



CWP-2640-2023 (O&M)

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

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CWP-2640-2023 (O&M)
Date of Decision: 20.08.2024

Rajbala

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. S.K. Verma, Advocate for the petitioner

Mr. Tapan Kumar, DAG, Haryana

AMAN CHAUDHARY, J. (ORAL)

1. The action whereby the petitioner has been verbally removed from the post of Asha Worker on 31.12.2022, stating that she has attained the age of 58 years, has been challenged.

2. Learned counsel does not press the issue with regard to date of birth of the petitioner being incorrectly recorded in Aadhaar card as 01.01.1965, however claims that taking the same as above, she was nevertheless entitled to continue in service till she attained the age of 60 years, being a Class-IV employee, in terms of the judgment in **Rumali Devi and another vs. State of Haryana and others**¹, whereby a batch of petitions were allowed, against which no appeal has been filed, the relevant paras whereof read thus:

“10. In order to appreciate the arguments of respondent-State the definition of ‘workman’ as given in the industrial dispute Act, 1947 defined in Section 2 (s) of the said Act needs to be seen. A bare reading of the definition of workman makes it clear that an employee



performing certain duties in the course of employment is to be treated as workman and whether the said employee is working on regular basis or temporary is not relevant factor to determine the status of an employee as workman. Hence, even the regular employees working with respondent-State, who are governed under 2016 Rules performing the nature of duties as per the definition of workman will also be covered by the definition of workman and thereby under 2012 Rules, however they are allowed to continue till the age of 60 years under 2016 Rules.

11. Learned counsel for the respondent-State has not been able to rebut the fact that employees who are working on regular basis on a Group-D post and are covered under the definition of workman to whom 2012 Rules applies irrespective of their status of being regular or temporary employee, are retired at the age of 60 years under 2016 Rules. Therefore, once the respondent-State has prescribed a higher age of retirement for a workman working on regular basis under 2016 Rules, there is no valid reason/rationale why the temporary employees who were also workman and are working on the same post be also not given the same higher age of retirement and the action of respondent-State in not allowing temporary workman to continue in service till 60 years of age and in retiring them at the age of 58 years by contending application of the said 2012 Rules is totally arbitrary and illegal and will be discriminatory and cannot be accepted.

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13. Further, Rule-17-A of the 2012 Rules as being relied by the respondents is as under:-

“Age of superannuation:- The age for retirement or superannuation of a workman shall be as may be agreed between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of fifty eight years of age by the workman”

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15. In the present case, respondents have framed the 2016 Rules prescribing age of superannuation as 60 years qua regular Group-D employee who are covered by the definition of workman as envisaged under the Industrial Dispute Act, 1947. Once 2016 Rules have been framed subsequent to 2012 Rules for employees covered under the definition of workman, who are working on regular Group-D post as per which they are allowed to work till 60 years of age, there is no rationale to suggest why the same should not be made applicable to temporary employees/workmen, who are working on the same



group-D post. Further, after prescription of a particular age under 2016 Rules, same will be applicable even under Section 17-A of the 2012 Rules. As per Rule 17-A of the 2012 Rules, which has been reproduced hereinbefore, age of retirement can be prescribed by consent or agreement. The said will also include where Government prescribes the age of retirement of workman which is being applied to the workmen, who are working with the Government of Haryana though on regular basis. Rule 17-A does not differentiate between a regular workman and temporary workman and once an age of 60 years has been prescribed for regular workman in the 2016 rules, the same will ipso facto covers the rule 17-A of the 2012 Rules to govern the workman working with the State of Haryana. Therefore, keeping in view the promulgation of 2016 Rules, even under Rule 17-A of the 2012 Rules, the employee will retire at the age of 60 years as the same has already been prescribed by formulating the statutory rules qua workman.

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17. It may be noticed that despite there being no provision under the 2016 Rules governing the service to appoint temporary persons, still the appointments are being made by the Government on temporary basis and the work is being taken from temporary employees for years altogether at lower salary before regularization of their services under any regularization policy issued by the State. Once, the State has taken the liberty of appointing employees on temporary basis on a Group-D post which exist under the rules governing the service, for doing the same nature of work as is being taken from those regularly appointed, the respondent-State cannot be allowed to say that 2016 Rules will not be applicable qua the temporary group-D employees for the grant of continuity in service till the age of 60 years as allowed to the regular group-D employees working on the same post. Prescribing different standards of retirement age only on the basis of status of workman will be too harsh for a temporary employee/workman without there being any logical differentiation.

18. Further, being a welfare State, once a particular age of retirement has been prescribed under 2016 Rules for Group-D employees and when it is a conceded position that the duties being discharged by the petitioners is within the parameters of those discharged by Group-D employees, there is no justification that the temporary Group-D employees be made to retire at the age of 58 years whereas, the employees discharging the same duties but working on regular basis be allowed to work till the age of 60 years. This differentiation/discrimination has not been justified on basis of any object, which may be sought to be achieved by doing so.

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21. Therefore, in light of the above discussed position of law the impugned orders discharging the petitioners from their services at the age of 58 years are set aside and respondents are directed to allow the petitioners i.e. temporary Group-D employees to continue in service till the age of 60 years. It may be noticed that under the interim order of this Court, the petitioners are already discharging duties as temporary group-D employees beyond the age of 58 years and it is directed that the respondents shall not disturb their services so as to retire them before the age of 60 years.”

3. Learned State counsel despite his best efforts has been unable to controvert the submissions made on behalf of the petitioner and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.
4. In wake of the above, the present petition is disposed of in terms of the judgment passed in **Rumali Devi and another** (supra).

(AMAN CHAUDHARY)
JUDGE

20.08.2024
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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No