

(2013) 07 P&H CK 0890

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 17060 of 2004

Chhoto Devi

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: July 8, 2013**Citation:** (2013) 171 PLR 802**Hon'ble Judges:** Rajiv Narain Raina, J**Bench:** Single Bench**Advocate:** J.S. Dahiya, for the Appellant; Sunil Nehra, D.A.G., Haryana for the State, for the Respondent

Judgement

Rajiv Narain Raina, J.

This matter was admitted on 13.11.2006. The petitioner filed CM No. 14997 of 2012 for a decision on the writ petition in terms of the judgment of the Supreme Court rendered in [South Bengal State Transport Corporation Vs. Ashok Kumar Ghosh and Others](#). In paragraph 16 of the judgment, it has been held as under-

16. We may next consider whether the punishment is permissible in service jurisprudence. It is well settled that while an employee can be reverted to a lower post or service, he cannot be reverted to a post lower than the post in which he entered service (See: [Nyadar Singh Vs. Union of India \(UOI\) and Others](#) . Further it is also well settled that reversion to a lower post or service does not permit reversion to a post outside the cadre that is from regular post to a daily wage post We are therefore of the view that the punishment inflicted on the delinquent employee not being one of the punishments enumerated in Regulation 36, is not permissible in law....

By consent, the matter is taken on Board for final disposal.

2. The brief facts necessary for adjudication of the case shorn of unnecessary details is that the petitioner was appointed as a part-time Sweeper in Government High School, Pandu Pindara and her services were regularized by the 4th respondent, by

order dated 20.7.2000. On account of non-availability of regular sanctioned post of Sweeper, the regularization order was rectified and me petitioner was regularized as Sweeper-cum-Chowkidar vide order dated 20.4.2001. The service rules governing the post of Sweeper-cum-Chowkidar are known as the Haryana State Secondary Education Field Offices (Group-D) Service Rules, 1999 which contains a probation clause of two years. During the period of probation, her work and conduct was not found satisfactory and she was charge-sheeted under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 vide Memo No. 2011/01 dated 23.8.2001. After holding enquiry, me services of the petitioner were terminated vide order dated 19.2.2002. Aggrieved, the petitioner filed CWP No. 2944 of 2003 which was disposed of with a direction to the 3rd respondent to decide the petitioner's appeal by passing a speaking order within three months. The appeal was decided on 21.4.2004. The District Education Officer took a lenient view and modified the order of termination and asked her to join duties as part time sweeper. In short, she was reverted to her former post of part time sweeper. Left with no option, the petitioner joined as part time sweeper, a post outside the cadre of Sweeper-cum-Chowkidar.

3. The petitioner has narrated facts leading to the order of termination which was later modified in the manner indicated above.

4. The brief facts are that she was initially appointed as a part-time Sweeper on 27.9.1987 and had put in 13 years of service till her services were regularized on 20.7.2000 to be modified later to read 20.4.2001. She pleads that before the order of regularization was passed, a peon by the name of Radha Krishnan who projected himself to be close to the powers that be to pay value of one month's salary to him as bribe to help her gain regularization. On refusal to pay, a tirade started against the petitioner, and she made a complaint of it on 20.11.2000 to the 4th respondent-Headmistress on which no action was taken. She was assigned additional duties of Chowkidar at night in a school situated outside the village in a desolate place in a jungle which was most unfair. She was compelled to swear an affidavit that she was ready and willing to accept the additional charge of Chowkidar, only then the pay unlawfully deducted would be paid and she will get Rs. 30 extra a month for the additional work done. On 5.5.2001, she was called by respondent No. 6 and offered salary in exchange of the affidavit. Heretofore Radha Krishnan, Peon named as respondent No. 7 had been doing the work of Chowkidar at night in the school premises and the petitioner was being compelled to take the additional charge in a lonely isolated building on the outskirts of the village. This was not the way to treat a lady and the intention behind such a move has very serious implications of violation of woman's right to special protection of privacy and right to sleep at night in the safety of her home with her family. The situation that was being forced upon her is so insidious as would shock the conscience of the Court. These are very serious allegations levelled in the petition which are incapable of being refuted as there is an order and an affidavit in existence to indicate that something was really sinister in the mind set of her superior officer who thought of

the scheme of pushing her to an additional duty at night as a chowkidar in a desolate place.

5. In the written statement, it is pleaded in paragraph 2 that the petitioner refused to accept the revised orders. Even assuming that the order dated 20.7.2000 regularizing the service was a clerical error or mistake, she was subsequently regularized on 30.4.2001. If there is a post of Sweeper-cum-Chowkidar, it cannot be filled by a woman employee as it exists in a remote corner. The lady employee's prior consent on free will would have to be obtained in writing without pressure of any kind from any quarter failing which it should be read into the rules that the post of chowkidar can only be occupied by a male.

6. After hearing learned counsel for the parties, this Court is left with a distinct impression that the petitioner has been dealt in the most arbitrary and sinister manner. The nerve of this Court is pricked by the sinister design of a possible sexual predator abusing public office and superior position to lay a trap on the petitioner under cover of additional charge at Rs. 30 per month extra wages.

7. Without entering into any further factual dialectics, this dispute can be resolved on the legal issues presented for consideration whether an employee whose services have been regularized as a Sweeper, can be reverted as part time sweeper by putting the clock back behind the regularization order or to revert her to the position of a probationer. The petitioner had been serving for 13 years as part time sweeper and that was long enough to see her work and conduct. If it was as bad as is portrayed which led to the charge-sheet and termination, the authorities were free not to employ her at all. There was no administrative or judicial compulsion to withdraw the order of termination and replace it by what may loosely be called an order of reduction in rank and status. On having secured an order of regularization, she would have to be treated as a direct recruit to a post mentioned in the rules. For unsatisfactory work and conduct, the services of a direct recruit can either be dispensed with during probation or probation period can be extended for further assessment. The impugned order passed in this case is adopting a hybrid procedure not known to rules. Therefore, I agree with the submission of the learned Counsel that the judgment of the Supreme Court in South Bengal State Transport Corporation (supra) would apply to this case that one cannot be reverted to a post lower than the one recruited.

8. Resultantly, the writ petition is allowed and the impugned orders (Annexures P-2, P-6 and P-7) dated 30.4.2001, 19.2.2002 and 21.4.2004 stand quashed with all consequential benefits flowing therefrom. Let a copy of this order be sent to the Chief Secretary, Haryana for him to consider in his wisdom issuing guidelines on posting of women employees as chowkidars in desolate and remote places, if there is no extant policy, without their free consent or approvals of their husbands or families to keep them safe from sexual predators holding public office. Let the Chief Secretary, Haryana also look into the conduct of those who devised such additional

charge of duty upon a helpless woman and to take such action against the wrong-doer(s) as is warranted by disciplinary rules.