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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13089-2000 (O&M)
Date of decision: 18.04.2024

SUDESH SHARMA

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. Padamkant Dwivedi, Advocate and
Ms. Khushboo, Advocate
for respondents No.2 and 3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the action of the respondents vide Annexure P-6, by which the services of the petitioner have been regularized as Peon instead of Clerk-cum-Typist and further to issue a writ in the nature of *mandamus* directing the respondents to regularize the services of the petitioner as Clerk-cum-Typist as per the policy/instructions (Annexure P-2) w.e.f. 01.02.1996 along with all consequential benefits.

2. Learned counsel for the petitioner submitted that during the pendency of the present writ petition, the services of the petitioner have since

been regularized vide Annexure P-6 but the same were regularized to the post of Peon with effect from 01.02.1996 and thereafter, an application for amendment of the writ petition was also moved for challenging the aforesaid order of regularization (Annexure P-6) to the extent that the petitioner ought to have been regularized on the post of Clerk-cum-Typist, on which she was appointed and not on the post of Peon. He further submitted that in this way, now the prayer is for quashing the aforesaid order Annexure P-6 only to the extent that instead of regularization on the post of Peon, it should be on the post of Clerk-cum-Typist with effect from 01.02.1996.

3. On facts, learned counsel for the petitioner submitted that it is a case where the petitioner was appointed as a Clerk-cum-Typist by the respondent-Board on 01.12.1992 on work charge basis and from time to time, her appointment was being extended, but at the time of initial appointment, there was no formal letter of appointment issued to the petitioner but the respondent-Board kept on taking duties from the petitioner from time to time. Thereafter, vide Annexure P-5, an appointment letter was given to the petitioner to the post of Clerk-cum-Typist against the work of development of NAM, Ganaur. The aforesaid letter was issued by the Executive Engineer, HSAMB, Panipat to the petitioner on 28.02.1996. He further submitted that issuance of the aforesaid letter to the petitioner has not been denied by the respondent-Board while filing the reply. He further submitted that however after few months, the services of the petitioner were retrenched and she therefore, filed her claim before the learned Industrial Tribunal-cum-Labour Court, Panipat under the Industrial Disputes Act, 1947 and vide Annexure P-1, the reference was answered in the favor of the petitioner and her termination was held to be

bad and she was directed to be reinstated with continuity of service with full back wages. The aforesaid award was passed on 11.11.1999 by the learned Industrial Tribunal-cum-Labour Court, Panipat and consequent upon the same, the award was thereafter implemented by the respondent-Board and the petitioner was taken back in service as Clerk-cum-Typist and she kept on discharging the duties of Clerk-cum-Typist. He further submitted that thereafter, order dated 23.08.2002 (Annexure P-6) was passed by the respondent-Board, whereby the petitioner was directed to be regularized on the post of Peon instead of Clerk-cum-Typist with effect from 01.02.1996.

4. Learned counsel for the petitioner also submitted that thereafter, in the year 2017, an order of promotion was passed, wherein the petitioner was directed to be promoted from the post of Peon to the post of Clerk-cum-Typist with effect from 17.01.2014. He further submitted that the action of the respondent-Board was bad in law in view of the fact that once the petitioner who was already working from the year 1992 on the post of Clerk-cum-Typist, then there was no occasion for the respondent-Board to have regularized her on the post of Peon and thereafter, to have acted to the detriment of the petitioner and therefore, the aforesaid order Annexure P-6 to the extent that the petitioner was regularized on the post of Peon is liable to be set aside and prayed from this Court that instead of being regularized on the post of Peon, she should be deemed to have been regularized on the post of Clerk-cum-Typist with effect from 01.02.1996.

4. On the other hand, Mr. Padamkant Dwivedi, learned counsel for respondents No.2 and 3-Board submitted that the petitioner was never appointed to the post of Clerk-cum-Typist and she had been working on the post

of Peon right from the beginning and after the passing of the award she was reinstated with continuity in service and full back wages and thereafter, she was regularized on the post of Peon vide Annexure P-6 and thereafter, she stands promoted to the post of Clerk-cum-Typist in the year 2017 with effect from 17.01.2014. He further submitted that the petitioner has not been able to place on record the initial letter of appointment or any other letter by which it can be said that the petitioner was appointed to the post of Clerk-cum-Typist. He further submitted that so far as the aforesaid award passed by the learned Industrial Tribunal-cum-Labour Court, Panipat is concerned, the same has attained finality and was not challenged by the respondent-Board and after the passing of the award, the petitioner was reinstated in service but on the post of Peon and not on the post of Clerk-cum-Typist. He also submitted that the present writ petition was filed in the year 2000 for the purpose of seeking prayer for regularization of services and order of regularization was passed in the year 2002 vide Annexure P-6 during the pendency of the present writ petition, which was thereafter challenged by way of amendment and therefore, there is a delay on the part of the petitioner in challenging the same and on this ground, the present writ petition is liable to be dismissed.

