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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21671-2022
Date of decision: 07.03.2024

KAVITA

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Virender Kumar, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Prem Chand Chaudhary, Advocate for respondents No.3 to 5.

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 impugned order dated 06.09.2022 (Annexure P-10), whereby the claim of the petitioner for taking her on the pay roll of Municipal Corporation, Karnal as Safai Karamchari has been rejected and further to issue a writ in the nature of *mandamus* directing the respondents to take the petitioner on the pay roll of the Municipal Corporation, Karnal as Safai Karamchari in view of the Policy dated 06.09.2019 (Annexure P-5) issued by the Government of Haryana.

2. The brief facts of the present case are that the petitioner was working on outsourcing basis as Safai Karamchari through an Outsourcing

Agency, which was sanctioned by the respondent-Municipal Corporation, Karnal. While the petitioner was working in the aforesaid Municipal Corporation through Outsourcing Agency, a policy decision was taken by the State of Haryana dated 06.09.2019 vide annexure P-5, whereby it was so decided on the basis of decision taken by the Council of Ministers under the Chairmanship of the Chief Minister of Haryana that the employees who on 24.05.2018 were working as Safai Karamchari/Sewermen/Damkal Chalak/Fireman through Manpower Outsource Agencies/Contractor are to be taken on the roll of concerned Palika and before taking the aforesaid on the contract basis, application form/age proof may be taken and agreement be also executed etc. Thereafter, in pursuance of the aforesaid Policy (Annexure P-5), the Directorate of Urban Local Bodies, Haryana issued letter to all the Commissioners of Municipal Corporations in the State of Haryana and all the Executive Officers/Secretaries of Municipal Councils/Committees in the State of Haryana vide Annexure P-6 for taking the Safai Karamcharis of Municipalities on Nigam/Palika roll engaged through Outsourcing Manpower Agencies. It was specifically reiterated that the Commissioners of the Municipal Corporations, Executive Officers and Secretaries of Municipal Councils and Committees, respectively, are the competent appointing authority in the subject case and as such no approval is required from the office of the Government.

3. In clause (b), it was so provided that the Government vide letter dated 06.09.2019 has categorically clarified that Safai Karamcharis, who were engaged through outsourcing manpower agencies as on 24.05.2018 and continued to work as such till 06.09.2019 (date of issuance of the above mentioned letter) are eligible to be engaged on Nigam/Palika roll by the

concerned Municipalities and it was further clarified that the Municipalities should ensure that those Safai Karamcharis who were on the pay rolls of outsourcing manpower agencies from 24.05.2018 to 06.09.2019 and have continuously received their wages/remuneration for this period in their bank accounts, are eligible to be taken on Nigam/Palika roll and the Municipalities may also consider the attendance sheet submitted with the monthly payment bills by the sanitation manpower agencies which should depict the name of all eligible Safai Karamcharis as on 24.05.2018 and in monthly bills till 06.09.2019. The grievance of the petitioner in the present case is that although the aforesaid policy decision was taken by the Government of Haryana, which was so communicated to all the Commissioners of Municipal Corporations in the State of Haryana and all the Executive Officers/Secretaries of Municipal Councils/Committees in the State of Haryana including the present Corporation, the petitioner was not taken on the rolls of the Municipal Corporation in view of the fact that as per the respondent-Corporation, the petitioner was not working in the month of May, 2018 and she had received salary only from June, 2018 and there was nothing to show that she was working in the month of May, 2018 and therefore, was not covered under the aforesaid conditions.

4. Learned counsel for the petitioner submitted that aggrieved by the aforesaid action of the respondent-Corporation, the petitioner filed a petition before this Court bearing No.CWP-13521-2022 and the same was disposed of on 04.07.2022 by a Coordinate Bench of this Court vide Annexure P-9 with a direction to the Joint Commissioner, Municipal Corporation, Karnal to consider and decide the representation and the supplementary representation, if any, within a period of two months from the date of receipt of certified copy of the

order. He further submitted that thereafter, vide Annexure P-10, the impugned order has been passed in which the entries of salaries of the petitioner before the outsourcing agency have been so depicted in a tabulated form and the claim of the petitioner for being taken on the pay rolls of the Municipal Corporation has been declined on the ground that as per the aforesaid entries, the petitioner did not receive the salary for the month of May, 2018 and in view of the aforesaid period, total salaries has to be 17 salaries, whereas it comes out to be 16 salaries in case of the petitioner and therefore, the petitioner was not covered in the aforesaid period and the claim was rejected.

