

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(217)

CWP No. 25451 of 2018

Date of Decision : 16.04.2024

Sumitra

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Deepak Sonak, Advocate for the petitioner.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. The present petition has been filed for quashing the order dated 27.04.2017 (Annexure P-2) by which the claim of the petitioner for regularization of her services under the Instructions/Policy dated 27.02.2004 (Annexure P-4) has been denied.

2. Learned counsel for the petitioner submits that the Instructions/Policy dated 27.02.2004 (Annexure P-4) has been issued for regularization of the services of the employees, who were working in the Education Department and as per the Instructions/Policy dated 27.02.2004 (Annexure P-4), 766 posts were to be filled up on the basis of the seniority of the working employees, which was to be prepared by the respondents by regularizing the services of the employees already working. Learned counsel for the petitioner further submits that the said seniority list was to be maintained on the basis of the date of joining of

the part time employees and the preferences were to be given to the employees, who had worked for a period of six years for regularization of their services.

3. Learned counsel for the respondents, on the other hand, submits that the petitioner was appointed as Class-IV employee in November, 2000 on part time basis only and even otherwise, the Head Teacher, who had appointed the petitioner, had no jurisdiction to appoint her as, the power of appointment of the part time Sweeper was only with the District Primary Education Officer. Learned counsel for the respondents further submits that as there was no sanctioned Class-IV post prior to 22.05.2007, the petitioner was deemed to be appointed from the said date only, which is much after the issuance of the Instructions/Policy dated 27.02.2004 (Annexure P-4), hence, the claim of the petitioner for regularization of her services is liable to be rejected.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. The claim of the petitioner is for consideration of her claim for regularization under the Instructions/Policy dated 27.02.2004 (Annexure P-4). As per the said Instructions, 766 posts were to be filled up, which had already been sanctioned and the same were to be filled up by regularizing the services of the part time employees on the basis of the seniority. It is not mentioned in the Instructions/Policy that in case, all the employees, who are otherwise covered by the conditions mentioned in the Policy, will loose their right for consideration for regularization in case,

they are not adjusted against the said 766 posts. As per the Policy dated 27.02.2004, the employees, who could not be adjusted against the 766 sanctioned posts available, they would be considered for regularization on the basis of the seniority provided sanctioned Class-IV posts are available in future. The relevant paragraph 12 of the Instructions/Policy dated 27.02.2004 (Annexure P-4) is as under :-

“12. First of all those Class-IV part time employees shall be regularized only against the regular sanctioned posts available/becoming available in Govt. schools/offices strictly on the basis of their seniority in the common seniority list, who have completed at least six years of continuous services on their post and whose work and conduct is satisfactory. While calculating 6 years of continuous service the break in such service due to vacations shall also be counted in the length of service. The remaining employees would be considered for regularization thereafter on the basis of their seniority provided duly sanctioned Class-IV posts are available. The very fact that a part time Class-IV employee has completed more than six years of continuous service shall not confer a right on such employee for regularization of his/her services if no sanctioned posts are available or if such employee is lower in seniority. Every such employee will be considered for regularization only on his/her turn provided a duly sanctioned Class-IV post is available.”

6. Further, nothing has come on record that the claim of the petitioner was considered by the respondents under the Instructions/Policy dated 27.02.2004 (Annexure P-4) and she was not found eligible

for regularization of her services against said 766 posts. Rather, as per the reply filed by the respondents, the claim of the petitioner was not even considered under the said Policy on the ground that the petitioner does not fulfill six years experience. The said view of the respondents is not supported by the Clause-12 of the Instructions/Policy dated 27.02.2004 (Annexure P-4).

7. Further, even in the impugned order, nothing has come on record that the petitioner's claim was considered under the Instructions/Policy dated 27.02.2004 (Annexure P-4) at any given point of time either against 766 posts or the posts, which had become available thereafter. Hence, the impugned order dated 27.04.2017 is set-aside. The case is remanded back to the respondents for passing a fresh order keeping in view the parameters laid down under the Policy dated 27.02.2004 for consideration of the case of the petitioner. In case, the petitioner comes within a seniority against 766 posts to be regularized, appropriate order be passed otherwise, as and when, the post is available keeping in view the seniority, the petitioner be granted the benefit of regularization of her service. Let appropriate order be passed within a period of eight weeks from the date of receipt of copy of this order.

8. Disposed of.

April 16th, 2024
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

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