

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

LPA No.750 of 2013(O&M)
Date of decision: **11.05.2015**

Ms.Neelam Sharma

---Appellant

Versus

The Secretary to Government Punjab and others ---Respondents

Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.G.S.Bal, Senior Advocate assisted by
Mr.Sewa Singh, Advocate for the appellant.

Mr.Gaurav Garg Dhuriwala, DAG, Punjab.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 08.09.2011 of the Learned Single Judge, whereby, CWP No.3233 of 1994 filed by the appellant seeking directions to the respondent – State to reinstate her w.e.f. 21.1.1988 as Lecturer in Zoology, has been dismissed. The appellant has also challenged the order dated 8.2.2013, vide which, the Review Application No.437 of 2011 seeking review of the aforesaid judgment was dismissed.

Here a fact needs to be noted that though the review was dismissed, but a correction was made in the order dated 8.9.2011 that the post on which the petitioner was working be read as 'Zoology' instead of 'Geology'.

The appellant served as Lecturer in Zoology in different

Government Colleges in the State of Punjab, as detailed below:-

Sr.No.	Name of College	Period of service
1.	Government College, Tanda Urmur, District Hoshiarpur	01.09.1977 to 31.03.1980
2.	Government College, Sunam	12.10.1981 to 31.3.1982
3.	Government College of Science, Education & Research, Jagraon, District Ludhiana	19.10.1982 to 15.1.1983
4.	Government College, Gurdaspur	18.11.1983 to 4.2.1987

It is the case of the appellant that thereafter, she was transferred to Nawab Jassa Singh Ahluwalia Government College, Kapurthala.

As the services of the appellant and other similarly placed Lecturers had not been regularized though they had put in substantial number of years, (about seven years in the case of the appellant) and they had apprehensions that their services may be terminated, they filed Writ Petition No.856 of 1987 in the Hon'ble Supreme Court. Some other writ petitions were also filed in the Hon'ble Supreme Court raising the same issue.

Initially, vide order dated 24.9.1987 status quo was ordered. Later some regularly selected candidates moved an application in the Hon'ble Supreme Court and on their application on 16.12.1987 the following order was passed:-

“It is pointed out that following the directions of this Court of August 23, 1987 in W.P.No.317/87, regular recruitment has been made and candidates are now available to report to duty on being appointed. It is said that new 35 people who have been selected have

resigned from their jobs also where to join on being appointed.

We are aware of different later directions made in separate Writ Petitions. But, in view of the nature of the appointment given to the petitioner and to direction in the finally disposed of matter as referred to above, it must now be made clear that between the selected candidates and the persons who were earlier appointed on Adhoc basis the regularly selected candidates must have preference. We would accordingly direct the Govt. of Punjab respondent herein to proceed to appoint these 35 people who have resigned first, against existing vacancies, if any, and if there be none or inadequate number by terminating sufficient number of Adhoc lecturers on the basis of 'first come last go'....."

The Hon'ble Court directed that the regularly selected candidates be appointed and wherever required the ad hoc lecturers be terminated on the principle of 'first come last go'.

The petitions were finally disposed of the by Hon'ble Supreme Court vide order dated October 25, 1991. The Hon'ble Court held that no direction for regularization could be issued as the petitioners had not appeared before the Public Service Commission for regular selection. However, it was directed that all the petitioners who were in service be given an opportunity to appear before the Public Service Commission for regular selection by giving relaxation of age and as per the qualifications as existed at the time of their initial appointment. It was directed that till the result of the selection is published they would be allowed to continue.

It is the case of the appellant that during the pendency of

the petitions before the Hon'ble Supreme Court, her services were terminated on 28.1.1988, whereas respondents No. 3 and 4 were retained in service though they were her juniors having joined service on 25.11.1986 and in 1983 respectively, much after the appellant who had joined in 1981.

She filed CWP No.8304 of 1988 challenging her termination order and also prayed for regularization. The petition was disposed of with directions to consider her case in terms of the decision in CWP No.72 decided on 26.09.1988. When no action was taken she filed C.M. No.1396 of 1991, which was disposed of vide order dated 6.11.1992 with a direction to decide the representations filed by the appellant seeking reinstatement and regularization within three months.

Vide order dated 19.3.1993, the said representations were decided. Her claim for reinstatement and regularization was declined. It was stated that her services were terminated from Government College, Kapurthala on 28.1.1988 as a new Lecturer had been appointed in her place. Further, in terms of the decision of the Hon'ble Supreme Court dated 25.10.1991 in W.P.856 of 1987, in which the appellant was a party, a fresh selection limited to all the Lecturers who were in service was to be held by relaxing the age and qualifications. They were to be interviewed by the Public Service Commission. As the services of the appellant had been terminated before the aforesaid order, hence her services could not be regularized nor could she be given continuity of service nor could her

name be recommended to the Public Service Commission.

The appellant challenged the aforesaid order by filing CWP No.3233 of 1994 which has been dismissed vide order dated 8.9.2011 which has been impugned in the present appeal.

The case of the appellant before the Ld. Single Judge as well as in the present appeal is that as per the directions of the Hon'ble Supreme Court dated 16.12.1987, if required, the regularly selected candidates could be appointed by terminating the ad hoc lecturers on the basis of 'first come last go'. Hence, respondents No.3 and 4 who were juniors to the appellant were wrongly retained and the petitioner wrongly terminated.

The stand of the respondent – State which has been accepted by the Ld. Single Judge was that the respondent Nos.3 and 4 who are Lecturers in Zoology and juniors to the petitioner and were appointed on ad hoc basis, had filed writ petition Nos.1065-1110 of 1984 in the Supreme Court with a prayer that their services may be regularized. The Supreme Court had granted status quo on 07.03.1984. As such, they were not relieved by the Department. Smt.Niwanjit Gill, Lecturer in Zoology was appointed in Government College, Hoshiarpur against the post of Smt.Davinder Kaur, Adhoc Lecturer-respondent No.3, but Smt.Niwanjit Gill did not join her duties. Hence, Smt.Davinder Kaur-respondent No.3 continued working. Had Smt.Niwanjit Gill joined her duties, Smt.Davinder Kaur would have been relieved much earlier. In the case of petitioner, Ms.Manwal Sanjeev Inder Dev Kaur was recommended by the

Punjab Public Service Commission and she joined against the post held by the petitioner. In this background, the petitioner had to be relieved to accommodate the regularly selected candidate.

Similarly, as per the order of the Hon'ble Supreme Court dated 25.10.1991 only such lecturers were given a chance for regular selection by appearing before the Public Service Commission, by giving relaxation of age as were in service then. As the services of the petitioner had been terminated on 28.1.1988 and she was not in service on the date of the order of the Hon'ble Supreme Court, therefore, she could not be a part of the selection process. Thus, her representation was rightly rejected.

We agree with the Ld. Single Judge on both counts.

During the pendency of this appeal, the State has filed an additional affidavit dated 10.3.2014, wherein, it is stated that date of birth of the appellant is 29.12.1953 and thus, she has completed the age of 58 years on 28.11.2011. Thus, apart from the fact that no case is made out on merits, for this reason as well, no relief can be granted to the appellant, at this stage.

Accordingly, this appeal is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

May 11, 2015

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