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2023:PHHC:041929

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

CWP-4588-2023

Date of Decision: 09.03.2023

BHIM SINGH

.... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anil Shukla, Advocate,
for the petitioner.

JAISHREE THAKUR.J

1. The petitioner herein prays for quashing of impugned order dated 14.10.2022, Annexure P-9, passed by respondent No.2-Commissioner, Municipal Corporation, Faridabad, with a further prayer for issuance of a writ in the nature of mandamus directing respondent No.2 to pay him grade pay of Rs.750-940 from the date of regular appointment i.e. 17.01.1997 till January 2001 as was being paid to similarly situated employees and also to pay the difference of pay from the date of appointment till the date of retrenchment along with 18% interest per annum.

2. The brief facts of the case are that the petitioner was appointed as a Safai Karamchari against a regular post vide order dated 17.01.1997 in the pay scale of Rs.750-940. He remained on probation for a period of 2 years. It is alleged that despite the fact that the petitioner was appointed against a regular post in the grade of Rs.750-940, he was being paid Rs.1500

per month till January 2001, the date when the petitioner was retrenched. In fact, the petitioner had been appointed as a Safai Karamchari during the period when the Safai Karamcharis went on strike in the year 1997 and when the strike was withdrawn, respondent No.2 issued notices proposing to retrench their services. The petitioner along with other Safai Karamcharis approached this Court by way of CWP No.16850 of 1997 which is still pending. The services of the petitioner were retrenched in January 2001. Thereafter, the petitioner was again taken on duty on daily wages and he joined the services in the year 2012 and was subsequently regularized vide letter dated 22.08.2014.

3. It is contended that the petitioner, who had worked on the regular post of Safai Karamchari in the pay scale of Rs.750-940/- from January 1997 till January 2001, was not paid the salary as per the pay scale admissible to him and, therefore, claims the same. It is submitted that one of the employees Smt. Krishna wife of Dharambir, who had been appointed along with the petitioner on the same date i.e. 17.01.1997, had filed a civil suit for 'equal wages for equal work' and the said suit was decreed by the Civil Court, Faridabad, which judgment was challenged by the respondents by filing Civil Appeal No.158, dated 14.11.2007 and the same was dismissed by the District Judge, Faridabad, vide judgment and decree dated 19.12.2007, against which, respondent No.2 filed Regular Second Appeal No.3130 of 2008 before this Court which was dismissed as was the SLP. The petitioner claims the same benefit of 'equal pay for equal work' by contending that he was only paid Rs.1,500/- per month for the period that he worked from 1997 to January 2001 and, therefore, the same cannot be denied since on similar

footing, Smt. Krishna has been allowed the same. It is submitted that a legal notice through registered post was sent on 27.08.2021 calling upon respondent No.2 to pay the difference of salary, however, no action was taken thereon, which led to the filing of CWP No.10452 of 2022 which was disposed of directing respondent No.2 to decide said legal notice. The legal notice has been decided and the claim of the petitioner herein stands rejected. Hence, the present writ petition.

4. Learned counsel appearing on behalf of the petitioner herein would urge that the petitioner, who was appointed against a regular post w.e.f. 17.01.1997 and continued to work till January 2001, was to be paid the same pay scale as had been allowed to similarly situated employees and, therefore, he would be entitled to the benefits of pay from the date of appointment till the date of retrenchment along with 18% interest per annum. Counsel would argue that a similarly situated person, namely, Smt. Krishna, who had been appointed along with the petitioner, had filed a civil suit claiming equal wages per month as was being paid to the other co-Safai Karamcharis. The said civil suit was allowed and the appeal filed by respondent No.2 stood dismissed. Counsel would urge that the petitioner herein is entitled to parity and, therefore, rejection of the claim by respondent No.2 is wholly unjustified.

5. I have heard learned counsel for the petitioner and find no merit in the writ petition and the same deserves to be dismissed. It is not in dispute that the petitioner herein was appointed as a Safai Karamchari on 17.01.1997 in the pay scale of Rs.750-940. The petitioner herein is relying upon Annexure P-2, which is acknowledgement by the Municipal Corporation,

Faridabad, which stipulates that the petitioner is being paid a sum of Rs.1,500/- per month as against a sum of Rs.2,658/- and the balance would be paid as per the direction of the Government. The services of the petitioner came to be dispensed with as far back as in January 2001 on account of the fact that he was appointed during the Statewide strike of the employees of the State of Haryana and the dismissed employees were later on allowed to rejoin making the petitioner and others appointed during the strike period as surplus. In fact the State Government was requested to grant sanction for the excess posts of Safai Karamcharis, but the sanction was not granted. Thereafter, the petitioner was retrenched in accordance with the provisions of Section 25-F of the Industrial Disputes Act from the services of the Corporation and retrenchment compensation was paid to him. The petitioner along with other similarly situated employees approached this Court by way of filing bunch of writ petitions, however, the same were dismissed on 27.09.2005. A review application was filed and this Court, while disposing of the review application, granted liberty to the petitioner to approach the Labour Court in accordance with law for appropriate relief and redressal of their grievance. On receipt of various requests/representations made by various Unions, the State Government decided to take such employees back in service on daily wage basis with the condition that they will not claim back wages for the period from their retrenchment. It is thereafter the petitioner and others were taken back on daily wages and subsequently regularized. The petitioner and other similarly situated persons filed an affidavit that they will not claim any wages for the period from their retrenchment.

6. Now the petitioner is seeking the pay scale that has been allowed to Smt. Krishna for the period he worked from 1997 to 2001 claiming 'equal pay for equal work' as has been allowed. However, the same would not be payable by claiming parity. Smt. Krishna had approached the Civil Court claiming 'equal wages for equal work', however, this is not the case of the petitioner. The petitioner had challenged the retrenchment before the Labour Court and was paid retrenchment compensation as per the award of the Labour Court. The Labour Court award was upheld by this Court. The claim for 'equal pay for equal work' is highly belated and that too after having accepted the post of Safai Karamchhari and being regularized in the year 2014.

7. The argument raised by counsel for the petitioner that the petitioner is entitled to regular pay scale of Rs.750-940 w.e.f. 17.01.1997, cannot be accepted considering the fact that he was retrenched in the year 2001, against which he approached Labour Court and the Labour Court while upholding the retrenchment, directed for retrenchment compensation to be paid and the writ petition against the said award stood dismissed.

8. In view of above, the petitioner cannot be made entitled to regular pay scale of Rs.750-940 w.e.f. 17.01.1997 to January, 2001. Accordingly, present petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

09.03.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No