

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

**CWP No.3804 of 1994 (O&M)
Date of decision: 20.01.2016**

Bindu Sharma

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.N. Sharma, Advocate,
for the petitioner.

Mr. Gaurav Goel, AAG, Haryana,
for respondent Nos. 1 and 2.

Mr. G.S. Gandhi, Advocate,
for respondent No.3.

RITU BAHRI, J.

The petitioner is seeking a writ of certiorari for quashing the order dated 22.06.1993 (Annexure P-6), vide which, payment of remaining installments of Additional Dearness Allowance (ADA) have been stopped and recovery in respect of already paid ADA has been sought to be made.

The petitioner was appointed on 24.09.1986 as B.Sc./B.Ed. Mistress by the respondent-school in the pre-revised scale of B.Sc./B.Ed. Masters on probation for a period of two years vide appointment letter (Annexure P-1). As per petitioner, she was appointed against a sanctioned post of master grade and ever since her appointment, she has been given the scale of Science Mistress (B.Ed.) Grade. A certificate (Annexure P-2)

certifying that the petitioner has been working as Science Mistress since 24.09.1986 has been issued by the Sub Divisional Education Officer. Pursuant to the decision given by the Hon'ble Supreme Court in **Haryana State Adhyapak Sangh Vs. State of Haryana**, the petitioner along with other similarly situated teachers was given arrears of instalments of ADA/House Rent Allowance in the scale of pay as allowed to B.Sc./B.Ed. Masters. Six installments of arrears on account of revision of pay scales w.e.f. 01.01.1986 and Additional Dearness Allowance along with four installments of House Rent Allowance were paid by the State Government through cheque to the teachers working in aided schools. The petitioner was also given three installments of ADA amounting to Rs.7333/- each in the months of October 1990, May 1991 and October 1991 vide cheque Nos.494616, 089439 and 725677 respectively issued the D.E.O. Yamuna Nagar. Apart from this, a sum of Rs.1861/- was paid on 16.01.1992 vide cheque No.BA68092140 on account of arrears of House Rent Allowance. However, 4th, 5th and 6th installment of Additional Dearness Allowance amounting to Rs.21,999/- and 2nd, 3rd & 4th installment of House Rent Allowance amounting to Rs.5583/- had not been paid to the petitioner. Vide letter/order dated 22.06.1993, the petitioner was informed that she was possessing higher qualification than the post on which she had been working and necessary approval of the Education Department was required for that purpose. Therefore, remaining installments of Additional Dearness Allowance etc. could not be paid to her. She was further informed that separate recovery proceedings would be initiated with regard to the payments of ADA which had already been paid to her.

Upon notice, written statement has been filed by respondent

No.3, wherein it has been stated that the petitioner was teaching in the School

against an unsanctioned post. No advertisement had been published with regard to the said post. The official respondents in a meeting with all the Heads of Private Aided Schools assured that necessary sanction for the teaching staff on receipt of requisitions from the schools, shall be made. After appointment of the petitioner vide Annexure P-1, she was accordingly paid the salary in the absence of any sanction from the department. Therefore, she could not claim that she had been appointed as Mistress and had a right to claim ADA on the said post. It has been further stated that certificate (Annexure P-2) has been given by the Sub Divisional Educational Officer on humanitarian ground showing that she had been working as Science Mistress since 24.09.1986. However, in the absence of any sanctioned post, the petitioner could not claim any benefit, which were admissible to a person appointed on a sanctioned post. Earlier, the ADA was released to the petitioner under a bonafide mistake and thereafter, the same was withdrawn vide letters/orders dated 11.11.1992 and 28.05.1993 (Annexures R-3/2 and R-3/3).

A perusal of the impugned order shows that the petitioner has been appointed on unsanctioned post without the consent of respondent-department. After verification of grant for the year 1991-92, the excess amount paid to the petitioner has been deducted. Another letter dated 28.05.1993 (Annexure R-3/3) was issued to the Manager, Mukandlal National Senior Secondary School, Yamunanagar, to recover the excess amount paid to the teachers, who had been appointed against the unsanctioned post. Subsequently, vide letter dated 22.05.1992 (Annexure R-3/4) permission was sought to appoint higher qualified teachers on JBT and C&V posts. The petitioner was appointed as JBT teacher w.e.f. September

1986 with qualification of B.Sc./B.Ed. Finally, vide letter (Annexure R-3/6), sanction was accorded to appoint six teachers, including the petitioner, to the posts of JBT teachers. On the date of filing of written statement i.e. 13.05.1994, the petitioner was teaching upto middle classes, which is a job assigned to JBT teachers. Thereafter, the petitioner made a request for sanction of house building loan from the Housing Development Finance Corporation Ltd., Chandigarh. Respondent-school vide letter dated 03.10.1992 (Annexure R-3/9) informed the said Corporation that the petitioner had been appointed on an unsanctioned post and it would not be possible for them to deduct and remit the amount of monthly installments. After deduction of excess ADA, the petitioner is being paid salary since January, 1994. She cannot claim any parity with an employee, who has been appointed on sanctioned post.

In replication to the written statement, the petitioner has reiterated her stand that she was appointed on sanctioned post of Master/Mistress Grade in 1986. Grant in aid was released against the petitioner's claim w.e.f. 1986 onwards till 1992. In 1990, Yamuna Nagar was declared as a district and it is only thereafter, the District Education Officer became competent to countersign the certificate, which has been issued to her. It was further stated that the respondent-department had released grant against the name of the petitioner in Master's Scale w.e.f. 1986 till 1992 in full knowledge that she has been appointed in Master/Mistress Grade.