5. I have heard the learned counsel for the parties.

6. A perusal of the documents which have been attached with the present writ petition would show that there is nothing on the record to show that when the petitioner was appointed on 01.12.1992 on work charge basis, then on what post was she appointed. Neither the petitioner nor the respondent-Board has been able to place on record any such document. However, at the same time, there is a letter Annexure P-5 on the record, which is dated 28.02.1996,

which is a letter of appointment issued to the petitioner by the Executive Engineer, HSAMB, Panipat with regard to appointment to the post of Clerk-cum-Typist. The aforesaid letter dated 28.02.1996 (Annexure P-5) is reproduced as under:-

HARYANA STATE AGRIL. MARKETING BOARD, PANIPAT

From

*Executive Engineer,
HSAM Board, Panipat*

To

*Sudesh Sharma D/o
Sh. O.P. Sharma
Karnal*

Memo No. 1069

Dated: 28-2-96

*Sub: Appointment to the post of Clerk-cum-Typist against
the work of Dev. Of NAM Ganaur.*

*Reference to your application dt. Nil on the subject
cited above.*

You are hereby offered the work charged post of Clerk-cum-Typist in Panipat Div. under the Haryana State Agril. Marketing Board, in the pay scale of Rs. 1378/- i.e. D.C. Rate plus usual allowances as admissible to the work charged employees of the Haryana State Agril. Marketing Board on the following terms and conditions.

- 1. Your appointment is purely upto 29.4.96 or till the completion of the work cited as subject whichever is earlier.*
- 2. Your services are terminable without notice or assigning any reason.*
- 3. You will not be paid any traveling allowance for joining in the appointment or on termination there from.*

In case you are ready to accept the officer of the above noted terms and conditions you should report for duty to the Sub Divisional Officer (Const.) Haryana State Agril. Marketing Board, Panipat.

Sd/- Executive Engineer

Endst. No.

Dt.

Copy is forwarded to:-

1. The Sub Divisional Officer (Const.) Haryana State Agril. Marketing Board Panipat for information and necessary action.

The joining report of the Official duty countersigned be submitted to the Divisional Officer for taking further action in the matter.

Sd/- Executive Engineer

7. A perusal of the aforesaid letter would show that it has been issued on 28.02.1996 by the Executive Engineer, HSAMB, Panipat, who is the competent authority in the present case of the respondent-Board and has been addressed to the petitioner and the appointment of the petitioner has been directed to be made to the post of Clerk-cum-Typist. The aforesaid Annexure P-5 has been so specifically pleaded by the petitioner in para number 8-A of the writ petition in which the petitioner has so stated that she was issued the appointment letter on the post of Clerk-cum-Typist. However, since the aforesaid para number 8-A was inserted after the amendment of the writ petition, the respondent-Board has not chosen to file a reply to the amended writ petition nor any such document has even now been placed on the record to rebut the aforesaid averment. Therefore, in the absence of any rebuttal from the respondent-Board with regard to the existence and issuance of aforesaid letter Annexure P-5, the same shall be deemed to be admitted by the respondent-Board.

8. Thereafter, the petitioner was retrenched from service on 01.07.1996 and she raised her claim before the learned Industrial Tribunal-cum-Labour Court, Panipat, in which she pleaded that she was appointed as a Clerk-

cum-Typist on monthly wages in the office of HSAMB, Panipat and she worked from 01.12.1992 to 30.06.1996, when her services were terminated without assigning any reason and her retrenchment was bad in law and violative of the provisions of the Industrial Disputes Act, 1947. Some relevant portions of the aforesaid award (Annexure P-1) is reproduced as under:-

1. Disputes raised by workman Sudesh through her demand notice dated 22.11.1996 and subsequent claim statement filed in Court on 29.5.1998 in this reference No. 314 of 1998 made by Government of Haryana under section 10 (1) (c) of Industrial Disputes Act, 1947 (for short "the Act") is that she was appointed a Clerk-cum-typist on monthly wages in the office of Haryana State Agricultural Marketing Board Panipat and she worked there continuously from 1.12.1992 to 30.6.1996 but her services were terminated without assigning any reason and without giving her any notice, notice pay or retrenchment compensation on 1.7.1996 despite the fact that she had continuously worked for more than 240 days in a calendar year preceding the day of termination of her services and at that time she was drawing a salary of Rs.1500/- per month. It was further disclosed the notice board at the time of termination of her services and even after termination of her services persons have been employed in her place and further that while terminating her services the principle of "last come first go" was not followed. She prayed for reinstatement with continuity of service and full back wages.

