

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

204

Civil Writ Petition No.2858 of 2013

Date of Decision: April 08, 2015

Dr. Oma Wati Sharma

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. M.K. Tiwari, Advocate
for the petitioner.

Mr. Harkesh Manuja, Additional Advocate General, Punjab,
for the respondents.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court impugning the action of the respondents in rejecting the claim of the petitioner for retention in the college vide order dated 10.07.2012 (Annexure P-3) on the ground that she has not passed her National Eligibility Test (NET) and thus she does not fulfil the requisite qualification for appointment/retention in the college.

2. Counsel for the petitioner asserts that the petitioner has passed her Ph.D. in Sanskrit and also possesses the other qualifications requisite for appointment to the post of Lecturer. A Ph.D. candidate is not required to pass the NET and for this, he has placed reliance upon the U.G.C. Guidelines dated 30.06.2010 (Annexure P-5) as also the Instructions of the Punjabi University, Patiala dated 24.06.2011 (Annexure P-6). He contends that the impugned order cannot, thus, be sustained.

3. Counsel for the respondents, on the other hand, asserts that even if the petitioner, in the light of the U.G.C. Guidelines/Instructions, may

not be required to pass the NET, still the cadre of the petitioner cannot be changed as she belonged to the school cadre and the mode of recruitment is different in case of Lecturer and, therefore, cannot be absorbed in the college cadre. In support of this contention, he has placed reliance upon the judgment of this Court passed in **LPA No.76 of 2012** titled as **Hari Dutt Sharma and others Vs. State of Punjab and another**, decided on 26.03.2013 (Annexure R-1/1). He thus contends that the writ petition deserves to be dismissed.

4. I have heard counsel for the parties and with their assistance, gone through the records of the case.

5. As is apparent from the pleadings and the assertions put forth by the counsel for the petitioner, the petitioner being a Ph.D. holder is not required to pass the National Eligibility Test, as per the U.G.C. Guidelines dated 30.06.2010 (Annexure P-5) and Instructions of the Punjabi University, Patiala dated 24.06.2011 (Annexure P-6). In the impugned order, the only ground, which has been taken for rejecting the claim of the petitioner, is that she does not possess the requisite qualifications for appointment as Lecturer in Sanskrit and more emphasis has been laid upon her non-clearance of the NET, which in the light of the above, cannot be a ground for rejecting the claim of the petitioner.

6. The contention of the counsel for the respondents with regard to the assertion that the cadre of the petitioner cannot be changed firstly in the light of the judgment passed by this Court in a bunch of writ petitions with lead case being Civil Writ Petition No.4946 of 1989 titled as **Dev Raj Kashyap and others Vs. The State of Punjab and others**, decided on 28.09.2011 (Annexure P-1), where it has been held as follows:-

“This brings to the most crucial issue to the parity in scales sought by persons, who are working in these institutes as college teachers. As such, all those persons, who have been brought from school cadre and repatriated or liable to repatriation shall have no claim to parity in scales. On the other hand, the persons, who have been appointed at the institutes themselves directly and who possess qualifications as lecturers as prescribed by the University or who have been brought from college cadre from any other college shall alone be entitled to the scales of pay equivalent to that of Lecturers. The scales shall be worked out from the date of their engagement at the institutes and the amounts shall be calculated and be paid to them within 8 weeks from the date of receipt of copy of the order. If amongst the teachers in the institutes, there are teachers who are brought from the school cadre but who have qualified to be Lecturers in a college, with qualification so acquired, the scales could be considered for revision and for retention in the institute itself and placed in the college cadre. (...emphasis supplied). Their scales will be revised only from the day when orders are passed for the retention in the institutes and when a decision is taken to treat them as coming within the college cadre. This exercise shall be completed by the Director of Public Instructions Colleges and the appropriate sanctions shall be issued by the Government for appropriate revision of their scales commensurate with their qualifications and the status as persons belonging to the college cadre, within 8 weeks from the date of receipt of the copy of this order”.

7. Petitioner's writ petition i.e. CWP No.9431 of 1992 was also allowed by this common order. It is not in dispute that the said judgment has attained

finality. That apart the decision of the Division Bench, on which reliance has been placed by the counsel for the respondent i.e. **Hari Dutt's case** (supra) in the present facts and circumstances would not be applicable and in any case, the judgment, in which the claim of the petitioner falls, has already having attained finality, thus, the petitioner is entitled to the benefit of the same.

8. In view of the above, the present writ petition is allowed. Impugned order dated 10.07.2012 (Annexure P-3) is hereby quashed.

9. The consequential benefits be released to the petitioner within a period of three months from today.

April 08, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE