

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 14839 of 2011

Date of decision : 13-07-2016

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Chandra Kumar Jha

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Anurag Goyal, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl.A.G, Haryana.

Ms. Nikita Bangar, Advocate for
Mr. A.S Virk, Advocate for respondent no.3.

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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?*

RITU BAHRI, J

The petitioner is seeking a writ of certiorari for quashing the order dated 19.6.2009 (Annexure P-23), vide which the petitioner has not been treated as regular employee. He has further sought a direction to treat him as a regular employee in conformity with the orders passed dated 18.1.2008 (Annexure P-13) with all consequential benefits and grant of minimum of the basic pay in the

revised pay scale instead of basic pay of Rs.8000/-.

The petitioner was appointed as a Lecturer in Sanskrit by a duly constituted Selection Committee held on 11.12.1998 against the leave vacancy in the scale of Rs.2200-4000 in the office of the Principal of the respondent-College. After recommendation of the Selection Committee, the petitioner was issued an appointment letter dated 14.12.1998 (Annexure P-2) and given appointment as Lecturer in Sanskrit against the leave vacancy up to 31st March 1999 in the pay scale of Rs.2200-4000 subject to the approval of the Kurukshetra University, Kurukshetra with a condition that if the work and conduct of the petitioner was found to be satisfactory he may be considered for the next academic session. His appointment was thereafter approved by the University vide letter dated 29.12.1998 (Annexure P-3). His services were extended up to 31.3.2000 in the revised pay scale vide letter dated 15.7.1999 (Annexure P-4). This very extension of the services of the petitioner was again approved by the Kurukshetra University, Kurukshetra vide letter dated 1.9.1999 (Annexure P-5). On 3.5.2000, a letter (Annexure P-8) was written by the Principal of the College to the Director, Higher Education i.e respondent no.2 requesting him that since Dr. Ashima Joshi has vacated the post of Lecturer and as the work and conduct of Sh. C.K Jha is good and satisfactory, therefore he may be allowed to continue on regular basis from the ensuing session. In reply of this letter, the petitioner was duly recommended to continue till the post was filled up on permanent basis vide letter dated 20.6.2000 (Annexure P-9).

In view of this, the petitioner was issued another letter of appointment dated 1.7.2000 (Annexure P-10), whereby the services of the petitioner were ordered to be extended in the pay scale of Rs.8000-10200 till the permanent appointment is made subject to the approval of the Kurukshetra University, Kurukshetra which was further approved by the University vide letter dated 17.8.2000 (Annexure P-11). The Governing Body in its meeting held on 16.11.2002 under the Chairmanship of the President of the Governing Body wherein the nominee of the Vice-Chancellor and Higher Education Commissioner were present confirmed the services of the petitioner as a lecturer in Sanskrit. The proceedings of the Governing Body meeting are attached as Annexure P-12. The petitioner was also communicated a letter of confirmation w.e.f 1.7.2002 by the Governing Body vide letter dated 18.1.2008 (Annexure P-13).

The grievance of the petitioner now in the present writ petition is that despite the confirmation of the petitioner as Lecturer in Sanskrit, neither GPF was deducted by the respondent nor any annual increment was granted to him. To this effect, a letter dated 12.1.2004 (Annexure P-15) was written by the Principal of College to the Higher Education Commissioner, Haryana, Chandigarh. The petitioner also made representations dated 26.5.2008 (Annexure P-16), 3.7.2008 (Annexure P-17), 8.11.2008 (Annexure P-18) respectively on the same ground. The Principal of the college also wrote a letter dated 11.11.2008 (Annexure P-21) to the Higher Education Commissioner, whereby a request was made that the

petitioner may kindly be given increments w.e.f 1.7.2001 as he is a confirmed employee. Again another letter dated 8.7.2009 (Annexure P-22) was written by the Principal of the College in this regard. To one of the request dated 22.11.2008 made by the principal, respondent no.2 replied vide letter dated 19.6.2009 (Annexure P-23), whereby it was intimated that the petitioner cannot be treated as a regular appointee as the petitioner would be treated regular only when the post is advertised and he shall be interviewed along with other candidates. Therefore, by way of this petition, the petitioner is seeking directions to:

- (i) to treat him as regular employee as per recommendations made by the meeting of the Governing Body (Annexure P-12).
- (ii) the respondents to make the payment of regular pay scales with all consequential benefits of annual increments as per (Annexure P-12).

