

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

344

RSA-2880-2006 (O&M)

Date of decision: 04.12.2023

The Head Master Government Girls Primary School, Pali, Tehsil & District
Mahendergarh and others

....Defendant-Appellants

Versus

Savitri Devi

...Plaintiff-Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jagdish Manchanda, Addl. AG, Haryana.

None for the respondent.

AMAN CHAUDHARY, J.

1. The present regular second appeal is filed challenging the concurrent findings of facts returned by Courts below in favour of the plaintiff-respondent in a suit filed by her for declaration and consequential benefits.

2. The brief facts of the case are that the plaintiff-respondent was working as a part time Sweeper in Govt. Girl Primary School, Pali since 18.07.1981. She had been recruited through Employment Exchange. As per the Policy dated 30.12.1998/25.02.1999, she was to be regularized but her claim was not admitted by the defendants, resulting in filing of suit for declaration.

3. The defendants filed a joint written statement contending that plaintiff was not entitled for regularisation on account of the fact that her senior was already working as part time. It was averred that the work done by her cannot be called as 'satisfactory', since the duty time is only for 1-2 hours. There being no sanctioned post available, she cannot be granted the benefit and that the same would be done as and when such availability arises. Hence, they prayed for

dismissal of the suit.

4. Learned trial Court decreed the suit in favour of the plaintiff by placing reliance on **Ranbir Singh and others vs. State of Haryana and others**, 2001(4) R.S.J. 676, wherein a Division Bench of this Court had held that the employees cannot be declined their right of regularisation on the excuse of non-availability of posts. Therefore, she was declared to be entitled for regularisation in terms of the instructions.

5. Dissatisfied by the above, the defendant-School in an appeal preferred stated that the policy was misinterpreted, since no regular sanctioned posts were available and the claim of each part-timer employee was to be evaluated individually. However, the lower appellate Court affirmed the findings of the trial Court by observing that different treatment could not be given to the plaintiff viz. a viz. her juniors, who were also working as part time sweepers-water carriers and regularised w.e.f. 16.09.2002.

6. Learned State counsel would contend that despite the specific stand taken that there was no sanctioned post available against which the plaintiff-respondent could be regularised, a direction was issued in that regard, which is contrary to law. The parity being sought is misplaced, inasmuch as, the juniors who were regularised, worked as Water Carriers and not sweepers.

7. Heard and perused.

8. Concededly, the respondent had been working on an ad-hoc basis as a Sweeper since 1981. As per the above-said notification, the services of a class IV employee, who had been appointed through Employment Exchange and had experience of three years was to be regularised. She was clearly within the parameters of the same, having worked for more than three years but was wrongly

denied on account of there being no sanctioned posts. However, the services of her juniors were regularised from 16.09.2002. The sole contention of the State regarding non-availability of posts holds no water in view of the judgments of this Court in **Uttar Haryana Bijli Vitran Nigam Ltd. and others vs. Azad Singh and others**, LPA-401-2019, decided on 28.07.2022; **Haryana Vidyut Parsaran Nigam Ltd. and others vs. Madan Lal and others**, LPA-1316-2018, decided on 12.07.2022 and **Haryana Vidyut Parsaran Nigam Ltd. and others vs. Darshan Singh and others**, LPA-837-2018, decided on 19.07.2022. The relevant portion of Darshan Singh (supra) reads thus:

“Admittedly, juniors to the writ petitioners who were appointed on 01.09.1995, 01.07.1996 and 01.02.1996 have been given the benefit of regularization under the orders of this Court. Reliance can be placed upon the communication dated 05.03.2015 (Annexure P-16) which is in terms of the orders passed in CWP-11368-2012 (Gian Chand's case) and as noticed, upheld upto the Apex Court. It is apparent from the reading of the policy that it would be applicable to the part-time employees also. In spite of that the Nigam continues to take a stubborn stand that the policy is not applicable and at its own convenience when it wishes to. Initially, CWP-13529-1999 titled Satyadev Vs. Haryana Vidyut Parsaran Nigam Ltd. & others, decided on 08.12.2000 by the coordinate Bench wherein it was held that if a part-time employee is required to be regularized and made whole time worker if the volume of work justifies that it should be a whole time job, the condition that he has to be recruited through Employment Exchange or he was fulfilling the age criteria was also held not to be applicable.”

9. In **Chief Engineer, Union Territory vs. Ram Sarup Walia**, 2012 SCC OnLine P&H 423, it was held that, “Though against this judgment, the SLP has been filed in which the operation of the impugned order has been stayed by the Supreme Court, but we are, prima-facie, of the view that even if an appeal against the judgment of the High Court has been admitted and the operation of the order has been suspended during the pendency of the appeal, it does not have the effect

of rendering the said judgment non-est till the disposal of the appeal.” Therefore, the submission of learned State counsel that notice has been issued in SLPs against the judgments in Madan Lal and Darshan Kumar (supra) cannot come in the way of the respondent, since they have not been stayed.

10. In view of the above it is found that the Courts below had, after analysing and evaluating the evidence, reached the correct conclusion, which is in consonance with the judgments referred to hereinabove. It has not been shown that the evidence was misinterpreted or disregarded.

11. In **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026, Hon’ble the Supreme Court held that, “Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a “question of law”. In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court”.

12. As an upshot, no perversity or illegality is found in the impugned judgments and decrees. The present appeal being without any merits is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

04.12.2023

gsv/Ankur

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No