5. He further submitted that it is a case where as per the aforesaid Policy, firstly there was no reference made to the number of salaried months and it has been so self-created by the respondent-Corporation by passing the aforesaid impugned order and secondly, a perusal of the impugned order itself would show that the petitioner received the salary for the month of June, 2018 to the tune of Rs.9,574/- and even EPF was paid in the month of June 2018 by the outsourcing agency. He also submitted that even as per the aforesaid Policy, the Safai Karamchari was to be engaged as on 24.05.2018 and in fact the petitioner was engaged by the outsourcing agency in the month of May, 2018 and for the month of May, 2018, salary has been paid in the month of June 2018, which is so clear from the aforesaid table, which has been so reproduced in the impugned order itself. He further submitted that the plea taken by the respondent-Corporation that 17 salaries are to be seen nowhere find mention in the aforesaid Policy and the Policy only shows that the Safai Karamchari has to be on the rolls as on 24.05.2018. He further submitted that once it has been so stated by the respondent-Corporation themselves on the basis of the verification

and so reproduced in the impugned order itself that the petitioner was paid salary in the month of June, 2018, it clearly shows that she worked for the month of May, 2018 because when an employee works for a particular month then the salary is paid in the next month and therefore, in terms of the aforesaid Policy itself, the case of the petitioner was rather covered and the impugned order which has been passed is totally cryptic, perverse and arbitrary and therefore, is liable to be set aside.

6. On the other hand, learned counsel for respondents No.3 to 5 submitted that as per the aforesaid impugned order (Annexure P-10) and as per the written statement filed on behalf of respondents No.3 to 5, since the salary of the petitioner for the month of May, 2018 was not verified, it was clear that the petitioner did not work as on 24.05.2018 and she did not work in the month of May, 2018 and, therefore, was not entitled for taking on the roll of the Municipal Corporation as Safai Karamchari because of the aforesaid reason. He further submitted that the petitioner had later on produced one certificate of the outsourcing agency dated 01.07.2022 vide Annexure P-2 and according to the said certificate, petitioner had worked with effect from 01.05.2018 to 30.09.2018 and for the month of May, 2018, she received the salary in cash and her work was satisfactory. He further submitted that the aforesaid certificate was issued much later and is of the year 2022 and therefore, it cannot be relied upon because the remaining salaries were paid in the bank accounts and not by cash and this was an afterthought by taking a certificate from an outsourcing agency and therefore, cannot be taken into consideration for the purpose of calculation of aforesaid total period of 17 months. He submitted on instructions that even otherwise also, the respondent-Corporation had rather requested the

State Government to consider relaxation for 195 such kind of Safai Karamcharis including the present petitioner. He submitted that however, the aforesaid letter was written to the Government in the month of March, 2021, but no reply has been received from the Government till date.

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

8. The issue involved in the present case is as to whether the petitioner who was working as a Safai Karamchari through Outsourcing Agency was entitled to be taken on the pay roll of the Municipal Corporation, Karnal in pursuance of the Policy of the Government (Annexure P-5) and in pursuance of the letter issued by the Government of Haryana to all the Commissioners of Municipal Corporations in the State of Haryana and all the Executive Officers/Secretaries of Municipal Councils/Committees in the State of Haryana vide Annexure P-6 or not. A perusal of Annexure P-5 would show that on the basis of decision taken by the Council of Ministers under the Chairmanship of Chief Minister of Haryana, it was so decided to take Safai Karamcharis etc. on the pay roll of the concerned Palika. It was a broad policy decision but on the basis of aforesaid broad policy decision, a letter was written by the Government of Haryana vide Annexure P-6 to all the Commissioners of Municipal Corporations in the State of Haryana and all the Executive Officers/Secretaries of Municipal Councils/Committees in the State of Haryana. The relevant portion of Annexure P-6 is reproduced as under:-

“Therefore, it is reiterated that Commissioners of the Municipal Corporations and Executive Officers & Secretaries of Municipal Councils & Committees respectively are the competent appointing authority in the

subject case and as such no approval is required from this office.

(b) Government vide above referred letter dated 06.09.2019 has categorically clarified that Safai Karamcharis who were engaged through outsourcing manpower agencies as on 24.05.2018 and continued to work as such till 06.09.2019 (date of issue of the above mentioned letter) are eligible to be engaged on Nigam/Palika Roll by the concerned Municipalities.

To clarify it further, the Municipalities should ensure that those Safai Karamcharis who were on the pay rolls of outsourcing manpower agencies from 24.05.2018 to 06.09.2019 and have continuously received their wages/remuneration for this period in their Bank Accounts, are eligible for taking on Nigam/Palika Roll. Municipalities may also consider the attendance sheet submitted with monthly payment bills by the sanitation manpower agencies which should depict the name of all eligible Safai Karamcharis as on 24.05.2018 and in monthly bills till 06.09.2019. Besides Biometric attendance (if adopted), deposit of EPF/ESI for the said period shall also be a conclusive proof in itself for engagement on Nigam/Palika Roll.”

