

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 18991 of 2009

DATE OF DECISION :- August 18, 2015

J.K. Sharma

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. Om Pal Sharma, Advocate for the petitioner.

Mr. D.R. Sharma, Advocate for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

M.JEYAPPAUL, J.

1. The Writ Petitioner challenges the order passed by the Central Administrative Tribunal declining his prayer for fixing his seniority w.e.f. 16.5.1989 with all consequential benefits.
2. The petitioner was appointed as Trained Graduate Teacher (TGT) in Navodaya Vidyalaya Samiti (NVS) on deputation

basis from Kendriya Vidyalya Sangthan on 12.3.1986. On 28.11.1988, the respondents advertised 81 posts of PGT (English) out of which 54 posts are to be filled up on deputation and 27 posts by direct recruitment. In the advertisement, there was a general instruction that application would be accepted only against one category of post i.e. either for direct recruitment or on deputation basis. In case a candidate apply for both the categories, his candidature shall be considered for direct recruitment only. The petitioner applied for the post under both the categories. The petitioner was relieved from duty as TGT from Navodaya Vidyalya, Jhajjar on 15.5.1989 and joined as Post Graduate Teacher (PGT) at Navodaya Vidyalya, Pabra, Hisar on 16.5.1989. The date of joining for duty was modified by the respondents to the effect that the candidates should report for duty only on 31.5.1989 instead of by 31.5.1989. The petitioner was permanently absorbed as TGT w.e.f. 1.5.1989.

3. On 7.6.1991 the respondents framed Recruitment Rules for the employees of NVS and circulated the tentative seniority list of PGT's in the month of March, 1995. The petitioner was shown at Sr. No. 402 in the tentative seniority list. Objections were invited to the tentative seniority list prepared. The petitioner sent a representation raising objections to his placement in the tentative seniority list. The petitioner approached Chandigarh Bench Central Administrative Tribunal by filing OA No. 1063/HP of 2003 and the same was

disposed of on 16.1.2006 with a direction to the respondents to decide the representation within three months by passing a reasoned and speaking order. The respondents rejected the claim of the petitioner vide order dated 31.7.2006.

4. The respondents have submitted in their reply that the petitioner joined duty on 31.5.1989 as per the modified communication as regards the date of joining for duty. The service of the petitioner as PGT was regularised w.e.f. 6.6.1991, one day prior to the date of notification of the recruitment rules.

5. The learned counsel appearing for the petitioner submitted that as per the terms of the advertisement, the petitioner should have been appointed to the post of PGT as a direct recruit.

6. Per contra, learned counsel appearing for the respondents brought to the notice of this Court Annexure P4, the order of appointment issued to the petitioner and Annexure P6 the joining report submitted by the petitioner and submitted that the petitioner was appointed on deputation category.

7. Of course, advertisement (Annexure P1) reads that in case a candidate applied for both the categories i.e. for direct recruitment and for appointment on deputation basis, his candidature should be considered for direct recruitment only.

8. Under this advertisement, the Appointing Authority has reserved the right to consider the candidature under a particular category, if at all application had been submitted for both categories.

The fact remains that the petitioner had applied for the post of PGT under the category of direct recruitment and also under the category of deputation basis. The respondents considered his candidature only for deputation category. The order of appointment (Annexure P4) would read that the petitioner was appointed for the post of PGT under the deputation category. The petitioner also submitted a joining letter accepting the position as PGT on deputation basis.

9. In view of the above, the general instruction issued by the respondents reserving a right of selection of the candidates under one of the categories does not give any right to the petitioner to claim appointment under direct recruit category, despite the acceptance of the terms of appointment order before joining as PGT on deputation basis.

10. The petitioner, who joined on 31.5.1989 as per the modified communication regarding date of joining for duty served as PGT on deputation basis until he was absorbed on 6.6.1991 as per the Recruitment Rules framed for the employees by the respondent on 7.6.1991.

11. We straightway reject the submission made by learned counsel appearing for the petitioner that the period of service rendered by the petitioner as PGT on deputation basis also should be considered for fixing seniority. A person appointed on deputation basis cannot make a claim for counting the service rendered by him on that basis for the purpose of fixing seniority. In our considered

view, the respondents have rightly considered the seniority of the petitioner from 6.6.1991, the date on which he was absorbed as per the Recruitment Rules they framed on 7.6.1991. The respondents have fairly fixed the seniority of the petitioner.

12. We do not find any merit in the Writ Petition and, therefore, it stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

August 18, 2015

p.singh