Counsel for the petitioner has referred to a Division Bench judgment passed by this Court in the case of **Poonam Sachdeva vs. State of Haryana and others (CWP No. 10951 of 2002)** decided on **28.8.2002 (Annexure P-27)**, whereby the writ petition has been allowed to regularize the appointment of Poonam Sachdeva as regular lecturer whereas she has been appointed initially against a leave vacancy.

Counsel for the respondent on the other hand has argued

that the petitioner was appointed by a duly constituted selection Committee against a leave vacancy. His appointment against leave vacancy was approved by the affiliated University. In the appointment letter (Annexure P-2) given to the petitioner it was clearly mentioned that this appointment is against the leave vacancy. The State Govt. in the year 1991 issued instructions dated 8.4.1991 (Annexure R-1) vide which it was decided that in case any appointment is made against a leave vacancy through duly constituted Selection Committee then the appointment shall be treated against leave vacancy only and in case the said post subsequently becomes vacant permanently then the regular posts so fallen vacant shall be re-advertised and selection will be made through a duly constituted Selection Committee. As the post held by Dr. Ashima Joshi became vacant on regular basis, hence, as per latest instructions dated 8.4.1991 (Annexure R-1) applicable in this regard, the petitioner is not automatically entitled for regularization on the post held by her against leave vacancy. On this basis, the proposal of regularization of the services of the petitioner sent by the management of the College vide letter dated 3.5.2000 (Annexure P-8) was rejected by respondent no. 2 vide letter dated 20.6.2000 (Annexure P-9).

Counsel for the respondent has made reference to a judgment in the case of **Dr. Purshotam Dass vs State of Haryana (CWP No. 4637 of 1992)** decided on **October 28, 1992 (Annexure R-II)**, this Court held that after issuance of circular dated 8.4.1991, a

person appointed as Lecturer against leave vacancy does not get any right to be regularized in the service even though he/she may have been appointed against leave vacancy on the recommendations of a duly constituted Selection Committee. Reference has also been made to a judgment in the case of Mrs. Veena Kumari vs. Director Higher Education and others (CWP No. 1760 of 1994) decided on 14.11.1994 (Annexure R-III), wherein it was categorically held that no right came to be vested in the petitioner on the basis of her appointment against leave vacancy to claim regularization in service.

Heard counsel for the parties. The facts not in dispute are that the petitioner was appointed against a leave vacancy and one of the conditions of the appointment letter dated 14.12.1998 (Annexure P-2) was that if the work and conduct of the petitioner is found to be satisfactory, he may be considered for the next academic session. The petitioner though has been granted extension from time to time, his claim for treating as regular employee has to be examined in view of the instructions dated 8.4.1991 (Annexure R-1). As per above said instructions (Annexure R-1) an equal opportunity of participation in a selection was to be granted to all eligible candidates against a permanent post. A candidate appointed against a leave vacancy had only a right to participate in the selection process.

No doubt that the petitioner has not been appointed pursuant to the Instructions dated 8.4.1991 (Annexure R-1).

However, the question for consideration in the present writ petition is

whether the appointment of the petitioner was against a leave vacancy or it was likely to be continued. As per the Instructions dated 8.4.1991 (Annexure R-I), appointment made against the leave vacancy has to be considered as a leave vacancy appointment only, and if that post becomes available later on, than. it has to be re-advertised a a regular post and appointment is to be made by duly constituted selection committee. The objective of the appointment is to give equal opportunity to similarly situated persons to participate in regular appointment process. In the judgments referred to by the counsel for the respondents in Dr. Purshotam Dass's case (supra) and Mrs. Veena Kumari's case (supra), the appointments had been made against leave vacancy initially. In the case of Dr. Purshotam Dass, he had been appointed against leave vacancy for 2 years and the management had received the information that the regular Professor would come back and rejoin the post. In this background, the petitioner could be allowed to continue only till the Professor rejoined. However, it was informed to the Court that Sh. Paliwal had already rejoined and already put in his resignation. The writ petition was dismissed by this Court with a direction that if and when the post vacated by Sh. Paliwal is advertised and the petitioner applies, he will be given due weightage for his having already worked to the entire satisfaction of the Management. It was left open to the Management to keep the petitioner in service till the post which became available on the resignation of Sh. Paliwal was filled on regular basis. Management was also directed to pay the entire arrears of the

petitioner within two months of the receipt of the copy of the order.

