

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

210

CWP-16884-2013
Date of Decision : 15.01.2024

Kirna Devi (now deceased) through her LR.s.Petitioners

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Raj Kaushik, Advocate for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

Mr. Sanjeev Soni, Advocate with
Mr. Sarthak Soni, Advocate for respondent Nos.2 to 4.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has approached this Court by filing the instant writ petition under Articles 226/227 of the Constitution of India impugning the order dated 21.03.2013 (Annexure P-14) whereby her claim for regularization has been rejected on the ground that her initial engagement was not through the Employment Exchange, further a writ of mandamus has been sought for directing the respondents to regularize the service of the petitioner in view of the instructions/policy dated 04.03.1999 (Annexure P-1) and in view of the judgment passed by this Court in *CWP No.17499 of 2011 tilted as 'Satya Devi and others Vs. State of Punjab and others'* decided on 24.01.2012 (Annexure P-11) with all consequential benefits.

2. It is not disputed that the petitioner was appointed as part time Sweeper in the year 1997 and she worked till 27.09.2013 when

CWP-16884-2013

2

unfortunately she died while in service. The petitioner had earlier filed CWP No.24132 of 2012 claiming regularization in service, however, the said writ petition was disposed of by this Court vide order dated 06.12.2012 with a direction to the respondents to take final decision on the legal notice dated 30.07.2012 served by the petitioner by passing a speaking order within a period of four months. Thereafter, the claim of the petitioner has been considered by the respondent/Board, however, the same has been rejected vide impugned order dated 21.03.2013 by stating as under :-

“3. In reply to this letter, it is stated that the case of regularizing the services of the employee was to consider in view of the instructions issued by the Govt. of Punjab, Personnel Department No.11/15-98-4 P.P.3/2803 dated 4.3.1999. Copy of this letter is annexed. As per clause 2(A) (iv) of the letter dated 4.3.1999 of the Punjab Govt. the appointment of the employee should have been made through Employment Exchange but as per the records of the office, the appointment has not been done through Employment Officer. Therefore, her case of regularization can not be considered.

4. The reply of this para is as above.

5. As so stated in para No. 3 that as the appointment of the petitioner had not been made through Employment Exchange and neither through Open Advertisement, therefore, her case of regularization in services can not be considered.”

3. Learned counsel for the petitioner submits that the impugned order passed by the respondent/Board rejecting the claim of

the petitioner for regularization of her services on the ground that her initial engagement was not through the Employment Exchange is against the law laid down by the Division Bench of this Court in ***CWP No.16655 of 2003 titled as 'Paramjit Singh and others Vs. State of Punjab and others'*** and other connected cases decided on 15.03.2004 whereby the said clause on the basis of which the claim of the petitioner has been rejected, already stands quashed. The concluding para of the said judgment reads as under :-

“For the reasons mentioned above, the writ petitions are allowed. Paragraph 2 (A) (iv) of Annexure P-8 is quashed. Letter Annexure R-1 annexed with written statement filed in C.W.P. No.16084 of 2003 is also declared illegal and quashed. The respondents are directed to consider/re-consider the case of the petitioners for regularization of their services without taking into consideration paragraph 2 (A) (iv) of letter Annexure P-8 and pass appropriate orders within 3 months from the submission of certified copies of this order. If the competent authority comes to the conclusion that the petitioners or some of them are not entitled to be regularized in service, then the order passed in such cases should be communicated to the concerned petitioner(s).”

4. He further submits that the Special Leave Petition filed against the abovesaid judgment has been dismissed by the Hon'ble Supreme Court vide order dated 08.04.2005 (Annexure P-10) and thereafter, the claim of similarly situated employees, who were working as part-time Sweepers in the Government Schools of Education Department, Punjab have also been accepted by this Court vide

judgment dated 24.01.2012 passed in *CWP No.17499 of 2011 titled as ‘Satya Devi Vs. State of Punjab and others’* (Annexure P-11). He further submits that in view of the above, the case of the petitioner is liable to be reconsidered.

5. Learned counsel for the respondents could not dispute the abovesaid legal position and could not justify the impugned order.

6. I have heard learned counsel for the parties and have gone through the relevant documents.

7. Since the claim of the petitioner has been rejected on the basis of clause, which has already been quashed by this Court vide judgment dated 15.03.2004 passed in CWP No.16655 of 2023 (Annexure P-9) which has also been upheld by the Hon’ble Supreme Court vide order dated 08.04.2005 (Annexure P-10), therefore, the present writ petition deserves to be allowed.

8. Consequently, the instant writ petition is allowed, the impugned order dated 21.03.2013 (Annexure P-14) is hereby set aside and the respondents are directed to reconsider the claim of the petitioner for regularization of her services sympathetically and release all the consequential benefits arising therefrom to the legal heirs of the petitioner, within a period of 03 months from the date of receipt of certified copy of this order.

15.01.2024

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(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No