

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5520 of 2018 (O&M)
Date of Order:17.11.2023

Om Wati

.Appellant

Versus

Indian Red Cross Society and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil Shukla, Advocate and
Mr. Gaurav Arora, Advocate,
for the appellant.

Mr. Rajesh Gaur, Advocate
for the Indian Red Cross Society

Mr. Jaspal Singh Pannu, AAG, Haryana

ANIL KSHETARPAL, J

1. In this second appeal, the correctness of the judgment and decree passed by the First Appellate Court is assailed by the plaintiff.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief are required to be noticed.

3. The appellant filed a suit for decree of declaration that her services are supposed to be regularised from the date when the service of her junior has been regularised, as the services of her juniors were regularised five years back from the date of filing of the suit. She claims to be working as a part time sweeper for the last 20 years and with effect from 01.06.2012, she has been employed on a full time salary and is being paid at the rates specified by the Deputy Commissioner. She further claimed that now the respondents are directing her to work as a Gardener which is not the job of

the sweeper.

4. The defendants while contesting the suit claimed that she is very irregular in the performance of her duty.

5. The trial court on appreciation of the evidence held that the services of the appellant are entitled to be regularised from the date the services of Sh. Rajesh, her junior were regularized. During the pendency of the first appeal the respondents filed an application to produce a letter dated 09.12.2014, passed by the Deputy Commissioner Faridabad, which shows that Sh. Rajesh was transferred to perform the duty at working women's hostel Sector 16, Faridabad.

6. The First Appellate Court on re-appreciation of the evidence has found that the appellant is totally uneducated and therefore her services are not entitled to be regularised.

7. As per the service rules of Indian Red Cross Society & St. John Ambulance (India District Branches, Haryana, notified with effect from 27.02.2017 (hereinafter referred to as 'the 2017 Rules'), the sweeper is expected to have minimum academic qualification of Matric, whereas the appellant is uneducated.

8. The learned counsel representing the parties have been heard at length and with their able assistance perused the paper book as well as the judgments passed by the courts below.

9. The learned counsel representing the appellant submits that the 2017 Rules will not be applicable because the appellant joined service 20 years before the filing of the suit i.e. somewhere in the year 1995. He submits that Sh. Rajesh was junior to the appellant but his services were regularised while discriminating the appellant.

10. On the other hand, the learned counsel representing the respondent- Indian Red Cross Society submits that the services of Sh. Rajesh were also not regularised although he is being paid at the DC rates which are at par with the appellant. He submits that the Indian Red Cross Society has not adopted or framed any policy for regularization of the employees.

11. On a careful reading of paragraph 17 of the judgment of the First Appellate Court, it is evident that Sh. Rajesh, the alleged junior of the appellant has never been regularized in the service. On a Court question, the learned counsel representing the appellant admits that the Indian Red Cross Society has not notified any policy for regularization of the employees. He submits that in the absence of policy, it would not be appropriate for the court to issue directions for notifying the policy and thereafter take any action.

12. This court has considered the submissions of the learned counsel representing the parties.

13. The State government as well as the Union of India from time to time has issued policy-instructions to regularise the services of the back door entrants. A Five Judge Bench of the Supreme Court in **Secretary, State of Karnataka vs. Uma Devi and others, (2006) 4 SCC 1**, has held that such policies of regularization are not in accordance with law. However, the Court in the facts and circumstances of the cases permitted the employer to frame a new policy as a one time measure to regularise the services of the employees who have completed 10 years of their service.

14. In this case, the appellant has not produced any policy adopted by the respondent to regularise the services of the temporary employees. As already noticed, the services of Sh. Rajesh have also not been regularized.

Therefore, the plea of discrimination is not made out. It has been brought to the notice of the court that as per the Service Rules applicable from the year 2009, the minimum academic qualification for the post of Sweeper is Middle pass. The learned counsel representing the appellant does not dispute the fact that the appellant is absolutely uneducated.

15. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

16. Dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

November 17, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO