

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.27368 of 2013(O&M)

Date of Decision : 27.08.2015

Reena Kumari

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

- 1)Whether reporters of local newspapers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3)Whether the judgment should be reported in the Digest?

Present :Mr. Mukesh Yadav, Advocate for the petitioner

Mr. Hitesh Pandit, Addl. AG, Haryana

MAHESH GROVER, J.

The petitioner was initially engaged on contractual basis as an instructor but was dis-engaged from service on 8.12.2011 since posts of instructors in the trade of embroidery being rendered surplus on account of the decision of the Govt. to shut down Industrial Training Institute for Women Narnaul, District Mohindergarh which is a part of Gurgaon Division.

The petitioner remained out of service even though she had worked from 9.8.2007 till 8.12.2011. A writ petition came to be filed in this Court bearing no.5289 of 2007 titled as **Ashok Kumar and others vs. State of Haryana and others** pertaining to the same Department and dealing with similar circumstances. The writ petition was

disposed of with the following observations:-

“(i) That the petitioners shall not be entitled to continue in service, when regularly selected candidates, on completion of on going selection process are appointed against the posts, the petitioners are holding at present.

(ii) In case the department decides to close down any trade in any institute, incumbent of those posts will have no right to continue. However in case that very trade is opened in any other institute and if former teachers are available, they be offered the posts in the first preference.”

Clause (ii) extracted above mandates the respondents to offer the post to contractual employees whose services were dis-engaged as a matter of first preference in the event of revival of the trade in any other institute.

The petitioner thus presses her claim on account of the aforesaid extracted clause to contend that the trade was concededly revised in 2013 when two posts in the same trade were advertised against which the petitioner applied but for some reasons the appointments were not carried through and in 2015 a fresh advertisement has been issued on similar terms intending to fill up the posts of instructors on contractual basis. The petitioner was therefore required to be considered in the process and given a preferential right of employment. In case titled as **Hargurpartap Singh and others vs.**

14751 of 2003 Hon'ble Supreme Court has deprecated the practice of replacing ad hoc arrangement by another ad hoc arrangement and further stated that it is not at all appropriate to ignore persons who have gained experience as their services would be more beneficial and useful to the institution rather than fresh appointees on ad hoc basis. That being a settled position of law and the petitioner being otherwise eligible would necessarily have to be appointed keeping in view clause (ii) of the judgment of the Hon'ble Division Bench (supra).

This Court while issuing notice of motion had permitted the petitioner to be interviewed and noticed that the purpose of facing the interview is to test the petitioner's present capability of teaching since she is not in service since December, 2011. It was further observed that if she clears the said test respondent will have to give effect to note (ii) of the Division Bench judgement. Relevant portion of interim order dated 12.12.2013 is extracted herebelow:-

“As an interim measure, the petitioner would be permitted to appear in the interview pending either (i) declaration of rights by this Court (ii) acceptance of a right by the Department based on her preferential right vested under Note (ii) preserved by the Division Bench judgment of this Court in CWP No. 5289 of 2007 decided on 24.1.2008 together with rights declared and settled by the Supreme Court in **Hargurpartap Singh's case (supra)**.

The purpose of facing the interview is only to test the

petitioner's present capabilities of teaching since she has not been in service since December, 2011. If she satisfies that test, then the respondents will have to give effect to Note (ii), as referred to above.”

The result of the interview was directed to be kept in sealed cover which has now been shown to the Court and under the head skilled test and interview the petitioner fairs satisfactorily and is only 1 mark short against the highest awarded to the candidates and 2 marks short of the highest awarded in interview to any candidate. This would indicate that her performance is largely satisfactory. Consequently, in view of the observations made by the motion bench and the directions contained at note (ii) of the Division Bench judgment coupled with the observations of Hargurpartap Singh's case (supra) the petitioner would be entitled to appointment and the present petition deserves to be allowed.

Ordered accordingly.

Sealed cover of the result which was produced in the Court is returned back to Sh.Jaideep Kadian, Principal ITI, Gurgaon who is present in Court today after opening and perusing the same.

Respondents would be at liberty to declare the remaining result.

August 27, 2015
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(Mahesh Grover)
Judge