

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9555 of 1996

Date of Decision: 03.03.2016

Smt. Anita Sharma

... Petitioner

Versus

Punjabi University, Patiala

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. Vishal Khatri, Advocate,
for Mr. Vipul Jindal, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. The University admits that one Ms. Man Mohan Kaur passed the type test on June 08, 1994 and on qualifying the test she was promoted on March 22, 1995 as a Semi Professional out of the Restorers working in the University. It is given out that the active shelf-life of the type test is prescribed at six months after which it loses its efficacy. This decision was taken by the University on October 18, 1995. While Ms. Man Mohan Kaur has been promoted the petitioner has been denied promotion as Semi Professional only for the reason that the life of the type test had expired in terms of the policy decision. It is well settled that instructions operate prospectively and, therefore, the accrued rights of the petitioner could not be taken away by resort to the instructions issued later.

2. For this proposition Mr. Sanjiv Gupta, learned counsel places reliance on the Full Bench decision of this Court in **Surinder Jit Singh v. State of Punjab**, 1994 (2) SCT 665 reiterating the settled principle that retrospective application of executive instructions is impermissible. In fact the principle is so well-founded it needs no longer authority in support thereof.

3. The petitioner approached this Court when the University was gearing up to conduct the type test on July 11, 1996 seeking a writ of prohibition restraining the University from holding the type test for her. It may be recorded that the petitioner is still in office.

4. In view of the above facts, the petitioner has successfully demonstrated a case for interference for correction of the error committed by the university in applying the policy instructions retrospectively and consequential declaration that action taken was legally bad. Hence the denial of right of consideration for promotion calls for removal of fault and restorative justice not only for the reason that cited instructions are prospective in nature but also by reason of unreasonable discrimination between similarly placed persons. If Ms. Man Mohan Kaur was promoted to the higher post then the petitioner deserves parity of treatment to prevent continued infringement of equality in Article 14 of the Constitution.

5. Consequently, the petition is accepted. A writ of mandamus is issued directing the respondents to re-consider the case of the petitioner for promotion as Semi Professional with effect from the due date and to give her all the consequential benefits arising therefrom in accordance with law including further promotions, if any, falling on the way from the date juniors, if any, who may have been promoted meanwhile; including revision

of pay and allowances. The University is directed to re-consider the case of the petitioner in the light of this order within two months from the date of receipt of certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

03.03.2016
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