In similar background, Ms. Veena Kumari was appointed w.e.f 27.10.1987 as Lecturer (History) on temporary basis in the service of Fateh Chand College for Women, Hisar against a leave vacancy caused due to the fact that one Mrs. Asha Kiran was on leave. She continued to serve as a Lecturer in History up to 31.3.1994 after rendering seven years of service. Finally Mrs. Asha Kiran resigned from service w.e.f 31.3.1994. The claim of Ms. Veena Kumari for appointment in service on regular basis was declined on the ground that the as per Instructions dated 8.4.1991 (Annexure R-I) she did not acquire any right to be regularised and the said vacancy could be filled only by a fresh advertisement. The writ petition was dismissed with a direction to the respondent that for the period for which the petitioner worked as a Lecturer in History, she shall be paid salary in the regular time scale and this shall, however, not confer any right on the petitioner to claim regularization in service, at any time, in future and it shall be open to respondents to make regular appointment by advertising the post.

However, these judgments will not be applicable to the facts of the present case. In the present case, the petitioner was appointed as a Lecturer in Sanskrit against a leave vacancy by a duly constituted Selection Committee Meeting held on 11.12.1998. On 3.5.2000, a letter (Annexure P-8) was written by the Principal of the College to the Director, Higher Education i.e respondent no.2 requesting him that since Dr. Ashima Joshi has vacated the post of

Lecturer, the petitioner may be allowed to continue on regular basis. The respondent-Management should have advertised the post for regular appointment but instead the petitioner was duly recommended to continue till the post was filled up on permanent basis vide letter dated 20.6.2000 (Annexure P-9). In view of this, the petitioner was issued another letter of appointment dated 1.7.2000 (Annexure P-10), whereby the services of the petitioner were ordered to be extended in the pay scale of Rs.8000-10200 till the permanent appointment is made subject to the approval of the Kurukshetra University, Kurukshetra which was further approved by the University vide letter dated 17.8.2000 (Annexure P-11). The Governing Body in its meeting held on 16.11.2002 confirmed the services of the petitioner as a lecturer in Sanskrit. The petitioner was also communicated a letter of confirmation w.e.f 1.7.2002 by the Governing Body vide letter dated 18.1.2008 (Annexure P-13). For all intents and purposes, the respondent-Management had an occasion to advertise the post for regular appointment after Dr. Ashima Joshi ceased to hold lien period on the post on 2.5.2000 as is evident from Annexure P-8. Continuation of the petitioner on this post after 2000 till 2008 and thereafter would amount to appointing the petitioner not against leave vacancy. The information about the decision taken on 16.11.2002 as regards the confirmation of the services of the petitioner as a Lecturer in Sanskrit had been communicated to him vide letter dated 18.1.2008 (Annexure P-13). The petitioner has served till the year 2008 for almost a period of 10 years.

In the case of **Poonam Sachdeva (supra)** in response to an advertisement dated 2.11.1999 for the post of a Lady Lecturer in Hindi, the petitioner applied for the post and was selected by a duly constituted selection committee. It was indicated in the advertisement that the post was likely to be continued. The petitioner was appointed against the leave vacancy post of Dr. Sushma Chawla who had been appointed as Principal of the College. Dr. Chawla had a lien on the Post of Lecturer in Hindi and after the expiry of the lien the post of Lecturer in Hindi against which the petitioner was appointed became vacant. A request was made to the Commissioner/Director Higher Education, Haryana vide letter dated 11.9.2000 (Annexure P-4) to regularize the services of the petitioner as it was specifically mentioned in the advertisement dated 2.11.1999 that the post was likely to continue. Thereafter petitioner filed this writ petition to quash the impugned order dated 6.6.2002 (Annexure P-10), whereby the claim for regularization was rejected. The Division Bench interpreted that the respondents are bound by the terms and conditions of the advertisement when it was made within the legally permissible powers and the petitioner had relied upon the same. Besides the University authorities had also given their consent and no objection for regularizing the services of the petitioner provided the leave vacancy was likely to continue on permanent basis. The contention for not accepting the request of the management of the college for sanction and approval of the appointment of the petitioner on permanent basis was held to be

without substance.

In the present case, the petitioner has served since 1998 till date i.e for a period almost 16 years and the respondents are bound to accept the recommendations of the Governing Body (Annexure P-12) as per the judgment passed by this Court in the case of **Poonam Sachdeva (supra)**. Keeping in view that the College has not advertised the permanent vacancy when it became available till date i.e for a period of 16 years, this writ petition is being allowed. Order dated 19.6.2009 (Annexure P-23) is set aside and a direction is given to the respondents to treat the petitioner as a regular employee with all consequential benefits.

13-07-2016
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(**RITU BAHRI**)
JUDGE