In reply to the replication of petitioner, respondent Nos. 1 and 2 have given details of the sanctioned posts, which were existing as on 01.07.1986/24.09.1986 in respondent-School, which is reproduced as under:-

Principal : 01

Lecturer	: 12
Master/Mistresses	: 26
Teachers (J.B.T. & C&V)	: 18
D.P.E.	: 01
Total	: <u>58</u>

In the above reply, it has been stated that Sh. S.P. Sethi was working as Master against the sanctioned post. He was promoted as Lecturer against the sanctioned post w.e.f. 01.07.1986. As per letter dated 20.09.1994 (Annexure R-3/T), Sh. K.C. Sharma, who was working against sanctioned post of teacher, was promoted against the post of Master, which was vacated by Sh. S.P. Sethi w.e.f. 01.07.1986. One Jitender Chawla, who was working against the sanctioned post of Master, had resigned on 31.05.1986 and his post was also filled up by Sh. J.K. Riyal on 01.07.1986. Smt. Bindu Sharma-petitioner did not come into picture at that time. The petitioner was appointed against an unsanctioned post of Mistress on 24.09.1986. Hence, the question of appointing the petitioner against the post of Master vacated by Sh. S.P. Sethi on account of his promotion, does not arise. On the post vacated by Sh. S.P. Sethi, Sh. K.C. Sharma was promoted as Master w.e.f. 01.07.1986 as per letter dated 20.09.1994. Hence, the petitioner did not acquire any right on the post vacated by Sh. S.P. Sethi. One post of teacher had been lying vacant in M.L.N. Senior Secondary School, Yamuna Nagar since long and necessary approval was accorded to the appointment of petitioner against the said post with retrospective effect i.e. 24.09.1986. Respondents are releasing grant accordingly to respondent No.3. It has been further clarified that the grant, which was released w.e.f. 1986-87 to 1991-92 was due to inadvertence.

Respondent No.3 has placed on record relevant letter (Annexure R-3/5) issued by District Education Officer, Yamunanagar, regarding sanction of posts of JBT teachers possessing higher qualification. The sanction given by the Director, Secondary Education, Haryana (Annexure R-3/6) is not disputed by the petitioner. At the same time, the claim of the petitioner that she was appointed on a sanctioned post which was vacated by Sh. S.P. Sethi on his promotion as Lecturer, has been duly explained by the respondents by stating that Sh. K.C. Sharma was promoted against the post of Master w.e.f. 01.07.1986, which was vacated by Sh. S.P. Sethi. In the absence of sanctioned post of Master, the claim of the petitioner is liable to be rejected.

Moreover, in the supplementary affidavit filed by Mr. I.C. Singhal, Member Managing Committee, M.L.N. Senior Secondary School, Yamuna Nagar, it is stated that out of 26 sanctioned posts of Masters, all posts were filled. There were 18 sanctioned posts of teachers out of which, 2 posts were vacant as was clear from Annexure R-3/14. After a lengthy correspondence, sanction for appointment of the petitioner to the post of JBT with higher qualification was accorded vide Annexure R-3/6. It has been further explained that one Sh. Bhagwant Singh was appointed as Science Master on 06.07.1982 vide appointment letter (Annexure R-3/15) on the basis of recommendations of the Selection Committee. However, Sh. Bhagwant Singh left his services on 22.08.1985 (Annexure R-3/16). Thereafter, Sh. Jatinder Chawla was appointed as Master on 24.09.1985 vide appointment letter (Annexure R-3/7), who had resigned from the said post vide resignation letter dated 14.05.1986 (Annexure R-3/18). Thereafter, the said post was filled by Sh. J.K. Rial, who was appointed as Science Master

w.e.f. 15.07.1986 (Annexure R-3/19). When the petitioner was appointed on her own request vide Annexure R-3/13, there was no vacant post of Master available in the school. She was not appointed on the basis of any recommendation of the Selection Committee. Hence, the procedure as laid down under Rule 7 of the Haryana Aided Schools (Security of Service) Rules, 1974, for appointment on the sanctioned post was not followed. Her appointment was not pursuant to any advertisement. Moreover, on the date of her appointment, 28 posts of Masters were already filled. The petitioner had executed an agreement (Annexure R-3/27) with the respondents, whereby she had agreed to be appointed on the post of JBT teacher. It has been further clarified that Smt. Vijya Chopra, who was MA (English), B.Ed, was appointed in response to a press advertisement dated 16.08.1992. She appeared for interview and was selected as English Master on 01.09.1992. The petitioner being a Science Teacher cannot claim parity with Smt. Vijya Chopra.

After going through the petition, written statement and replication, this Court is of the view that the present petition deserves to be dismissed. Sufficient material has been placed on record to show that vide Annexure R-3/6, necessary sanction was accorded to appoint six teachers possessing higher qualification, including the petitioner, on the posts of JBT teachers. For all intents and purposes, the petitioner was working on the post of JBT and cannot claim parity with any of the Masters/Mistresses, who were regularly appointed by way of recommendation of the Selection Committee.

Mr. Gandhi, on instructions from Mr. Ravi Bhatia, working as Accountant with the Management of the respondent-school, has informed that the recovery has been effected from the grant in aid sanctioned to the

Management by the Government. After making recovery of excess amount from the petitioner, admissible ADA on the post of JBT is being paid to her after the sanction was granted vide Annexure R-3/6.

In view of the above discussion, no ground is made out to quash the impugned order dated 22.06.1993 (Annexure P-6).

Resultantly, the present petition is dismissed.

(RITU BAHRI)
JUDGE

20.01.2016.
ajp