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10. When we take into consideration the factum that Executive Engineer Haryana State Agricultural Marketing Board Panipat has made every effort to conceal the truth regarding working days while filing the written statement and also the factum that every effort has been made to withhold muster rolls from the Court, the only inference that can be drawn is that services of the petitioner were illegally and arbitrarily terminated by the then Executive Engineer w.e.f. 1.7.1996 with ulterior motive to accommodate another girl Seema. So both these issues are returned against the management and in favour of the petitioner to the effect that services of the petitioner have been illegally and arbitrarily

terminated without complying with the provisions of Sections 25-F and 25-H of the 1947 Act and this is not at all a case of abandonment of the service by the petitioner.

Relief:

11. In view of my findings on other issues, holding termination of the services of petitioner as illegal and void she is ordered to be reinstated with continuity of service and full back wages. In the first instance the back wages shall be paid by Haryana State Agricultural Marketing Board but since the Board should not suffer on account of arbitrary act of its Executive Engineer who terminated services of the petitioner illegally and arbitrarily so after making payment the Board shall be at liberty to recover the entire amount back wages from the then Executive Engineer. The petitioner shall also be entitled to sum of Rs.500/- as costs of proceedings.

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9. A perusal of the aforesaid award which attained finality would show that the learned Industrial Tribunal-cum-Labour Court, Panipat not only directed the reinstatement of the petitioner with continuity of service, but also granted full back wages to her. A perusal of para No.10 of the aforesaid award would further show that the learned Industrial Tribunal-cum-Labour Court, Panipat also took a very serious view with regard to the conduct of the officials of the respondent-Board, wherein they did not even produce the muster rolls and rather observed that the purpose of retrenchment of the petitioner was with ulterior motive to accommodate some other person. It was held that the provisions of Section 25-F and Section 25-H of the Industrial Disputes Act, 1947 were violated.

10. After the aforesaid award was passed which attained finality, the respondent-Board reinstated the petitioner with continuity of service and full back wages but there is no order on the record to show as to on what post the

petitioner was appointed. However, as per the aforesaid award, the petitioner was to be reinstated in service, which would mean that reinstated in the services where she was already working. Therefore, in the absence of any order placed on the record after the award was passed, the only document which can be considered by this Court would be Annexure P-5, by which in February, 1996, just before the retrenchment of the petitioner, she was appointed as Clerk-cum-Typist and therefore, it becomes crystal clear that she had to be reinstated on the post from where she was retrenched. The respondent-Board in the present writ petition has not been able to place on record any document to show that at any point of time the petitioner was appointed as a Peon. However, when the petitioner was to be regularized in the year 2002, her regularization took place on the post of Peon instead of Clerk-cum-Typist. Neither there is any justification on behalf of the learned counsel for the respondent-Board nor there is any document on the record to show as to how a person who was working on the post of Clerk-cum-Typist for a long period of time and was rather reinstated in service by way of award of the learned Industrial Tribunal-cum-Labour Court, Panipat after being retrenched has been regularized on the post of Peon.

11. So far as the plea taken by the learned counsel for the respondent-Board that there was a delay on the part of the petitioner in challenging the aforesaid order Annexure P-6 to the extent of her regularization on the post of Peon is concerned, the aforesaid order of regularization was passed during the pendency of the present writ petition and after the aforesaid order was passed, this Court permitted the petitioner to amend the writ petition vide order dated 20.02.2015 and rather the learned counsel for respondents No.2 and 3 had fairly stated that he has got no objection in case the present application is allowed. In

this way, the aforesaid order Annexure P-6, which was passed during the pendency of the present writ petition was allowed to be challenged by this Court with no objection from the learned counsel for respondents No.2 and 3-Board. In this way, it cannot be said that the petitioner can be non-suited only on the ground of delay and laches.

12. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The regularization order (Annexure P-6) to the extent only that the petitioner is regularized on the post of Peon is set aside. It is directed that in the aforesaid order (Annexure P-6) instead of regularization on the post of Peon, the petitioner shall be deemed to have been regularized on the post of Clerk-cum-Typist with effect from the same date i.e. 01.02.1996. The respondent-Board is now directed to calculate the difference of salary, if any, and pay the same to the petitioner, within a period of three months from today, along with interest @ 6% per annum. All the other necessary consequences which would flow out of the aforesaid order would also be given to the petitioner within the period of aforesaid three months.

18.04.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No