further sought for directing the defendants to release the above benefits to the plaintiff.

Both the Courts below decreed the suit of the plaintiff by recording concurrent findings to the effect that the case of the plaintiff fell within the purview of Haryana Government Notification No.GSR-24/Const/Art-309/2003 dated 01.10.2003 (Ex.P-9), as he was appointed against a duly sanctioned post, therefore, he was entitled to the benefit of regularization of his services. The Courts below while decreeing the suit of the plaintiff further observed that since the plaintiff had been serving in the defendant department for the last 15 years, and performing dual job of Sweeper-cum-Chowkidar, therefore, great injustice would be caused to him if his services were not regularized.

Learned counsel appearing for the defendants argues that the Trial Court failed to appreciate that the plaintiff was working as a part time employee whereas the Government Notification No.GSR-24/Const/Art-309/2003 dated 01.10.2003 (Ex.P-9) only covered daily

wagers, contractual and adhoc employees. Therefore, a parent error had been committed by mis-interpreting the said notification (Ex.P-9) as the plaintiff was not covered under the said notification (Ex.P-9). A prayer has, therefore, been made for setting aside of the impugned judgment and decree.

I have heard learned counsel and perused the relevant material on record.

This Court does not find any merit in the submissions made by learned counsel appearing for the defendants. The submissions of the learned counsel for the defendants falls flat in the face in the wake of the admission made by DW-1 Gyani Ram, Tehsildar, Kharkhoda. DW-1 Gyani Ram, Tehsildar, Kharkhoda himself has admitted during his cross-examination before the Trial Court that the plaintiff had been working as a Sweeper during the day and as Chowkidar during the night. This leaves no manner of doubt that the plaintiff was discharging dual functions under the defendant department. Still further, Haryana Government Notification dated 01.10.2003 (Ex.P-9) was issued by the State for regularization of adhoc/contractual employees who had completed three years of service on 30.09.2003. It is a matter of record that the plaintiff was appointed as a Sweeper vide letter dated 17.04.1997. The post for his appointment i.e. post of one Sweeper-cum-Chowkidar was sanctioned vide letter dated 31.03.1993. It, thus, is apparent from the material on record that the appointment of the plaintiff was made against a sanctioned post, and still further, admittedly the plaintiff had been uninterruptedly

discharging dual duty in the defendant department for the last 15 years. Resultantly, this Court has no hesitation in holding that the case of the plaintiff is covered under the Haryana Government Notification dated 01.10.2003 (Ex.P-9).

On being pointedly asked, learned counsel for the defendants failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality.

As a sequel to the above, this Court does not find any error in the impugned judgment and decree. Accordingly, the instant appeal being devoid of any merit is dismissed.

15.12.2022

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**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No