9. A perusal of the aforesaid would show that a period has been defined i.e. from 24.05.2018 to 06.09.2019 that a Safai Karamchari must have been engaged through Outsourcing Manpower Agencies during the aforesaid period. It is a case of the petitioner that the petitioner was on the rolls of the Outsourcing Manpower Agency in the month of May, 2018 but has been non-suited only on the ground that the petitioner had to complete 17 salaries and the respondent-Corporation had the record of only 16 salaries because for the

month of May, 2018, such record was not there. During the course of arguments, learned counsel for the petitioner submitted that the petitioner has already attached Annexure P-2 to show a certificate of the outsourcing agency stating that the petitioner had worked with effect from 01.05.2018 to 30.09.2018 and while passing the aforesaid impugned order, the respondent-Corporation has rejected the claim of the petitioner on the ground that the said certificate cannot be relied upon because it was issued later on in the year 2022. Learned counsel for the petitioner further submitted that the respondent-Corporation otherwise has not verified on their own and rather it was a duty of the respondent-Corporation to have verified on the basis of record but without verification of the same, the claim of the petitioner has been rejected only on the ground that 17 salaries were not completed.

10. A perusal of the Policy (Annexure P-5), which is a decision taken by the Council of Ministers under the Chairmanship of Chief Minister of Haryana would show that it only states that the Karamcharis, presently who on 24.05.2018 were posted in different Municipal Committee and working, are to be taken on the roll of concerned Palika but it does not say at any place that total number of salaries are to be seen. However, in pursuance of the aforesaid Policy, the Government of Haryana wrote a letter (Annexure P-6) to all the Commissioners of Municipal Corporations in the State of Haryana and all the Executive Officers/Secretaries of Municipal Councils/Committees in the State of Haryana and in the said letter, the same period as aforesaid was stated but when the impugned order was passed, a new issue has been raised by the respondent-Corporation that 17 salaries are to be seen, which does not find any mention either in the Policy (Annexure P-5) or in the letter issued by the

Government (Annexure P-6) and it was for the first time that such kind of ground has been taken in the impugned order. Therefore, it is clear that the ground on the basis of which the respondent-Corporation has rejected the claim of the petitioner is based upon non-existing grounds. The relevant factor for the purpose of considering as to whether a Safai Karamchari is to be taken on the pay roll or not has to be in consonance with the aforesaid Policy (Annexure P-5) or aforesaid letter (Annexure P-6), which is a letter written by the Government to all the Commissioners of Municipal Corporations in the State of Haryana and all the Executive Officers/Secretaries of Municipal Councils/Committees in the State of Haryana, in which only period has been mentioned but number of salaried months have not been mentioned.

11. Now considering the aforesaid period, it has been so stated in the Policy as well as in the aforesaid letter issued by the Government itself that those Safai Karamcharis who are working through the outsourcing agencies as on 24.05.2018 are to be considered and the petitioner got the salary in the month of June, 2018 even as per the impugned order itself and regarding which even EPF has also been paid which would necessarily mean that the petitioner was working in the month of May, 2018. An employee who works for a particular month gets the salary in the next month only and therefore, the order which has been passed by the respondent-Corporation is not only against the record but is arbitrary and perverse on the face of it. Firstly, the argument which has been raised by the learned counsel for respondents No.3 to 5 that for the purpose of relaxation of 195 such kind of Safai Karamcharis including the petitioner, the matter was referred to the Government in the year 2021 is concerned, the same will have no significance in view of the fact that almost

three years have elapsed and the Government has not taken any decision and the claim of the petitioner is to get on the pay roll of the respondent-Corporation in pursuance of the aforesaid Policy Annexure P-5. Secondly, a perusal of Annexure P-6, as reproduced above, would also show that it has been clarified and reiterated by the Government that the Commissioners of the Municipal Corporations and Executive Officers and Secretaries of Municipal Councils and Committees respectively are the competent appointing authorities in the subject case and no approval is required from the Government and therefore, it appears that such an approval or sanction etc. which the learned counsel for respondents No.3 to 5 has stated to have written to the Government pales into insignificance.

12. Consequently, keeping in view the aforesaid facts and circumstances, the present writ petition is allowed. The impugned order dated 06.09.2022 (Annexure P-10) is hereby set aside qua the petitioner. The respondent-Corporation is directed to take the petitioner on the pay roll of Municipal Corporation, Karnal with immediate effect by passing an order in this regard.

07.03.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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